

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: : 2024-MED-08-0881  
:  
Ohio Patrolmen's Benevolent :  
Association (Deputy Lieutenants), :  
:  
Employee Organization, : **FACT-FINDING REPORT**  
:  
and : **FINDINGS AND RECOMMENDATIONS**  
:  
Cuyahoga County Sheriff Department, :  
:  
Employer. : **April 14, 2025**  
:

**APPEARANCES**

**For the Employee Organization:**

George E. Gerken, Attorney  
Miguel A. Caraballo Sr., President  
Chris Kozub, Vice President  
Timothy Coyne, Lieutenant  
Padraig (Pat) Devlin, Lieutenant

**For the Employer:**

Rebecca K. Divoky, Assistant Law Director  
Ryan Geary, Assistant Law Director  
Amy Marquit Renwald, Director of Human Resources, Employee and Labor Relations  
Aaron Reese, Chief Deputy  
Jim Mackey, Acting Major  
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**I. BACKGROUND**

The Fact Finder was appointed by the State Employment Relations Board (SERB) on January 21, 2025 pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). The parties are the Ohio Patrolmen's Benevolent Association (Union or OPBA) and the Cuyahoga County Sheriff Department (County or Sheriff). Cuyahoga County is in northeast Ohio. Cleveland is the county seat. The County has a population of over 1.2 million, with a median household income of \$43,501.00.

The Sheriff Department provides local police assistance, court security for both the Cuyahoga County Common Pleas Court and Cleveland Municipal Court, jail operations, service of warrants and subpoenas, and conducts foreclosure sales. It has a Detective Bureau, Narcotics Task Force, Human Trafficking Task Force, Electronic Monitoring Unit, SWAT, and Marine Patrol. The bargaining unit in this fact-finding consists of the Deputy Lieutenants in the Department's Law Enforcement Division. They primarily provide supervision of Deputy Sheriff Sergeants, Deputy Sheriffs, and civilian employees. In addition, they coordinate special investigations, assist in developing and instituting department policies and procedures, and perform other administrative duties. There are six members in the bargaining unit.

The collective bargaining agreement expired on December 31, 2024. Negotiations on a successor contract began in November 2024. The parties met four times: November 12 and 25, 2024, December 11, 2024, and January 8, 2025. During negotiations, the parties reached tentative agreements on all other issues that were not submitted to the Fact Finder. Throughout contract negotiations and the alternate dispute resolution process, the parties reached the following tentative agreements:

**Article 14 Wages**

Removal of the first and last sentences of the first paragraph.

**Article 20 Uniforms**

Section 2, add language that the uniform allowance will be paid in the pay period including February 1st. Also added language regarding uniform allowance and promotions.

**Article 26 Health & Safety**

Section 7, remove language regarding labor management Committee. Also, additional language regarding required training.

**Article 28 Grievance Procedure**

Section 6, Step 2 is changed from Chief Deputy to Major.

**Article 34 Sick Leave**

Removal of language in Section 4, 5 and 9. Addition of language in Section 10.

**Article 37 Sick Leave Donation**

Removal and addition of language in Sections 1, 2 and 3.

**Article 49 Pregnancy Notification & Maternity Leave**

Section 2. addition of language regarding reasonable accommodations. Section 3, removal of old language and addition of language that County will follow the PWFA.

**New Article Paid Parental Leave**

Parental leave will be in accordance with the Employee Handbook.

**Article 53 Expiration and Renewal**

Change to date of agreement.

Prior to the fact-finding, the County withdrew its proposal as to Article 47, Pregnancy Notification and Maternity Leave, while the Union withdrew its proposal as to Article 48, Pre-Tax Deduction of PERS Contributions. In addition, during the negotiations and through fact-finding, the parties agreed to waive ORC 4117.14(G)(11) as to retroactivity of any award in 2025.

Finally, any contract articles for which the parties agreed to maintain current contract language are hereby incorporated as part of this Report and are recommended to be continued in the successor agreement.

**II. THE HEARING**

The fact-finding hearing was scheduled for March 19, 2025 in the Law Department offices at the County Administration Building, 2079 E. Ninth Street, in Cleveland. Each party timely provided a pre-hearing statement. The parties reached impasse on the following issues that remain open for fact-finding:

- Article 14 Wages
- Article 15 Hours of Work/Overtime
- Article 16 Court Time/Call-In Pay/On-Call

- Article 18 Longevity
- Article 21 Group Insurance
- Article 25 Employee Assignment and Transfer
- Article 27 Employee Discipline
- Article 29 Personnel Records
- Article 34 Sick Leave
- Article 35 Sick Leave Donation
- Article 36 Vacation Leave
- Article 46 Leave of Absence Without Pay
- New Off-Duty/On-Duty Alternative Leave Work Assignment
- New Promotional Examination

The parties jointly introduced the following exhibit into evidence:

1. DEPUTY LIEUTENANTS' CONTRACT, CUYAHOGA COUNTY & OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, JANUARY 1, 2022 TO DECEMBER 31, 2024.

Additionally, the parties each introduced the following exhibits.

Union Exhibits

1. DEPUTY LIEUTENANTS' CONTRACT, CUYAHOGA COUNTY & OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, JANUARY 1, 2022 TO DECEMBER 31, 2024.
2. Cuyahoga County Financial Data.
3. Memorandum of Agreement re Limited Waiver of Application of O.R.C. Section 4117.14(G)(11).
4. Section 9.06 of Cuyahoga County Employee Handbook.
5. Cuyahoga County and UAW Region 2-B, Corrections Officer Corporals' Contract, Effective through December 31, 2023.
6. Arbitration awards re overpayments to employees.
7. Other Cuyahoga County Sheriff Department collective bargaining agreement language re Longevity.
8. Sheriff Departmental Notices.
9. Corrections Officer contract language re Sick Leave.
10. Other Cuyahoga County Sheriff Department collective bargaining agreement language re Attendance Bonus.
11. Chain of Command chart.
12. Article from Police Chief Magazine "Decision Fatigue and Why It Should Be Understood by Law Enforcement Leadership: Can Science Provide Insight into How Officers Make Decisions?"

County Exhibits

1. DEPUTY LIEUTENANTS' CONTRACT, CUYAHOGA COUNTY & OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, JANUARY 1, 2022 TO DECEMBER 31, 2024.
2. DEPUTY SHERIFFS' CONTRACT, CUYAHOGA COUNTY & LABORER'S INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 860, EFFECTIVE JANUARY 1, 2024 THROUGH DECEMBER 31, 2026.

3. DEPUTY SERGEANTS' CONTRACT, CUYAHOGA COUNTY & CUYAHOGA COUNTY DEPUTY SHERIFF'S SUPERVISORS ASSOCIATION, EFFECTIVE JANUARY 1, 2022 TO DECEMBER 31, 2024.
4. COLLECTIVE BARGAINING AGREEMENT BETWEEN: THE COUNTY OF CUYAHOGA AND THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION FOR THE CORRECTIONS OFFICERS BARGAINING UNIT, SHERIFF'S DEPARTMENT, 0101/23 - 12/31/25.
5. Cuyahoga County Employee Handbook.
6. Cuyahoga County Proposal 11/12/24.
7. Cuyahoga County Proposal 1/6/25.
8. Union Proposals 11/25/24.
9. Union Proposals 12/31/24.
10. Union Proposal.
11. ORC 4117.08.
12. Arbitration Decision and Award - Gregory Szuter.
13. Arbitration Decision and Award - Margaret Nancy Johnson.

The Fact Finder thanks the parties for their time and effort making their presentations. The parties' presentations were thorough, well presented and thought out, and supported by their evidence. In addition, the Fact Finder recognizes the professionalism and courtesy the parties extended to each other and the Fact Finder. The Fact Finder truly enjoyed working with both sides. The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

**All tentative agreements reached during contract negotiations and alternative dispute resolution sessions that were not rejected by one or both of the parties are hereby adopted and incorporated into this Fact-Finding Report. Additionally, all other provisions of the collective bargaining agreement that were not the subject of bargaining during the contract negotiations and alternate dispute resolution process are incorporated into this Report.**

**III. FACT-FINDING CRITERIA**

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the 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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

**IV. ISSUES AND RECOMMENDATIONS**

**Introduction**

With a population of 1,264,817 as of the 2020 U.S. Census, Cuyahoga County is the second most populous county in Ohio after Franklin County. The county seat and most populous city is Cleveland. The County was created on June 7, 1807 and organized on May 1, 1810. It spans 459.8 square miles and includes 38 cities, 19 villages, two townships, and 19 paper townships. Effective 2010, Cuyahoga County transitioned from a statutory county to a charter county. As a charter county, it has an elected county executive and prosecutor with a county council of 11 members. The Sheriff is appointed by the county executive.

Cuyahoga County operates on a biennial budget. Under Section 3.09(5) of the County Charter, upon receiving the County Executive's proposed operating budget, the County Council is required to adopt and amend the biennial operating budget. On December 5, 2023, the Council formally adopted the 2024-2025 Biennial Operating Budget and Capital Improvements Program by passing Resolution No. 2023-0285. The current budget is effective until the end of calendar year 2025, and a new biennial budget for 2026-2027 must be established prior to the end of 2025. The County's General Fund is the main operating fund in the County budget and the County's primary unrestricted fund. Revenues are derived from sales tax, property tax, fines and forfeitures, charges for services, other intergovernmental revenue, investment earnings, and other revenues and taxes. There is no dispute here that the County has the ability to pay increases sought by the OPBA. The only dispute is whether those increases should be recommended and how large any recommended increase should be.

***Issue: Article 14, Wages***

**Position of the County:** Add the following sentence to the end of Article 14:

Only those employees who are in active status in the bargaining unit as of the date the Deputy Sheriff's Agreement is ratified by the Cuyahoga County Council shall be eligible for retroactive payment.

**Position of the OPBA:** Keep current contract language.

**Findings:** The County wants to define who is eligible for retroactive pay when a new contract is negotiated. Retroactive pay is based on the County's contract with the Deputies. That contract is negotiated the year before the Lieutenants contract. The County argues that linking the Lieutenants' retroactivity to the ratification of its own contract as opposed to the Deputies' collective bargaining agreement is confusing and inefficient. The Union has agreed to the removal of the last sentence, but the County believes this creates an overbroad term as to which employees are eligible for retroactivity. The County asserts it has encountered problems with not defining which employees are eligible to receive retroactive payments and negotiated the proposed language into several collective bargaining agreements. The lack of clarity in

defining who is eligible for retroactive pay will create problems with PERS and possible payments to people who are no longer employed with the County. It will also create problems when determining which current employees are eligible for retroactive payments and grievances could occur without defining eligibility.

The OPBA counters that there is no reason that members of the bargaining unit should not be compensated for hours worked at the Lieutenant level retroactive to the start of the contract. This has occurred in every prior contract between the parties. There has been no issue with this language since it was negotiated and there is no need to change it. Lastly, the OPBA believes that the current language "...employed upon the ratification of this Agreement..." is the same as the County's proposal, so there is no need to modify it.

At the hearing, the record revealed that the real issue here is when a Lieutenant retires and begins receiving benefits from PERS before a successor agreement is ratified by the County Council. If a retired Lieutenant receives retroactive pay, it causes issues with PERS that can take months to resolve. The OPBA does not object to acknowledging that a retiree should not receive retroactive pay.

**Recommendation:** Keep current contract language. Add a new sentence:

Any Lieutenant who retires and begins receiving benefits for PERS prior to ratification of this Agreement by Cuyahoga County Council shall not be entitled to retroactive pay.

***Issue: Article 15, Hours of Work/Overtime***

**Position of the Union:** In Section 4, the OPBA proposes an increase in the total number of compensatory hours that can be accrued from 320 to 480. It also seeks to eliminate the two year period that compensatory time must be used and replace the language with "There shall be no expiration date for the use of accumulated overtime."

**Position of the Employer:** Current contract language.

**Findings:** The Union contends that the County Handbook allows certain County employees to accumulate 480 hours of compensatory time. Currently, Lieutenants have the greatest number

of comp time hours employees are allowed to accumulate under a union contract. The Lieutenants believe they should at least be even with those County employees who are not represented by a Union. In addition, as supervisors, their responsibilities limit their opportunity to use comp time. Their responsibilities have increased in recent years and doing more work will only lead to more comp time. The Lieutenants are not asking for unlimited comp time, just an increase in the cap. The Lieutenants also believe there should be no expiration date for the use of comp time. This does not pose a financial obligation on the Employer as there is a cap on the time and simply assures that the time is available for emergencies if needed.

The County responds that the Union has failed to provide a compelling justification for the proposed increase in the compensatory time cap and removal of the two year time limit. Currently, Lieutenants have the highest cap of any bargaining unit employees in the Sheriff Department at 320 hours. The Deputies and the Deputy Sergeants are both capped at 280, well below the Lieutenants' cap. Based on these comparisons, the 320 hour cap is fair and should not be increased. The Union has argued that, since 480 hours can be earned by non-bargaining law enforcement employees, they should receive 480, also. The County believes that these non-bargaining employees are especially high level management employees in the Sheriff Department and are unable to bargain for an increase in benefits and wages. Because of their high level in the Department and the inability to bargain, the County believes that they should receive more comp time than the bargaining level employees.

The Union has also proposed the removal of the two year limit on using comp time. The County claims that the Union has failed to provide a compelling justification for the proposed change. All but one bargaining unit in the Sheriff Department have a two year limit to use comp time. That other bargaining unit has only 365 days to use it. Thus, the Lieutenants currently have the longest period of time to use their time. The burden that this language would create is an unending open financial liability for each Lieutenant. If the Fact Finder were to recommend this language, all of the other bargaining units within the Sheriff Department, and perhaps in

other departments, will seek similar language. Further, the Lieutenants do not lose any comp time, as they are paid for any time that is not used within two years.

**Findings:** The Fact Finder agrees that the OPBA has not shown a compelling need to increase the cap. They currently accrue more than other Sheriff Department bargaining units and the OPBA did not persuade the Fact Finder that the Lieutenants are comparable to non-bargaining law enforcement employees. The Fact Finder notes that the evidence established another level of management, Majors, has been created between the Captains and Chief Deputy Reese. This further supports that the non-bargaining law enforcement employees are not comparable.

As to eliminating the two year limit, the OPBA did not persuade the Fact Finder it should be changed. The hours are not lost, but paid out. Discontinuing the limit would create an open-ended liability. Additionally, if the limit were eliminated, it is likely the other Sheriff bargaining units would seek the same, increasing the open-ended liability.

**Recommendation:** Retain the current language of Article 15.

***Article 16: Court Time/Call-In Pay/On-Call***

**Position of the OPBA:** Add a new Section 4 as follows:

In the event that an error regarding wages appears on the Employee's pay warrant, the Employee shall contact the Payroll Department immediately upon discovery of the error for assistance. In the event of an underpayment of more than \$500.00, the Employee shall notify the Payroll Department and a new payroll warrant will be issued no later than the close of business the next day of the County Fiscal Office.

In the event of a wage overpayment, the Employee and the Union will be notified. The parties shall meet and discuss the issue. If the overpayment occurred in the same fiscal year, the parties agree that the overpayment shall be recouped at the same rate, and amounts, the overpayment was made. Any recoupment of an overpayment that occurred outside the current fiscal year shall be by mutual agreement only.

**Position of the County:** The County rejects the OPBA's proposed language in favor of a new article titled "Payroll" as follows:

In the event that an error regarding wages appears on an employee's pay warrant, the employee shall contact the Payroll Department immediately upon discovery of the error for assistance. In the event of an underpayment of wages in excess of ten (10) hours, the employee shall notify the Payroll Department and a new payroll

warrant will be issued no later than the close of the next business day of the County Fiscal Office.

In the event of a wage overpayment, the employee and the union will be notified. The parties agree that the County has the right to recoup the overpayment. Prior to recouping the overpayment, the County shall meet and discuss the terms of repayment with the employee and the union.

**Findings:** The OPBA submits that its rationale is consistent with the language in the collective bargaining agreement between the County and the Corrections Officers in the Sheriff Department. It is also consistent with two arbitration awards with OPBA bargaining units, a 2020 award involving Protective Services Officers of the County and a 2025 award with the City of Cleveland Heights and its Police Department. Both awards found contract violations when the employer deducted money from paychecks to recoup overpayments mistakenly made by the employer.

The County counters that, as a public employer and an entity holding public property and funds as a “trust,” it has an obligation to recoup overpayments. However, the County recognizes that overpaid employees must be notified of the overpayment and given an opportunity to participate in the formation of a reasonable repayment plan. It believes that its proposed language balances the needs of the County and the employee by ensuring that the employee and the Union are apprised of the overpayment and given a meaningful opportunity to participate in the creation of a repayment plan, which recognizes the County’s ultimate obligation to the taxpayers, whose funds the County holds in trust. The language proposed by the County will be proposed to every bargaining unit with an expired collective bargaining agreement and has already been incorporated into four Sheriff Department contracts and 13 other Executive Department contracts.

Both sides recognize the need for language regarding underpayment and overpayment of wages. There is not much difference between their proposals. The OPBA uses \$500 as the underpayment threshold, while the County uses 10 hours. At the current hourly rates, this is not a great difference. The major difference is the OPBA seeks to limit the right to recoupment to a fiscal year. While this makes some sense, an overpayment in the last check of a fiscal year that

is discovered a few weeks later in the next fiscal year is treated vastly differently than an overpayment made at the beginning of a fiscal year that is not discovered until the end of the fiscal year. On the other hand, the County's proposal does not limit the time an overpayment can be recouped.

The Fact Finder recommends neither proposal as is. Rather, the County's language with a time limit added for any recoupment makes more sense to the Fact Finder. This creates something of an incentive to get payroll correct and make any corrections without too long a delay. In addition, it prevents hardship on an employee for an overpayment paid out some time ago. It also makes more sense to the Fact Finder to put this in a new article rather than Article 16, since Article 16 covers other topics.

**Recommendation:** The following language is recommended in a new article titled "Payroll."

In the event that an error regarding wages appears on an employee's pay warrant, the employee shall contact the Payroll Department immediately upon discovery of the error for assistance. In the event of an underpayment of wages in excess of ten (10) hours, the employee shall notify the Payroll Department and a new payroll warrant will be issued no later than the close of the next business day of the County Fiscal Office.

In the event of a wage overpayment, the employee and the union will be notified. The parties agree that the County has the right to recoup the overpayment. Prior to recouping the overpayment, the County shall meet and discuss the terms of repayment with the employee and the union. There shall be no recoupment of any wage overpayment greater than ten (10) hours paid out more than six (6) months prior to discovery of the overpayment. This applies to one time overpayments or continuing overpayments based on incorrect hourly wage rates, shift differentials, etc. in pay warrants more than six (6) months prior to discovery of the overpayment.

### ***Article 18, Longevity***

**Position of the Union:** Increase the longevity allowance from \$375 to \$400.

**Position of the Employer:** Do not increase the longevity allowance.

**Findings:** The Union argues that the increase is consistent with the increased allowance for the Deputy Sheriffs and Deputy Sergeants. Since the Lieutenants are on a rank differential, this increased allowance is not accounted for in the differential. The Employer submits that the Union has failed to provide a compelling reason for increasing the allowance, other than the

Deputy Sheriffs and Sergeants received it and the Lieutenants want it, too. However, that is an insufficient reason to increase the longevity allowance according to the County.

The Fact Finder determines the Union has not shown a compelling reason for the increase. In addition, given the other recommendations made in this Report, the Fact Finder sees no reason to increase the longevity allowance at this time.

**Recommendation:** No increase in the longevity allowance.

***Article 21, Group Insurance***

**Position of the County:** No change in the bi-weekly contribution percentages for 2025 and 2026. For 2027, apply the same bi-weekly contribution percentage/share approved by County Council that is applicable to all non-bargaining County Executive employees for health insurance and ancillary benefit plans.

**Position of the OPBA:** Continue the current employer and employee contribution rates for all three years of the successor contract.

**Findings:** The County seeks to eventually put all County Executive employees on the same plan with the same employer and employee contribution rates. The rates are set for the current biennial budget through 2025, and many collective bargaining agreements have set rates for 2026. However, the contribution rates for 2027 have not been determined. The County submits that the Executive has authorized the County Law Department to propose identical contributions rates for plan years 2025 and 2026 for the various health insurance and ancillary benefit plans to every bargaining unit with whom the County negotiates. In addition, the rates that have been extended to the Deputy Lieutenants are those that are in effect for 2025 and will be in effect for 2026 for all non-bargaining County employees. The County argues its proposal to maintain the bi-weekly contribution percentages for 2025 and 2026 and the “me too” proposal in the third year of the Agreement is a generous approach, especially where the County’s share of health coverage costs is expected to increase by at least 5%. The County’s

proposal to maintain current contribution rates through 2026 must be considered when evaluating the parties' positions on benefits.

The OPBA wants to keep the current rates. It contends the County's proposal would give it carte blanche to assign any monthly contribution it chooses to non-bargaining unit employees and then arbitrarily impose this amount on the bargaining unit members. This would take away the "bargaining" part of being in a "bargaining unit." The OPBA proposes to continue the current contract language cost distribution as there has been no showing of any pressing need to change the contribution rates.

At the hearing, the OPBA noticed its proposed contribution rates for other benefit plans in Section 2(B) changed the rates from the current 86% Employer and 14% Employee to 93% Employer and 7% Employee. It modified its proposal to continue the 86/14 rates.

The Fact Finder certainly understands the County's desire to standardize rates. He also recognizes the OPBA's wish not to give up bargaining power by agreeing to a rate County Council can approve unilaterally. There is also the uncertainty that the last year of the contract, 2027, is two years down the road and much can change in the meantime. This is particularly so given the chaos and uncertainty the federal government is causing at the present. The Fact Finder concludes the best approach is a reopener for bi-weekly contribution percentages for 2027.

**Recommendation:** The Fact Finder recommends a reopener for Employer and Employee bi-weekly contribution percentages for 2027.

### ***Article 25, Employee Assignment and Transfer***

**Position of the Union:** The Union wants to change the language in Section 1 to:

**SECTION 1.** The total number of Lieutenants in the bargaining unit shall not drop below a minimum of ~~four (4)~~, **eight (8)** except in the event of a vacancy. **A vacancy occurs on the date of the retirement, resignation, termination or demotion of the Lieutenant. When** a vacancy occurs, the Employer shall actively seek to fill the vacancy within a reasonable period of time. Retroactive compensation shall not be paid to the successor appointed Lieutenant prior to the date of appointment. **The Sheriff's Department will maintain an active promotional list at all times and**

**The Sheriff's Department will administer a promotional examination prior to 90 days of the list expiring.**

**Position of the Employer:** Amend Section 1 to the following:

**SECTION 1.** ~~The total number of Lieutenants in the bargaining unit shall not drop below a minimum of four (4), except in the event of a vacancy. If a vacancy occurs, the Employer shall actively seek to fill the vacancy within a reasonable period of time. Retroactive compensation shall not be paid to the successor appointed Lieutenant prior to the date of appointment.~~ **If the number of Lieutenants drops below 4, the Employer shall actively fill the vacancy within a reasonable period of time. Retroactive compensation shall not be paid to the successor appointed Lieutenant prior to the date of Appointment.**

**Findings:** There are currently six Lieutenants in the bargaining unit. The Union submits that, over the last two contracts, the Lieutenants' workload has increased dramatically. As a practical matter, this eliminates their ability to take vacation, compensatory time, and personal days. The increased workload creates additional stress that affects their physical and mental health. Increasing staffing to eight Lieutenants, as well as keeping an active promotional list would alleviate these issues. Simply put, according to the Union, the Lieutenants have more responsibility and need more staffing. The span of control of the Lieutenants has greatly increased and is out of control. They cannot be proactive because they are always reacting. As to the term vacancy, the Union acknowledges the County's concern over defining it. However, the Union is simply trying to define when a vacancy occurs.

While the County agrees that the workload has increased, the Union's proposal doubles the current staffing. Adding this language is an unreasonable encroachment on the County's management rights. Among the rights guaranteed the County under Article 4 of the CBA and §4117.08(C) of the Ohio Revised Code are the right to determine matters of inherent managerial policy such as organizational structure; the right to direct, supervise, evaluate or hire employees; the right to determine the overall methods and personnel by which operations are to be conducted; the right to retain employees; the right to determine the adequacy or size of the workforce; and the right to effectively manage the workforce.

Furthermore, the Union's proposal regarding the term "vacancy" as the date a Lieutenant leaves the classification or bargaining unit goes against two arbitrations between the County and the Deputy Sergeants' bargaining unit. These arbitration decisions determined a vacancy that takes the bargaining unit below the minimum staffing number must be filled upon the opening of the position. A problem occurs with this definition when the staffing is above the minimum staffing number and someone leaves the position of lieutenant. At this point it is up to the County to determine whether the position needs to be filled. The latest arbitration decision determined that a "discretionary vacancy" occurs when the Personnel Request Form for a deputy lieutenant is approved. If the Union's definition of vacancy is accepted, then the confusion regarding discretionary vacancies will still exist and the County will have to choose between violating the arbitration decisions with the Sergeants' bargaining unit or violating the Lieutenants' collective bargaining agreement.

Based upon this confusion and the two grievances the County has already had, the County has proposed deletion of the term vacancy altogether and proposed that Section 1 state "If the number of Lieutenants drops below 4, the Employer shall actively fill the vacancy within a reasonable period of time." With the removal of the term vacancy altogether, the County will fill all positions that drop below the minimum manning number in a reasonable period of time, therefore determining when a vacancy occurs will no longer be a problem. Further, the County will fill discretionary vacancies in accordance with the arbitration decision with the Sergeants.

The Fact Finder acknowledges that the Ohio Revised Code reserves to management certain rights. Typically, he is hesitant to infringe on those rights. He has not recommended certain language in this fact-finding at least in part for that very reason. However, the County has already relinquished some of these rights in Article 25. It has agreed to a minimum of four Lieutenants and filling any vacancy within a reasonable time when the number falls below four. The Union only seeks to increase the number due to the increased workload. While this does infringe on the County's management rights, it does not do so to the extent the County argues.

By including a minimum number in the contract, the County has made it a subject of bargaining.

The Fact Finder has thought long and hard about these proposals. He found Chief Deputy Reese's testimony at the hearing to be compelling. The Chief testified that the current span of control of the Lieutenants is "ridiculous." They are "saturated." Even so, the Sheriff makes it work. The Sheriff asks the Lieutenants all the time to do tasks they should not. Currently, Lieutenants are only scheduled on days. This means there are some Deputy Sheriffs that do not have either a Sergeant or a Lieutenant on the shift. The Sheriff has asked to hire more Lieutenants, but the County has not approved additional hiring. Simply put, according to the Chief Deputy, there are not enough Lieutenants. Sergeants are making decisions that a Lieutenant should, and some Deputies are making decisions a Sergeant should. While the Sheriff has added the Major position to the command structure, a Captain position was lost. The Fact Finder notes that Lieutenant Padraig Devlin is serving both as an acting Captain as well as a Lieutenant, according to the Chain of Command chart.

On this record, the Fact Finder believes the minimum staffing for Lieutenants should be increased. However, doubling the current number from four to eight seems inappropriate. This would require the County to hire at least two Lieutenants, perhaps more to ensure the number does not fall below eight. This would place a substantial additional cost on the County. On the other hand, while the current number is four, the County has continued to keep staffing above the minimum at six Lieutenants. This suggests that, by increasing the number to at least six, the County would keep the number higher than six. But that would not ensure the number would increase. The County could determine that, with six as the minimum and the current staffing, there is no need to hire additional Lieutenants. Increasing minimum staffing to seven would ensure that at least one Lieutenant is hired, perhaps even two so that the number does not easily fall below seven. Since Lt. Devlin is filling both a Lieutenant and Captain position, perhaps it will alleviate his working two positions. The County would retain some flexibility, though.

In the end, the Fact Finder sees merit in both proposals and finds that a combination of the two proposals is most appropriate. Increasing the minimum to seven and not defining what a vacancy is makes the most sense. The Fact Finder hopes that his recommended language serves several purposes. First, it alleviates at least some of the workload on the Lieutenants. Second, it encourages the County to hire more than the required number of Lieutenants so there is some leeway when there is a vacancy. Fourth, it acknowledges that hiring additional Lieutenants adds considerable cost and takes that into account. Finally, avoiding a definition of “vacancy” avoids the problems noted by the County.

**Recommendation:** Modify Section 1 to read:

**SECTION 1.** The total number of Lieutenants in the bargaining unit shall not drop below a minimum of ~~four (4)~~, **seven (7)**. **If the number of Lieutenants drops below seven (7), the Employer shall actively fill the vacancy within a reasonable period of time. Retroactive compensation shall not be paid to the successor appointed Lieutenant prior to the date of Appointment.**

### ***Article 27, Employee Discipline***

**Position of the Union:** Modify Section 3:

**SECTION 3.** If it is determined that disciplinary action is warranted, such action will be applied in a fair and uniform manner and shall take into account the nature of the violation(s), the Employee's record of discipline, and the Employee's record of performance and conduct. The Employer shall not consider any previous non attendance related disciplinary action rendered against the Employee which occurred more than ~~twenty-four (24) months~~ **twelve months (12)** preceding the current charge unless: (1) the disciplinary action is for the same or similar conduct for which the Employee was previously disciplined within the preceding five (5) years; and/or (2) there has been no other discipline imposed during the preceding ~~twenty-four (24)~~ **twelve (12) months**; however, any discipline consisting of a verbal or written reprimand which occurred more than ~~twelve (12) months~~ preceding the current charge shall not be considered if there has been no other discipline imposed during the preceding ~~twelve (12) months~~. Copies of any disciplinary action rendered shall be given to the Employee.

**Position of the Employer:** Keep current language.

**Findings:** The OPBA asserts that similar disciplinary action can be considered up to five years, so this only applies to other discipline and a twelve month look back period is not a significant change. The County counters that the OPBA fails to provide a compelling justification. Its only

argument is that the Deputies have a shorter look back period, and the Lieutenants want similar language. This “me too” argument is not a sufficient reason to recommend the change. Additionally, there has been no discipline issued to a Deputy Lieutenant in the last three years, since the language was added to the agreement. Accordingly, no Deputy Lieutenant has been adversely affected by this discipline look back period. Furthermore, this language was agreed upon by both parties in the last negotiation cycle as part of a package the County proposed which included a .5% increase to the rank differential between the Lieutenants and the Sergeants. The deletion of this longer look back period would compromise the management rights the County negotiated in exchange for the .5% increase the Lieutenants have received for the last three years.

For the reasons the County put forward, the Fact Finder finds no reason to recommend the change sought by the OPBA.

**Recommendation:** No change in the language of Article 27.

***Article 29, Personnel Records***

**Position of the Employer:** Change the term “an inquiry” in the first line of Section 3 to “a public records request.”

**Position of the Union:** Do not change “an inquiry” to “a public records request...”

**Findings:** The County proposes this change to clarify the language and make it closer to the current practice in the Sheriff Department. The Sheriff Department receives requests for personnel records from outside agencies, such as the U.S. Justice Department, that must be kept confidential during the investigation. The Sheriff Department is currently forced to violate the contract with the Lieutenants to keep the inquiries confidential and comply with the outside agency’s mandates. The County’s proposal will alleviate this problem and make the language less broad so that both parties know when this section is activated and notification has to be made.

The OPBA responds that the language has been in the contract for years with no

issues. There are requests for records other than public records requests and the County's proposal would limit notification to public records requests only. The Lieutenants would like to be informed of any request that is not mandated to be kept confidential.

Both parties make reasonable requests. The County does not want to be put in the position of violating the contract or the agency request. And the OPBA wants the Lieutenants to be aware of any inquiry that is not mandated to be kept confidential. The Fact Finder declines to recommend the County's proposed change, but does recommend language that allows the Sheriff Department to keep certain requests confidential.

**Recommendation:** Add the below language to Section 3:

Employees will receive prompt notification any time an inquiry is made to view their personnel file, unless the request is made by Deputy Sheriff supervisory personnel, a member of the executive staff of the Sheriff, or other authorized Employer representative. If an inquiry is made by an outside agency, e.g., the U.S. Department of Justice, that mandates the inquiry be kept confidential during the investigation, the Employer need not notify the Employee.

### ***Article 34, Sick Leave***

**Position of the Union:** Change Article 34 as follows:

**SECTION 1.** Each member of the bargaining unit shall earn sick leave credit at the rate of ~~four and six tenths (4.6)~~ **.0575 hours** for each ~~eight (80)~~ hours of completed service **hour worked**, Sick leave credit shall be prorated to the hours of completed service, not to exceed ~~one hundred twenty (120)~~ **one hundred and fifty (150)** hours in one year. Unused sick leave may be carried forward from one calendar year to the next without a maximum

**SECTION 5.** The Employer will grant the use of up to twenty-four (24) hours of sick leave per calendar year to be used by an Employee as personal time. The Employee must secure approval from the Employer no less than three (3) working days prior to the use of such personal time.

Any Employee who uses no sick time, and has no attendance violations, as defined by the Employer's attendance policy, for any "rolling" six-month period will be permitted, upon the Employee's request, to convert five (5) sick days to five (5) vacation days. **Pre-approved sick time shall not be considered as "sick time" for the purpose of obtaining the conversion from sick time to vacation time.** Personal time used pursuant to this section shall be subtracted from the available sick days to be converted to vacation days. Such conversion may only occur twice in any twelve (12) month period.

**SECTION 11.** At the time of retirement from active service with the Employer, provided that the Employee has completed ten (10) or more years of service, the Employee shall be entitled to be paid cash for one-half (½) of the value of accrued but unused sick leave credit, not to exceed ~~six hundred forty (640)~~ **nine hundred and sixty (960)** hours, (~~eighty [80] days~~).

**SECTION 12 (NEW SECTION).** Upon ratification of this Agreement by Cuyahoga County Council, all Employees shall be eligible for a one thousand (\$1,000.00) dollar "perfect attendance" bonus if they have zero absences from work and no tardies in a given payroll quarter (subject only to exceptions for vacation time that is submitted seven (7) days in advance of the absence, and comp time that is submitted three (3) days in advance of the absence). For purposes of this Article, there shall be four (4) payroll quarters defined as follows: Quarter 1 (commencing on the first day of pay period 1 and concluding on the last day of pay period 7); Quarter 2 (commencing on the first day of pay period 8 and concluding on the last day of pay period 14); Quarter 3 (commencing on the first day of pay period 15 and concluding on the last day of pay period 20); and Quarter 4 (commencing on the first day of pay period 21 and concluding on the last day of pay period 26/27).

**Position of the Employer:** Maintain current contract language.

**Findings:** In Section 1, the Union seeks the same amount of sick leave as the Corrections Officers, using the same calculation of .0575 hours per hour worked. The Union believes that additional sick days should be increased along with the increased workload of the Lieutenants. In addition, the Corrections Officers have a record of sick leave abuse, while the Lieutenants do not. It makes no sense to give Corrections Officers even more sick leave than Lieutenants, when Lieutenants do not abuse it. The Union would also like pre-approved sick leave to not be considered as sick time when converting it to vacation. Pre-approved sick leave gives the Sheriff time to prepare for a vacancy and find a replacement where overtime is not required, while staffing issues surrounding unplanned vacancies can be problematic and cause overtime. The Union also seeks an increase in accrued sick leave from 640 to 960. Finally, the Corrections Officers, Corrections Corporals, and Court Security Officers have a perfect attendance bonus. The Lieutenants would like the same bonus.

The Employer rejects each proposed change. It argues the Deputies, Deputy Sergeants, and Deputy Lieutenants all have the same sick leave cap at 120 hours in one year. The Corrections Officers sick leave cap is at 150 hours per year, but they do not have the same sick

leave buy back provision upon retirement that law enforcement units have. The Corrections Officers receive 25% of their allotted sick leave at retirement, whereas the Deputy Lieutenants receive 50% of their allotted sick leave. The Employer asserts it cannot afford to have an increased sick leave credit cap that leads to additional outstanding funded liability.

As to Section 5, the Employer submits that the Lieutenants' current contract allows the conversion of five days of sick leave to vacation leave on a rolling six month basis for any employee who uses no sick time and has no attendance violations. This language was created as an incentive for employees to work and not abuse their sick time. If the proposed language is accepted, carveouts for personal time or pre-approved sick time are created. This defeats the incentive. The Employer will not only not have employees at work, but will also have to pay the given benefit of converting sick to vacation time. This benefit is important to the employees because an employee gets paid out for all accumulated vacation time upon leaving the Sheriff Department. Therefore, the employee does not have to wait until retirement to get paid out any portion of his/her sick time that is converted to vacation time.

In Section 11, the Employer declares that it currently entitles Lieutenants who have completed 10 or more years of service upon retirement to be paid for one half the value of accrued but unused sick leave credit not to exceed 640 hours. The Union has proposed that the cap on sick leave hours be increased to 960 hours to be cashed out at retirement. Currently the Deputies, the Deputy Sergeants, and the Lieutenants all have the highest cash out of sick leave upon retirement. These bargaining units receive 50% of the value of their cap at 640 hours. Increasing it to 960 hours will require substantial additional payouts at retirement. Additionally, if the Lieutenants receive additional hours, the Deputies and Deputy Sergeants will likely seek it in the next contract.

As to the proposed attendance bonus, the Employer claims that the Union already has the incentive of being able to convert five sick days to five vacation days twice a year if the employee uses no sick time and has no attendance violations. The Union's proposal comes directly from the Corrections Officers collective bargaining agreement. This "me too" request

fails to explain why the Corrections Officers received this bonus, nor does it take into consideration the negotiations behind the language giving the Corrections Officers this attendance bonus. It is well known that the Employer has had a significant problem finding enough Correction Officers to staff the jail. Contributing to the shortage is a serious problem of Correction Officers calling off sick as soon as they earn sick time. The attendance bonus attempted to resolve this. The Employer has found that the bonus has not solved the sick leave abuse issue. The same employees continue to show up for work, while the same employees continue to call off sick. For example, only 12 Corrections Officers out of several hundred receive the attendance bonus regularly. On the other hand, the Lieutenants have more than enough applicants when there is an opening. And the Employer acknowledges the Lieutenants do not abuse sick leave and sincerely appreciates that they do not. Simply put, the Employer does not believe the Lieutenants need an attendance bonus to encourage them to report to work and has found such bonuses do not really work.

The Employer has introduced substantial evidence that an increase in the accrued sick leave cap from 120 to 150 and an increase in unused sick leave credit from 640 to 960 are not necessary and could increase its costs substantially. Additionally, it has shown the attendance bonus incentive is not needed for Lieutenants and has not worked with other units. While the concept of carving out pre-approved sick time for conversion of sick leave to vacation might have some merit, the Employer's position also has merit. Meanwhile, the Union has not demonstrated a compelling need for the proposed changes to Article 34. The Lieutenants receive a 50% payout of sick leave at retirement, while Corrections Officers are paid out only 25%. Carving out pre-approved sick leave for converting sick leave to vacation diminishes the incentive the sick leave conversion was designed to address. Increasing the unused sick leave credit by an additional 320 hours could add significant costs at retirement. Finally, since the Lieutenants do not abuse sick leave, the concept of an attendance bonus makes no sense. Add to this that the Employer has found such bonuses do not actually solve the problem, as well as the recommendation to increase the number of Lieutenants, and the Fact Finder sees

no reason to recommend it or the Union's other proposed changes.

**Recommendation:** Keep the current language in Article 34.

***Article 35, Sick Leave Donation***

**Position of the County:** Modify Section 3 to read:

**SECTION 3.** A bargaining unit member may donate sick leave, provided that the donor Employee:

- a) Voluntarily elects to donate the leave and does so with the understanding that the donated leave time will not be returned;
- b) Donates a minimum of one (1) hour ~~and does not exceed forty (40) hours per calendar year. Donations must be in full our increments.~~
- c) Retains a minimum of ~~eighty (80)~~ **one hundred and twenty (120)** hours of accrued sick leave at the time of donation;
- d) Completes a leave donation form identifying the recipient Employee, the number of hours being donated and certifying that the leave donated is voluntary.

The Employer will not solicit leave donations from Employees; the Union and/or bargaining unit members will be responsible for solicitation of donations and completion of the necessary documentation. The donation of sick leave time will occur strictly on a voluntary basis. No Employee can be forced or coerced to donate. Any Employee who feels they are being pressured to donate should contact the Department of Human Resources.

**Position of the Union:** Do not change Section 3.

**Findings:** The County proposes language mirroring its Employee Handbook, which requires employees donating sick leave to retain a minimum of 120 hours. The Union rejects the change because there have been no issues with the current language and the County has not shown a compelling need to change it. The parties reached a tentative agreement on much of Sections 1, 2, and 3 of Article 35 to make it consistent with County policy as in the Employee Handbook. The County's proposals would do the same for the rest of Section 3. This makes sense to the Fact Finder.

**Recommendation:** Adopt the County's proposal for Section 3.

***Article 36, Vacation Leave***

**Position of the County:** Amend Section 5 as below:

**Section 5.** Vacation leave shall be taken by the Employee during the year in which it earned and prior to the next recurrence of the anniversary date of employment. The Employer shall permit an Employee to accumulate and carry over his vacation leave to the following year. ~~No vacation leave shall be carried over for more than three (3) years.~~ **Vacation leave balance shall not exceed the maximum accrual allowance, which is equal to three (3) years of accrual.** Any vacation leave not carried over will be paid on the Employee's anniversary at the applicable rate of pay.

**Position of the OPBA:** Current contract language.

**Findings:** The Employer wants to implement this language across all its collective bargaining agreements to be clear and consistent. It contends the change would not materially alter bargaining unit members' entitlement to vacation leave, only clarify that vacation leave accrual is limited to three years. The Employer believes the current language is ambiguous as to maximum vacation accrual and the change would minimize the potential for future disagreement. The OPBA counters that there have been no issues with the current contract language and the Employer has no reasonable basis to change it.

It is understandable that the Employer seeks to clarify language it believes could lead to future disagreement and wants to put the language in all its collective bargaining agreements. However, there was no evidence of any disagreement with the Lieutenants nor any problems with the language in any of the Employer's contracts with other Unions. In addition, there was no evidence that the language has been negotiated with other bargaining units, even though several became effective within the last year. Finally, it is also not clear to the Fact Finder that the language only clarifies the current language. For these reasons, the Fact Finder does not recommend the change.

**Recommendation:** Keep the current language in Section 5.

#### ***Article 46, Leave of Absence Without Pay***

**Position of the County:** Modify Section 5 as follows:

**SECTION 5.** If the Employer has reason to believe that an Employee cannot perform the duties of the assigned position, the Employer may require that such Employee undergo a medical examination. The Employer shall pay for the examination and shall direct the Employee to utilize a specific physician for the purposes of such examination. Following such examination, the physician must submit a certificate to

the Employer which states that the Employee is able to return to work, and a specific date of return, and that the Employee is able to perform all job responsibilities of the classification with or without a reasonable accommodation. If the physician does not certify that the Employee is able to return to work and perform job duties pursuant to the Employee's job description with or without a reasonable accommodation, ~~such Employee shall begin unpaid leave or sick leave at the Employee's option~~ **such Employee shall begin unpaid leave as described in Section 1. If the Employee has been on unpaid leave for a period of six (6) months, the Employee may be disability separated.** The parties agree that the language in this Article is not intended to limit the County's rights under Article 34 (Sick Leave), including, but not limited to, Article 34, Section 7.

**Position of the OPBA:** Current contract language.

**Findings:** The County seeks language allowing for disability separation for an employee who has been on unpaid leave for six months and still is unable to perform all the job responsibilities with or without a reasonable accommodation. Section 5 currently allows the County to send an employee for a fitness for duty examination based upon probable cause and sets a process if the employee is unable to perform the duties of their assigned position. The County asserts that its proposed language would allow for not only paid or unpaid sick leave but also an option of disability separation if the employee has already had six months of unpaid leave. However, as the Fact Finder reads it, it would eliminate an employee using sick leave. According to the County, the additional language would allow employees an extended leave that they can return to their position within three years by allowing employees to be disability separated if they need additional time to be able to perform the duties of their assigned position. It also allows the County to fill a position left empty by an employee that needs more time. It further allows the County to provide coverage for the employee's duties in a faster and more efficient manner. This is consistent with the Ohio Revised Code.

The OPBA submits that there is no need for the language. The Ohio Revised Code has an entire section devoted to disability separation. The County can follow that procedure even though it is not in the collective bargaining agreement. The County has the discretion to do so and it has done so in the past. There have been no issues with this language and there is no need to change it.

The Fact Finder notes that Section 5 refers to Article 34, Section 7, which provides that

an employee who cannot return to active work status within six months of the employee using all accumulated sick leave will be given a disability separation. As the Fact Finder reads the contract, the County can separate an employee due to disability either if the employee cannot return within six months of using accumulated sick leave (Article 34, Section 7) or if the County has reason to believe the employee cannot perform his or her duties, a physician certifies the employee cannot perform the duties, and the employee is on unpaid leave for more than six months following the certification (Article 46, Section 5). Thus, the County has the ability to separate a disabled employee in two different circumstances.

While the Fact Finder accepts the County's desire to be more consistent with the Ohio Revised Code, it did not introduce evidence of employees who were disabled yet could not be separated as a result of this language, that employees who remained on sick leave or unpaid leave caused any staffing issues, or similar problems. Indeed, the OPBA recognizes that the County can follow the statutory disability separation process. Simply put, the County did not show a compelling need to change the language.

**Recommendation:** Retain the current language in Section 5.

### ***New Article, Promotional Examinations***

**Position of the Union:** Add a new article to read:

SECTION 1. The Employer agrees that a request shall be made to the appropriate governmental agency, or some other private, independent testing entity, to conduct promotional examinations within the boundaries of Cuyahoga County within 90 days of the expiration of the promotional list. The promotional examinations may include, but are not limited to, written exams, physical agility tests, or interviews. The Employer will maintain from such entity a current eligibility list for a period of two (2) years. Only current members with two (2) years of service or more within the bargaining unit shall be eligible to sit for a promotional examination. The members who participated in the examination will be listed in descending order based on test score.

If two or more applicants receive the same score, seniority in the classification from which the promotion is sought shall determine the order in which their names shall be placed on the eligible list. If the applicants are still tied after the aforementioned seniority has been considered, then scores received by the applicants in the examination from which appointments to the grade or rank from which the promotion is sought shall be used to determine the order of placement on the

eligible list.

SECTION 2. The Employer shall appoint from the "rule of three" on the eligibility list, as established as a result of the examination.

SECTION 3. The Employer shall provide the Union with notification of all requests and schedules for promotional examinations at the time that the request or schedule is made. The Employer shall provide a list of applicable references and make available study material used in connection with the examination, where applicable or as determined by the testing entity. Upon receipt by the Employer, the Union shall be provided with a copy of the certified eligibility list generated from the results of the promotional examination.

**Position of the Employer:** Do not add new language re promotional exams.

**Findings:** The OPBA desires to include language for promotional exams to Captain. This is tied to the OPBA's proposal on Article 25. Given the current number of Lieutenants and the increased workload, any vacancy creates more work for the Lieutenants employed. The OPBA would like to see testing for any openings conducted within 90 days. The Sheriff has similar language in other collective bargaining agreements. The Deputy Sergeants contract has similar language. The Fact Finder notes that the collective bargaining agreement with the Protective Services Sergeants also has promotional examinations language, though not as extensive as proposed. The Corrections Officers' contract has even more extensive language. The Lieutenants would like to establish a procedure for promotion to Captain.

The Employer submits that the OPBA's proposal regarding promotional exams unnecessarily encroaches upon the Employer's management rights. The Sheriff Department Deputy Captain position is non-bargaining and classified. The Employer's hiring and promotional decisions are matters of inherent managerial policy and are therefore reserved as part of its management rights. Accordingly, the Employer does not want to implement a separate promotional exam and eligibility list from within the bargaining unit as proposed by the Union.

As a classified position, testing for the Captain position is done by the Cuyahoga County Personnel Review Commission. Therefore, there is a procedure in place for testing for the Captain position. The main purpose of the OPBA's proposal is to ensure that only Lieutenants who are already employed by the Employer are eligible to test for and become

Captain. This is likely why the Employer rejects the proposal. It would infringe on its ability to hire from outside the bargaining unit.

Other than the OPBA indicating that it would like promotional examination language, this language is tied to the OPBA's proposal regarding the minimum manning language in Article 25. However, there was no evidence introduced as whether any Lieutenants were not promoted to Captain or the Employer has hired mainly from outside the bargaining unit or the Sheriff. The evidence that was introduced had to do with the number of Lieutenants and the ability of the Sheriff to hire more Lieutenants. As to Article 25, the Fact Finder recommends adding language that the County must actively fill a vacancy within a reasonable time. Given the PRC does testing and there is a process in place, the Fact Finder thinks the Article 25 language should be sufficient. If he is wrong, the OPBA can raise the issue in the successor contract to this one. On this record, and given the Fact Finder's recommendation as to minimum manning, the Fact Finder does not recommend adding language regarding promotional examinations in these negotiations.

**Recommendation:** Do not add the new article on promotional examinations.

***New Article, Off Duty/On Duty Alternative Leave Work Assignment***

**Position of the Union:** Add the following language in a new article:

In the event of an off-duty/on-duty injury/illness sustained by an employee and upon written recommendation of their physician, employees shall have the option to work an alternative work assignment for up to six (6) months. Employees shall perform such work in lieu of their regular work duties, even if such work requires modifying their regular work schedule.

**Position of the County:** Reject the new language.

**Findings:** The Union argues that this language would allow employees to work alternative work assignments, i.e., light duty, while injured or ill for extended periods. The County rejects this language primarily because it includes injuries that occur off duty. The Fact Finder is aware that on-duty injuries are covered by workers' compensation laws, which allow for light duty. The language also covers illnesses that could fall under the FMLA and perhaps even the ADA. The

Fact Finder has much experience with these various laws and the complexity involved when they apply. While the Fact Finder certainly understands the Union's desire to allow injured or ill employees to work alternative work assignments, there are simply too many variables at play here. At the hearing, there was little discussion or evidence as to how all these variables would interact. Without more, the Fact Finder is hesitant to recommend the language.

**Recommendation:** Do not add the new language.

**All tentative agreements reached during contract negotiations and alternative dispute resolution sessions that were not rejected by one or both of the parties are hereby adopted and incorporated into this Fact-Finding Report. Additionally, all other provisions of the collective bargaining agreement that were not the subject of bargaining during the contract negotiations and alternate dispute resolution process are incorporated into this Report.**

Dated: April 14, 2025



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Daniel G. Zeiser  
Fact Finder