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**IN THE MATTER OF CONCILIATION
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

OHIO PATROLMEN'S BENEVOLENT ASSOC.)	CASE NO.: 11-MED-09-1358
SECURITY OFFICERS UNIT)	
)	
UNION,)	
)	CONCILIATOR: NELS NELSON
v.)	
)	
CUYAHOGA COUNTY SHERIFF'S)	SEPTEMBER 19, 2012
OFFICE)	
)	
EMPLOYER.)	

**PRE-HEARING STATEMENT OF
OHIO PATROLMEN'S BENEVOLENT ASSOC.**

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Attorney for Employer

I. BACKGROUND.

Now come the Ohio Patrolmen's Benevolent Association and the Security Officers Unit, in accordance with the Ohio Administrative Code and Revised Code, and submits the following pre-hearing statement for fact-finding.

The name of the Union is the Ohio Patrolmen's Benevolent Association, Security Officers Division of the Cuyahoga County Sheriff's Office (herein "Union"). The Union is represented by Daniel J. Leffler, at the contact information above.

The employer is Cuyahoga County and the Cuyahoga County Sheriff's Office (herein collectively "Employer"). The Employer is represented by Chris Russ, at the contact information above.

This Conciliation relates to the collective bargaining unit consisting of approximately 140 full-time members made up of Security Officers of the Sheriff's Office. The Unit consists of armed security officers who protect approximately 30 different County facilities throughout Cuyahoga County, but excluding sergeants, lieutenants and supervisors. The collective bargaining agreement (herein "Contract") between the Union and Employer expired on December 31, 2010. In 2011, the parties entered into a one year extension of the Contract for the calendar year 2011. The basis for this successor agreement relates to the Contract dated January 1, 2008 through December 31, 2010. A copy of said Contract is attached hereto. The parties have previously agreed that the successor agreement shall be for the term January 1, 2012 through December 31, 2014.

The parties have mutually agreed that Mr. Nels Nelson shall be the Conciliator for these negotiations.

Negotiations began in November, 2011 and the parties met on approximately 13 different dates throughout the period prior to fact-finding. The parties have reached tentative agreement on all issues not presented for review herein. On May 31, 2012, the parties' conducted a Fact-Finding hearing before Jared Simmer. The Employer rejected the Fact-Finding Report. There remain approximately eight (8) unresolved issues.

The Union has unresolved issues as follows and the draft language is attached hereto.

The Union's unresolved issues concern the following:

- Article 13 – Hours of Work
- Article 17 – Sick Leave
- Article 29 – Uniform and Equipment
- Article 30 – Assumption of Rank
- Article 33 – Health Insurance
- Article 35 – Wages
- Article 35 – Longevity
- Article 50 – Parking
- New Article – Healthcare while on Layoff
- New Article – Healthcare while on Sick Leave

The Union requests that the Conciliator adopt and incorporate into the award the tentative agreements between the parties.

II. Unresolved Issues.

1) Article 13 – Hours of Work

The Union proposes to include language which clarifies the hours of work and also permits the employees' approved leave, with the exception of sick leave, to count as hours worked for purposes of overtime calculation. Sick leave may be counted for purposes of hours of work if the employee is on a pre-approved medical leave for a doctor appointment. In effect, the Union's only modification from the current language is to permit the use of pre-approved sick

leave to count towards the hours of work. The Union proposal mirrors the language provided in the Cuyahoga County Sheriff Deputies CBA. Additionally, the Correction Officers CBA also permits the use of approved leave for purposes of hours of work.

The Union, at Fact-Finding, proposed additional language which would permit sick leave to count towards the hours of work if the sick leave occurred prior to the accumulation of overtime. The Fact-Finder recommended the Employer's position. The Employer argued that the "prior accumulation" language presented a book-keeping nightmare for the County. The Union now withdraws its proposal on that language despite the fact the Sheriff's Office continues to grant the language to the Deputies unit.

The Employer has proposed current language.

2) Article 17 – Sick Leave

The Union proposes to include language which was extensively discussed at negotiations and includes language put forth by the Employer. The parties, at one point, were close to a tentative agreement on this article, except for a minor modification put forth by the Union which extended the number of consecutive days an employee could be absent without a physician statement. The Union submitted its modification to the Fact-Finder; however, the Employer's position was recommended. The Union now withdraws its previous modification and proposes to return the negotiated language put forth by the Employer.

The Union proposal mirrors the language provided in the Cuyahoga County Sheriff Deputies CBA.

3) Article 29 – Uniform and Equipment

The Union proposes to include language which requires the Employer to provide the initial issue of uniforms and to provide standard equipment, including a badge, sidearm, bullet-proof vest, less-than-lethal device, and ammunition. The union also proposes to increase the current uniform maintenance stipend from \$425 per year to \$750 per year. The Union proposal mirrors language provided in the Cuyahoga County Deputy Sergeants CBA with regard to the equipment issued. The Union maintains that the Employer's uniform requirement for the Protective Services Unit is essentially the same as the Deputies unit. The Deputies Unit receives a uniform stipend of \$1,400.

The Fact-Finder recommended an increase of the Uniform Allowance from \$425 to \$750 and the Union now adopts the Fact-Finder's recommendation.

The Employer proposes current language.

4) Article 30 – Assumption of Rank

The Union proposes to include a new provision which would permit the Employer to assign a bargaining unit member to act as an officer-in-charge (OIC). The designated OIC would be paid at the same rate as the sergeants' rate for a minimum of four (4) hours or all hours worked. Because this is a new provision, the Union requested that the parties meet at a Labor-Management Conference (LMC) to discuss the implementation and specifics about the new policy.

The Employer has proposed to include the new provision but offered to pay a rate 12% above the current officer rate. During negotiations, the Employer offered to pay up to 18% above the current officer rate. The Employer has also rejected the LMC proposal.

The Fact-Finder recommended the Union language, but reduced the pay differential to 12%.

5) Article 33 – Health Insurance

The Union proposes effective January 1, 2013, an employee premium contribution rate of ten percent (10%) of the monthly health insurance cost for all plans consistent with the Employer's proposal. Employees would contribute ten percent (10%) of the high cost plan. However, for the standard, non-HSA plans, the Union proposes a bi-weekly maximum contribution rate of \$75/family (\$162.50/month) and \$45/single (\$97.50/month). The proposed employee maximum contribution rates are in excess of the average employee cost published by SERB in their 2012 Healthcare Survey. The proposed maximum contribution rate also exceeds the current Cuyahoga County employees 10% cost by nearly twenty percent (20%). The Union proposal has the additional benefit of incentivizing employees away from the high cost plan.

The Union also proposes that for any ancillary benefits, the Employer will contribute 90% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employees will contribute 10% of the cost consistent with the Employer's proposal.

The Employer proposes that effective January 1, 2013, employees must contribute ten percent (10%) of the monthly premium with no cap. The Employer also proposes to eliminate any cost limits or controls on the plan design, including deductibles, co-pays, and co-insurance. The Employer's proposal would render the employees helpless with regard to increases in out-of-pocket costs for healthcare.

Other than modifications to contribution rates and caps, in general, the current language in the CBA has been in place for over ten years, has been hard fought for and well negotiated. The current language has worked for the parties. The Employer proposes to overturn the apple-cart and, in one contract cycle, eliminate years of negotiated language. Just as the Union cannot

expect wholesale changes in one contract, neither should the Employer. The Union's proposal accomplishes the Employer's goal but maintains consistency in the process.

The Fact-Finder recommended the Employer proposal.

6) Article 35 – Wages

At Fact-Finding, the Union proposed an across the board three (3%) wage increase in each year. The Employer proposed a 1% in 2012, 2% in 2013 and 2% in 2014. The Fact-Finder recommended an increase of 1.5% in 2012, 2% in 2013 and 2% in 2014. The parties did not have a R.C. 4117.14(g)(11) waiver and therefore any wage increase for 2012 was abolished.

The Union proposes a wage schedule consisting of 0% in 2012, 3.5% in 2013 and 2.5% in 2014. The Union proposal results in a minimal difference from the Fact-Finder's recommendation (\$150 over the life of the contract) for an employee at the top rate.

It is anticipated that the Employer will propose 0% in 2012, 2% in 2013 and 2% in 2014. The Employer's proposal would result in a decrease of over \$1,000 per employee from the Fact-Finder's recommendation.

7) Article 35 – Longevity

At Fact-Finding, the Union also proposed to include a longevity provision whereby employees would accrue longevity at \$375 after 5 years and an additional \$75 each year thereafter. The Union proposal mirrored the Cuyahoga County Sheriff Deputies CBA. The Fact-Finder recommended a longevity provision at \$187.50 after 5 years of service and an additional \$37.50 each year thereafter. The Union adopts the Fact-Finder's recommendation.

The Employer has rejected the inclusion of longevity.

8) Article 50 – Parking

At Fact-Finding, the Union proposed current contract language. The Employer currently provides parking free to second and third shift employees and provides parking to first shift employees at the monthly cost of designated lots. The Fact-Finder recommended the Union position and included that if the County implements a new parking policy, the County may file to reopen the parking provision. The Union now adopts the Fact-Finder's recommendation.

The Employer proposed to eliminate the provision.

9) At fact-finding, the Union proposed two additional articles related to the continuation of healthcare benefits while an employee is on layoff or has exhausted sick leave. The fact-finder rejected those two articles and the union withdraws the proposals.

III. Conclusion.

The Union's Final Settlement Offer on the issues identified is attached hereto. Additions are expressed in underline (red-line) and proposed deletions are struck through. Items not identified above shall be controlled by current contract language except where the parties have reached a tentative agreement. The Union will further support its proposals at the Conciliation hearing through exhibits and testimony.

Respectfully Submitted,

/s/ Daniel Leffler

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Certificate of Service

I hereby certify that a copy of the foregoing Pre-Hearing Statement was sent this 7th day of September, 2012 via electronic mail to the following:

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and

SERB

/s/ Daniel Leffler
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CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

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ARTICLE 13, SECTION 1 HOURS OF WORK

Section 1. The normal workday shall consist of eight (8) hours, the normal workweek shall consist of five (5) consecutive workdays and two (2) consecutive days off unless consecutive days off are not consistent with the operational needs of the post. The normal work period for all full-time Employees within the bargaining unit shall be a forty (40) hour workweek. Specific hourly and weekly work schedules may vary depending upon job assignments. Scheduled adjustments shall not occur solely to avoid the payment of overtime. Paid holidays, paid vacation leave, compensatory time and pre-scheduled medical appointments shall be considered as time worked within the forty (40) hour workweek for purposes of this article.

ARTICLE 17 SICK LEAVE

SECTION 1. Each member of the bargaining unit shall earn sick leave credit at the rate of four and sixth tenths (4.6) hours for each eighty (80) hours of completed service. Sick leave credit shall be prorated to the hours of completed service in each pay period. Unused sick leave may be carried forward from one calendar year to the next without a maximum.

SECTION 2. An Employee who is unable to report for work and who is not on a previously approved day of vacation, sick leave, or leave of absence shall be responsible for notifying the Employer at least two (2) hours prior to the Employee's scheduled work assignment, unless emergency conditions prevent such notification. The Employee shall submit to the Employer a signed written statement for the request and justification of sick leave within three (3) work days following the return to work. If such request is disapproved, the Employee may be subject to disciplinary action.

In the case of a condition exceeding three (3) consecutive work days, a physician's statement, subject to review by the County Employer, specifying the Employee's inability to report for work and the probable date of return shall be required, and the following shall apply:

1. When hospitalization is required, the Employee shall be responsible for notifying the Employer upon admission to, and discharge from, such hospital unless emergency conditions prevent such notification.
2. When convalescence at home is required, the Employee shall be responsible for notifying the Employer at the start, the expected length and the termination period of such convalescence.

Upon return to work, the Employee shall furnish to the Employer a certificate from a physician, dentist, or other licensed practitioner stating that the Employee is able to return to work without restrictions. All required medical documentation must be submitted within three (3) working days.

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SECTION 3. With the approval of the Employer, sick leave may be used by the Employee for the following reasons:

1. Illness, injury, pregnancy related condition of the Employee or member of the Employee's immediate family where the Employee's presence is reasonably necessary for the health and welfare of the Employee or affected family member.

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OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

2. Examination or treatment of the Employee or member of his immediate family where the Employee's presence is reasonably necessary including medical, psychological, dental, or optical examination by an appropriate practitioner. For purpose of this Section, definition of immediate family shall be employee's parents; spouse, children; employee's siblings; spouse's siblings; natural grandparents; and spouse's parents, and any child for which the employee stands "in loco parentis".

SECTION 4. Falsification of either the signed statement or a physician's certificate or application for use of sick leave with the intent to defraud shall be grounds for disciplinary action, up to and including dismissal. An Employee who engages in the patterned use of sick leave shall receive written warning from the Employer. A pattern use/abuse of sick leave includes those examples set forth in the Personnel Policies and Procedures Manual of the Cuyahoga County Department of Human Resources.

SECTION 5. Any Employee who uses no sick time, and has no "attendance violations", as defined below, for any "rolling" six (6) month period will be permitted, upon the Employee's request, to convert five (5) sick days to five (5) vacation days. For purposes of this Section 5, "attendance violations" are (a) more than three (3) "tardies" in the six-month period; (b) any Standard Schedule of Disciplinary Offenses Rule No. 11 "failure to punch time clock" disciplinary violation; or (c) any accumulation of A.W.O.L., as defined in the Standard Schedule of Disciplinary Offenses, in the six-month period

ARTICLE 29 UNIFORM & EQUIPMENT

~~Section 1. The initial uniform issue shall be completed by the employee's 90th day. The initial uniform issuance shall be:~~

~~Section 2. Employees shall receive an annual uniform maintenance voucher of three hundred fifty dollars (\$350.00) in 2008, four hundred dollars (\$400.00) in 2009 and four hundred twenty five dollars (\$425.00) in 2010.~~

~~Section 3. It is hereby recognized and agreed that all items issued pursuant to Section 1 of this article remain the property of the employer. At the termination of employment, either voluntary or involuntary, the employee must return all items issued by the employer. It is further agreed that any item issued under this article that is not returned shall be deducted from any compensation due the employee including, but not limited to, wage, vacation, or compensatory time. Each employee further agrees that the final paycheck shall be held until this account is settled.~~

~~Section 4. The parties shall meet to begin discussions regarding implementation of a continuum of force policy.~~

SECTION 1. The Employer will provide uniform clothing for Employees when they enter the bargaining unit or the first issue of any uniform change. This includes the following:

Headgear	1 winter	SS shirt	4
LS Shirt	4	Tie	2
Pants	4	Jacket	1 summer
Jacket	1 winter	Rain coat	1
Speedloaders	2	Duty belt	1

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SECTION 2. Effective January 1, 2012, Employees shall receive an annual uniform maintenance voucher of four hundred twenty-five dollars (\$425.00). Effective January 1, 2013, Employees shall receive an annual uniform maintenance voucher in the amount of seven hundred, fifty dollars (\$750.00) per year for each bargaining unit Employee.

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SECTION 3. The Employer shall issue each Employee a badge, sidearm, bullet-proof vest, less-than-lethal device, ammunition and case, holster, handcuffs, handcuff case, whistle and chain, and a hat with hat badge.

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

ARTICLE 30 ASSUMPTION OF RANK

Section 1. Effective January 1, 2013, the Employer will determine when an Employee is acting in a position of Sergeant. An Employee assigned and performing the duties of a Sergeant shall be compensated at a pay rate equal to eighteen percent (18%) above the highest officer rate for a minimum of four (4) hours, or hour-for-hour, whichever is greater. The Employee will continue in this position until the conclusion of his shift, unless another supervisor is assigned to that post to relieve the assigned officer-in-charge. The parties shall meet at a Labor/Management Conference within ninety (90) days of ratification of this Agreement to develop an implementation policy.

ARTICLE 33 HEALTH INSURANCE

Section 1. An eligible employee is defined as a full time employee covered by this Agreement. The Flex Count Plan ("the plan") is defined as the section 125 or cafeteria plan, which is provided by the Employer for health insurance benefits for Employer employees. The Employer shall be responsible for enrolling all eligible employees in the plan once during each plan year at its annual open enrollment period. The plan year commences on January 1, and ends on December 31 of the calendar year, but is subject to change.

Section 2. Bi-weekly employee contributions for medical and prescription drug benefits shall be determined as follows:

a) Highest Cost Provider

Effective January 1, 2012~~09~~, the Employer shall contribute 92.5% of plan costs and employees shall contribute 7.5% for plans offered through the highest cost provider. Effective January 1, 2013, the Employer shall contribute 90% of plan costs and employees shall contribute 10% for plans offered through the highest cost provider.

b) Other Providers (Non-HSA)

~~Effective January 1, 2009, the Employer shall contribute 95% of plan costs and employees shall contribute 5% of plan costs to be capped at biweekly contribution rates of \$25.00 for single coverage and \$40.00 for family coverage. Effective January 1, 2012, the Employer shall contribute 92.5% of plan costs and employees shall contribute 7.5% of plan costs to be capped at biweekly contribution rates of \$30 for single coverage and \$45.00 for family coverage.~~
January 1, 2013, the Employer shall contribute 90% of plan costs and employees shall contribute 10% of plan costs to be capped at biweekly contribution rates of \$45 for single coverage and \$75.00 for family coverage. The Employer shall offer at least one single and one family plan (non-HSA) free of biweekly contributions to bargaining unit members for the duration of this Agreement. The selection of free planes) offered shall be at the discretion of the Employer and may be HMO or other plan types.

c) Health Savings Accounts (HSA). In addition to the free plan referred to in paragraph (b) above, the Employer may offer one or more HSA plans free of biweekly contributions.

Section 3. The costs of the medical and prescription drug plans will be determined through an actuarially certified process that is verified through an outside party and that includes reserves necessary to sustain the plans. In successive plan years, the Employer may add to or delete plans/providers offered. Replacement of the Standard Benefit Plan shall not result in a reduction of benefit levels. However, employees may be offered

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

additional plans with reduced benefit levels.

~~Section 4. Effective January 1, 2009, the Employer will contribute 95% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employees will contribute 5% of the costs for the ancillary benefit plans. Effective January 1, 2012, the Employer will contribute 92.5% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employees will contribute 7.5% of the costs for the ancillary benefit plans. Effective January 1, 2013, the Employer will contribute 90% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employees will contribute 10% of the costs for the ancillary benefit plans.~~

Section 5. The Employer shall be entitled to increase the cost containment features of the Standard Benefit Plan only to the extent permissible in Arbitrator Robert G. Stein's decision dated March 17, 2003.

Section 6. Eligible employees may choose to opt out of health insurance coverage and select one of the opt-out options listed in sub-sections A, B or C below. For each option, the decision to opt out must be made during open enrollment and is irrevocable for the plan year unless the employee provides acceptable documentation of a qualifying event. Employees who are participating in a BOCC plan through a spouse who is also a BOCC plan participant shall not be eligible for an opt-out payment. If an Employee chooses to receive ancillary benefits, the cost of the opt-out payment will be proportionately reduced.

- A) An employee without eligible dependents may elect to opt out of health care coverage and receive a gross opt-out payment of fifty dollars (\$50.00) bi-weekly.
- B) If an employee with an eligible spouse provides documentation acceptable to the Employer that the spouse has alternative coverage available, the employee may elect to opt out of coverage for the spouse and receive an opt-out credit of fifty dollars (\$50.00) which shall be applied to the employee's bi-weekly contributions for single or family coverage for remaining eligible dependents.
- C) An employee with eligible dependents may elect to opt-out of coverage for the employee and all dependents and receive a gross opt-out payment of one hundred dollars (\$100.00) biweekly.

Section 7. The Employer may implement or discontinue incentives for employees to participate in Employer-sponsored wellness programs.

Section 8. The Employer may offer incentives to encourage use of low cost providers/plans (including HSA plans) which may be discontinued or modified by the Employer in future plans years with notification to the Union.

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

Section 9. A waiting period of no more than 120 calendar days maybe required before new employees are eligible to receive health and/or other insurance benefits. During the waiting period, the Employer may require employees who desire coverage to purchase it through a third party vendor instead of participating in the BOCC plans that are offered to regular full-time employees. New employees shall be eligible to participate in the BOCC plans on the first date of the first month following completion of the waiting period.

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

ARTICLE 35 WAGES

Section 1. Effective January 1, ~~2012~~, the wage schedule for bargaining unit employees shall be ~~the same wage schedule as 2011~~. Effective January 1, 2013, the wage schedule for bargaining unit employees shall be:

	Jan. 1, 2013	Jan. 1, 2014
Step 1	\$13.57	\$13.91
Step 2	\$14.07	\$14.42
Step 3	\$14.56	\$14.93
Step 4	\$15.30	\$15.68
Step 5	\$16.63	\$17.05

Section 2. ~~Upon ratification of the Agreement by both parties, employees who have been on the payroll since January 1, 2008, shall receive a \$650.00 lump sum payment. Employees who were hired subsequent to that date shall receive a payment based on the number of weeks that they have been on the payroll. The wage schedule shall be increased by three and one-half percent (3.5%) ~~2%~~ effective January 1, 2013~~09~~, and an additional two and one-half percent (2.5%) ~~2%~~ effective January 1, 2014~~10~~.~~

Section 3. During the term of this Agreement, an employee shall advance one step on the wage schedule on each anniversary of date of hire.

Section 4. ~~Effective upon ratification of the Agreement by both parties, e~~Employees required to work from 3:00 p.m. to 11:00 p.m. shall receive compensation in addition to their regular rate of pay, at the rate of 25 cents (\$0.25) per hour. Employees required to work from 11:00 p.m. to 7:00 a.m. shall receive compensation in addition to their regular rate of pay, at the rate of 50-cents per hour (\$0.50).

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

ARTICLE 35 WAGES

Section 5. Effective January 1, 2013, all Employees who have five (5) years of continuous, uninterrupted service with Cuyahoga County shall be paid a longevity allowance of one-hundred, eighty-seven dollars and fifty cents (\$187.50). Longevity will be paid by separate check in the pay period in which the anniversary date occurs. The Employee shall also be paid the amount of thirty-seven dollars and fifty cents (\$37.50) for each year of full continuous service after the initial five (5) years and is to be added to the original amount set for the five (5) year period. The said amounts, previously covered, shall be paid every year until the Employee retires. On the year of retirement, said fees shall be paid but include the full years and prorated months of service or thirty-seven dollars and fifty cents dollars (\$37.50) divided by twelve months = x dollars times number of months of service.

OPBA and CUYAHOGA COUNTY SHERIFF
CONCILIATION HEARING – SEPTEMBER 19, 2012
UNION FINAL SETTLEMENT OFFER

ARTICLE 50 PARKING

Parking for all employees who work second and third shift shall be free at all Employer lots and garages. ~~For the life of this Agreement, first shift employees shall pay the cost at designated lots consistent with past practice. In the event the County implements a County-wide parking policy during this Agreement, the parties may file to reopen this article.~~