STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Conciliation Between:	)	
MEDINA COUNTY SHERIFF	)	**Case No. 2014-MED-10-1453 (Corrections Officers and Corrections Sergeants)**
-and-	)	**Jonathan I. Klein, Conciliator**
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	

LAST BEST OFFER AWARD

Appearances

For the Union:

Max Rieker, Esq. - Attorney for Ohio Patrolmen's Benevolent Association
Gary Zemancik- Corrections Officer
John Newman- Corrections Sergeant

For the Employer:

William F. Schmitz, Esq. - Attorney for Employer
Holly Muren - HR Director
Scott Miller- County Administrator
Lt. Dean Lesak- Medina County Jail Administrator
Captain Kenneth Baca- Medina County Sheriff Administrator

Date of Issuance: December 1, 2015

I. PROCEDURAL BACKGROUND

This matter came on for hearing on October 15, 2015, before Jonathan I. Klein, appointed as conciliator pursuant to Ohio Revised Code Section 4117.14 (D)(1) and Ohio Administrative Code Section 4117-9-06. The hearing was conducted between the Medina County Sheriff ("Employer" or "County"), and the Ohio Patrolmen's Benevolent Association ("Union" or "OPBA"), at the Medina County Administration Building located at 144 North Broadway, Medina, Ohio 44256. The Union is the sole and exclusive bargaining representative of all full-time corrections officers and corrections sergeants as set forth in Article 3 of the collective bargaining agreement. (Union Ex. 3; Employer Ex. 1). At the time of the hearing, the bargaining unit was comprised of 63 corrections officers and three corrections sergeants. (Union's Pre-Hearing Statement, at 2; Employer's Pre-Hearing Statement, at 1).

The Union filed a Notice to Negotiate in October 2014 and the parties engaged in negotiations regarding the new collective bargaining agreement for calendar years 2015 and 2016. The parties were unable to resolve all of the outstanding issues and proceeded to a fact finding hearing. Fact-finder Thomas J. Nowel subsequently issued a Fact-Finder's Report and Recommendation on May 8, 2015. (Union Ex. 2; Employer Ex. 2). The Employer did not object to the recommendations in the report while the Union rejected it with respect to the corrections officers and corrections sergeants.[1]

1. The Union approved the fact-finder's Report and Recommendation as it concerns the following bargaining units: full-time sergeants; full-time and part-time communication technicians; and full-time deputy sheriffs and deputy detectives.

The unresolved issues at impasse are as follows:

Issue 1: Article 22 - Uniform Allowance
Issue 2: Article 30 - Rates of Pay
Issue 3: Article 30 - Rates of Pay (correction sergeant rank differential)

In selecting the last best offer, issue by issue, the conciliator reviewed the record of the hearing, including the fact-finder's report, arguments and evidence presented by both parties, together with their respective position statements.

II. LAST BEST OFFER CRITERIA

In the determination of each issue, the conciliator has also considered the applicable criteria listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). These conciliation criteria are enumerated, as follows:

(1) Past collectively bargained agreements, if any, between the parties;

(2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interest 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) The stipulations of the parties; and

(6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

III. FINDINGS OF FACT AND SELECTION OF LAST BEST OFFER

Introduction

The Employer initially points out that it has ratified agreements for 2015-2016 with all 14 of its bargaining units with the exception of the corrections officers and sergeants. The contracts reflect wage increases of either 1.5% or 2% per year. It notes that those bargaining units which received 2% wage increases in 2015 and 2016 accepted either the less expensive Teamster Welfare Plan, or agreed to provide the County Commissioners with the ability to unilaterally adjust the County's health insurance design plan. The Employer maintains that the authority to redesign the health insurance plan is important because it has experienced several years of a declining beginning fund balance.

It provided a summary of the negotiated changes in other contracts covering employees in the following departments/agencies: Job and Family Services; Child Support Enforcement Agency; Sanitary-Line Maintenance; Sanitary Water Distribution; Sanitary Wastewater; Transit; and Public Defender Clerical. (Employer Ex. 4). The Union would not provide the Employer with the right to unilaterally negotiate adjustments to the plan design and 1.5% raises were offered. The Employer points out that the OPBA bargaining units representing the road deputies, road sergeants and communications technicians received wage increases of 1.5% in 2015 and 2%

in 2016, and the lieutenants in the Sheriff's Office who are represented by the FOP/OLC also accepted the same salary increases.

The Employer expressed concern regarding its financial condition because expenses have continued to increase while revenue has remained relatively static. Although there has been a modest increase in revenue since 2011, it has not been enough to keep pace with rising expenses. As a result, the carry forward balance has decreased from $8,090,393.67 in 2007 to $3,413,653.07 in 2014. It points out that the carry forward balance in 2014 was less than 10 percent of 2014 expenses, and a decline in the carry forward balance affects the County's bond rating and ability to borrow money. Although the carry forward balance is expected to increase by the end of 2015, the County is mandated to assume additional expenses of $1,250,000.00 for improvements to the radio system and 911 upgrades. The Employer also notes that the May 2015 tax levy failed.

The County's 2015 budget was prepared based on the assumption of a 1.5% compensation increase. All non-union employees were awarded 1.5% wage increases in 2015 and two union contracts have been executed with the same increases. As noted above, other bargaining units which received 2% wage increases accepted changes which provide the Employer with the ability to reduce health insurance costs if premiums increase in 2016. Additionally, employees in bargaining units represented by the Teamsters who were awarded 2% wage increases receive health insurance provided by the Welfare Fund of Teamsters Local 293, which results in a significant savings for the Employer. Moreover, four bargaining units in the

Sheriff's Office agreed to accept the fact-finder's recommendation of a 1.5% wage increase in 2015 and a 2% increase in 2016 without the health insurance changes sought by the Employer.

As it concerns health insurance and the reason for a 1.5% wage increase rather than a 2% increase, the Employer maintains that it offered a higher pay increase for the ability to negotiate reduced premiums. Currently, a plan design is attached to and incorporated in all of the OPBA contracts and the monthly contribution paid by those bargaining unit employees is 10% of the premium. The parties have agreed that due to the marginal increase, the health insurance cost for 2015 will be the same as it was in 2014. However, the Employer is apprehensive about future increases due to the volatility in the healthcare industry. The Employer asserts that the plan design contained in the OPBA contracts limits its ability to negotiate lower premiums. It claims that the removal of a guaranteed plan design from the contract can provide it ". . . with a stronger negotiating posture as insurance providers are known to take advantage of employers that are contractually bound to a specific plan design." (Employer Pre-Hearing Statement, 9).

The Employer points out that Medina County has maintained a history of "pattern bargaining." This is specifically true regarding the four OPBA contracts which are nearly identical except for unique benefits. All of the newly executed OPBA contracts, as well as the FOP/OLC contract, provide the same benefits and all employees received the same wage increases in 2015 and 2016. The Employer acknowledges that minor variances in contract language will always exist. It maintains that the Union must present a compelling reason to deviate from the pattern. In the instant case, the pattern set with all other OPBA bargaining units cannot be dismissed. Furthermore, it would be extremely disruptive to the bargaining process to allow one OPBA bargaining unit to obtain a benefit not afforded the other units.

At the conciliation hearing, the Employer reiterated its position regarding pattern bargaining and urged the conciliator to follow the pattern set by the fact-finder. All bargaining units at the Medina County Sheriff accepted wage increases of 1.5% in 2015 and 2% in 2016. It claimed that these units have "never been separated before." Holly Muren, the Employer's human resources director, indicated that "all the units that received two percent increases made health care concessions." However, the corrections officers did not agree to accept the County negotiated health care plan. She also acknowledged that several bargaining units "took a different health care plan through the Teamsters." According to Ms. Muren, the Teamsters health care plan "provides a benefit to the County."

On cross-examination, Ms. Muren acknowledged that the law enforcement sergeants received a rank differential increase without health care concessions. Additionally, road deputies and detectives received wage increases of 20 cents per hour. As a result, the effective wage increase for road deputies is greater than 1.5% in 2015 and 2% in 2016. Further, Ms. Muren indicated that an effective rate increase of 2.66% for the deputy lieutenants "would not surprise her." She also confirmed that the deputy lieutenants made no health care concessions. Ms. Muren further explained that road deputies are "given a stipend to work on the road," and they perform different duties than corrections officers. She confirmed that law enforcement sergeants received a one-half percent increase in rank differential from the fact-finder. Ms. Muren asserted that the corrections officers are "not comparable to other bargaining units who received two percent increases because they have a cheaper insurance plan or allowed the County the right to negotiate a plan."

The Union points out that the 20 cents per hour increase afforded road deputies also applies to detectives, and law enforcement sergeants and lieutenants. It maintains that various "add-ins go into the base rate of pay." According to the Union, the majority of deputies, and all sergeants and lieutenants "received additional money in their base rate of pay over the corrections officers and corrections sergeants." Dispatchers also received an additional $200.00. Therefore, the Employer's argument that it engages in "strictly pattern bargaining" is incongruous and fails. The Employer notes that the road deputy differential applies only to those sworn deputies that work on the road, and the "increase to the lieutenants is due to the sergeants percentage increase."

Scott Miller, the Medina County Administrator, testified that the 2014 General Fund balance is approximately $5 million less than it was in 2007. He indicated that the 2014 carryover balance in the General Fund was 8.17 percent, however, the goal is a 20 percent balance. Mr. Miller confirmed that the May 2015 levy failed and the "jail pod and court house expansion couldn't be done." He acknowledged that sales tax is "very good," and the projected fund balance is $3.4 million. However, the County projects a decrease in revenue and he noted that a bond repayment in the amount of $800,000.00 is required in 2016. The monies for the bond repayment will be diverted from the General Fund. Mr. Miller also claimed that the County's AA bond rating "was a surprise" to him. He estimated that the County's health insurance costs will increase by eight percent in 2016. According to Mr. Miller, Green County is the most comparable jurisdiction to Medina County, while Lorain County is "somewhat comparable" and Cuyahoga County is not comparable at all.

On cross-examination, Mr. Miller acknowledged that Medina County is "affluent" and it has one of the lowest poverty rates in the State of Ohio. He also indicated that he "doesn't think the bond rating will change as the fund balance is expected to increase." Additionally, Mr. Miller acknowledged that total revenues have increased each year since 2011. However, the revenue is still less than it was in 2007. He further testified that the County's budget for 2015 is based on 1.5% wage increases in both 2015 and 2016. Mr. Miller confirmed that the "chances of layoffs are slim if the projections are accurate." Additionally, Medina County's sales tax rate of 6.75 percent is not as high as other counties, although it is consistent with surrounding counties. According to Mr. Miller, the low tax rate is one reason that the General Fund balance is "not as high as other counties."

Issue 1: Article 22 - Uniform Allowance

Fact-finding Report

The fact-finder's Report and Recommendation provides the following recommendation regarding Article 22, Uniform Maintenance Allowance:

> At hearing, the Union focused on minor pieces of clothing, such as name tags, as opposed to more significant articles of clothing. There was no clear evidence that the current clothing allowance is insufficient, and the possibility of a reduction of certain mandatory aspects of the clothing policy may reduce employee costs. There is no compelling reason to increase the uniform maintenance

> allowance for Corrections Officers and Sergeants. The recommendation is current contract language.
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> (Union Ex. 2; Employer Ex. 2).

Position of the Union

The Union proposes to increase the uniform allowance for corrections officers and corrections sergeants from $900.00 to $1,100.00 per year. It maintains that such an increase will allow the bargaining unit employees to approach the amount which is afforded the deputy sheriffs and sergeants who currently received $1,300.00 per year. According to the Union, the cost of uniform parts has increased significantly in recent years. As such, there is a great need to offset those costs with an increase in the uniform allowance. It asserts that ". . . something approaching internal parity is both needed and justified." (Union Pre-Hearing Statement, 3).

At hearing the Union confirmed that the Employer is switching to tactical uniforms which are less expensive than the traditional uniforms. However, the new uniforms are "not holding up." According to Gary Zemancik, the new uniforms are "fading quickly" and the seams are starting to tear. Mr. Zemancik "anticipates that more money will be required to maintain the new uniforms than with the old ones." He indicated that the new uniforms will cost approximately $105.00 and he will need two to three uniforms. Mr. Zemancik also noted that the law enforcement deputies receive a uniform allowance of $1,300.00 per year.

Position of the Employer

The Employer requests that the conciliator follow the fact-finder's recommendation and retain the uniform maintenance allowance at $900.00 per year. The Employer submits that deputy sheriff uniforms are vastly different than those required of corrections officers. It points out that the fact-finder specifically mentioned that corrections officers do not need items such as winter coats, foot wear and straw hats. The Employer has recently agreed to allow corrections officers to wear less expensive uniforms. Specifically, a new uniform with all the required extras may be purchased for less than $100.00. According to the Employer, the reasonable number of uniforms which a corrections officer must have is three. Therefore, the current $900.00 uniform allowance is excessive.

At the conciliation hearing, the Employer reiterated that the new uniforms cost less than the old uniforms. It asserts that the annual cost of uniforms for bargaining unit employees will be "$315.00 at most." Lt. Dean Lesak, the jail administrator, confirmed that damaged uniforms are replaced by the Employer. He also stated that the new uniforms cost approximately $100.00, and the road deputies uniforms are "far more expensive." Captain Kenneth Baca testified that the road deputies are required to have "winter gear, boots, jackets, hats, gloves and raincoats."

On cross-examination, Lt. Lesak described his entire uniform wardrobe, which includes boots, short sleeve and long sleeve shirts, pants, belt and patches. He also indicated that he purchases approximately one dress uniform each year. Lt Lesak testified that he "goes through two uniforms per year" and under his example the annual uniform expense is approximately $890.00. According to Lt. Lesak, sweaters and jackets may be worn by corrections officers inside the jail but they are not required. Corrections sergeant John Newman testified that it "can't just be any type of coat if you wear your uniform to and from the jail." However, he acknowledged that the Employer provides lockers and bargaining unit employees can change into their uniforms at work.

Last Best Offer

The conciliator selects the Employer's proposal regarding the uniform allowance as the last best offer for the following reasons. First, the evidence of record establishes that a uniform allowance of $900.00 per year is adequate for bargaining unit employees to purchase a sufficient number of complete uniform sets. The conciliator notes that the new uniforms are less expensive than those which were previously required to be worn by the bargaining unit employees. Although testimony was presented by the Union that the new uniforms are subject to fading and are not as durable as the old uniforms, there is insufficient evidence regarding additional expenses actually incurred by corrections officers due to these purported issues.

Second, no evidence was presented by the Union that any bargaining unit employees have been instructed to replace new uniform items which they have purchased as a result of an unacceptable appearance due to fading or any other issues with the material. Additionally, the language contained in Section 22.05 of the collective bargaining agreement specifically provides, in part, that "[i]n the event that personal equipment or property are damaged or destroyed while an employee is on duty, the Employer agrees to repair or replace said item, unless negligence can be shown on the part of the employee." The Union did not dispute the testimony of Lt. Lesak that damaged uniforms are, in fact, replaced by the Employer.

Third, the Union's argument that ". . . something approaching internal parity" regarding the uniform allowances afforded corrections officers/sergeants when compared with the allowance provided deputy sheriffs/sergeants is insufficient to justify the requested increase. The evidence of record establishes that the uniforms required of deputy sheriffs are significantly different than those which corrections officers must wear inside the jail. The Union did not dispute the testimony of Lt. Lesak and Captain Baca that the road deputy uniforms are more expensive than those worn by corrections officers.

For each of the foregoing reasons, the Employer's proposal on uniforms is selected as the last best offer.

Issue 2: Article 30 - Rates of Pay

Fact-finding Report

At the fact-finding hearing, the Union proposed a 3% wage increase effective January 1, 2015, and another 3% wage increase effective January 1, 2016. The Union argued that the average wage increase in 2015 for Sheriff Department employees in an eight county region, including Medina County, is 2.61%. It also asserted that internal comparables are less important than what is paid regionally. The Union pointed out that the 2014 SERB Wage Settlement Report indicates a "trend of increased wage increases."

The Employer proposed wage increases of 1.5% effective January 1, 2015 and January 1, 2016. It noted that the average wage increase in 2014 in the Akron/Canton Region was 1.76%. The Employer further stated that its primary argument is one of inability to pay what the Union has proposed. It also pointed out that Medina County has one of the lowest tax rates in the region. The Employer claimed that any wage increase above 1.5% could result in layoffs.

The fact-finder issued the following recommendation regarding Article 30, Rates of Pay:

> The parties make compelling arguments for their positions regarding wage increases. Some fact finding reports support the concept of the regional 'going rate' while other neutrals focus on the Employer's ability to pay. The statute asks SERB neutrals to consider both concepts in the development of a recommendation or award in the case of conciliation. It is often a delicate balancing act. In the instant case, the Employer makes a compelling case regarding county finances. Revenue in the general fund has decreased over several years and the carryover is not at a level which would allow for a great deal of flexibility. The Employer cites the inability to move forward with the jail and court house projects. It is clear that the passage of the levy is important for the financial health of Medina County, and the Employer asserts that its passage will allow for more flexibility during the next negotiations which will commence in late 2016. The Union argues that Medina County is an affluent community, and this fact does not go unnoticed by the Fact Finder. But the Employer's argument regarding the low tax base is not a factor which can be ignored. The Union's argument regarding increased workload with less staff is not dismissed, but this is true throughout the public sector.
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> The Employer states that it has budgeted for 1.5% wage increases. But evidence indicates that many employees in the Teamster bargaining units and others are receiving 2% wage increases in 2015 and 2016 based on their status on the pay schedule (Employer Exhibit 2). Sanitary Line employees, represented by the Teamsters Union, for example, received a 1.5% across the board wage increase and then a new Step 5 was added to the pay schedule. The step increase is worth 1.5%. Employees at the top of the wage

> schedule realized an overall 3% wage increase in 2015. Other step adjustments were included in a number of the recently negotiated collective bargaining agreements. The Employer states that wage increases beyond the budgeted 1.5% were granted to bargaining units, which moved to a modified health insurance plan, and the Fact Finder is aware of the trade-off. Having considered all facts and arguments at hearing the following recommendation is made for wage increases in the successor agreement, 1.5% effective January 1, 2015 and 2% effective January 1, 2016.
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> (Union Ex. 2; Employer Ex. 2).

Position of the Union

The Union seeks a 2% wage rate increase effective January 1, 2015, and a 2% wage rate increase effective January 1, 2016. It asserts that the Employer's proposed increases of 1.5% effective January 1, 2015, and 2% effective January 1, 2016, are inadequate and not justified based upon the relevant facts. The Union maintains that the bargaining unit is compensated at a rate which is below the average received by their peers in the relevant sampling area. It points out that the Medina County corrections officers are three percentage points below the average received by corrections officers employed by other jurisdictions in the area. Additionally, it notes that the average wage rate increase in 2015 for corrections officers in the area is 3.015 %. The bargaining unit members will fall further behind comparable employees if the Employer's proposal, which is woefully below the going rate, is ordered by the conciliator.

The Union asserted at the conciliation hearing that the corrections officers have been "left behind the curve" based on both internal and external comparables. Therefore, the wage increase should actually be greater than two percent. It maintains that the relevant sample area includes

Cuyahoga, Geauga, Lake, Lorain and Medina counties. According to the Union, Geauga County is the "best comparable," while Ashland, Wayne and Summit counties are not comparable to Medina County. It points out that the SERB wage settlement report indicates that comparable employees received higher wage rate increases. Furthermore, the average wage rate increase in 2015 for deputy sheriffs in a seven-county area is 2.61%. (Union Ex. 13). Moreover, the Medina County corrections officers receive less than the average total compensation afforded corrections officers in the applicable metropolitan statistical area. (Union Ex. 14). The Union asserts that the "clear trend makes a 1.5 percent increase impossible." It claims that the Employer has the ability to pay the modest wage rate increase requested in this case.

Position of the Employer

The Employer proposes that the conciliator follow the wage pattern set in the fact-finder's decision. During fact-finding the Employer presented considerable evidence regarding the County's finances and the need for some "belt tightening," while the Union presented evidence that the percentage wage increase offered the bargaining unit employees was less than the going rate; the citizens of Medina County have above average incomes and the unemployment rate is low. Although the evidence regarding the income of the citizens and the low rate of unemployment in Medina county may be true, this does not translate into increased revenue in the County's General Fund.

The Employer asserts that the corrections officers are adequately compensated and actually receive $5,313.00 more per year than their counterparts in Cuyahoga County. (Employer

Ex. 9). The Employer also notes that the May 2015 tax levy, which the fact-finder indicated was very important to the financial health of the County and would allow more flexibility in the future, failed. The Employer is projecting a declining fund balance in 2016 and 2017. It maintains that there is no compelling evidence to modify the fact-finder's recommendation and stray from the pattern set by the other OPBA bargaining units.

The Employer acknowledges that the fact-finding report is "reasonable." It agrees that Medina County "lands in the Cleveland-Elyria-Mentor metropolitan group." However, it asserts that "money is not coming in as claimed by the Union." The Employer reiterated that the carryover fund balance has decreased to 8.9 percent in 2015 which is among the lowest in the past 15 years. Additionally, a higher per capita income and lower unemployment rate in Medina County does not necessarily translate into more money in the budget. Moreover, it has no knowledge regarding the financial condition of other counties referenced by the Union as comparables. Specifically, the Union presented no evidence regarding the carryover balances, revenues, and expenditures for Geauga County. The Employer also asserts that Union Exhibit 14 is misleading as the Union removed Medina County from the average and it "did not use the base wage for Cuyahoga County but applied eight hours of built in overtime." It asserts that Medina County corrections officers are not paid at a rate which is below the average in the area. The Employer maintains that wages are "keeping up with the going rate and the raises necessitated by the County's finances."

Last Best Offer

The Employer emphasizes a history of multi-unit pattern bargaining in support of its proposed wage increases. However, this argument is weakened by the fact that not all internal bargaining units received the same wage increases. The Employer asserts that a 1.5% wage increase was offered because the Union did not agree to contract language allowing the County to unilaterally negotiate adjustments to the health insurance plan. In his recommendation, the fact-finder noted that he was aware of this "trade-off." No evidence was presented at hearing regarding any cost savings which would have been realized if the Union had agreed to contract language allowing the County to unilaterally negotiate and adjust the health insurance plan offered to the bargaining unit employees. The evidence reveals that increases in health care premiums under the current health insurance plan were minimal in 2015, and whether there would have been any savings under a different plan is unknown. Moreover, no plans were submitted by the Employer for purposes of comparison and evaluation. The conciliator determines that insufficient evidence was presented by the Employer to support its proposed 1.5% wage increase when viewed strictly in terms of a "trade-off" for the Union not agreeing to modify the health insurance provisions contained in the contract.

Additionally, the Employer's reliance upon pattern bargaining is further weakened by the fact that some bargaining units received increases in compensation not reflected on their respective pay schedules, such as a road deputy supplement of 20 cents per hour; an increase in the detective differential; an increase in the deputy sergeant rank differential; an increase in the lieutenant rate of pay as a result of the increase afforded deputy sergeants; and field training dispatching pay. The conciliator cannot consider wage rate increases in a vacuum without factoring in other forms of pay which are added to an employee's base wage rate or otherwise increase their total compensation. The OPBA bargaining units which accepted the fact-finder's recommendation of a 1.5% wage increase in 2015 and a 2% wage increase in 2016 received additional compensation which resulted in effective wage increases greater than that which is being offered by the Employer to the corrections officers and sergeants bargaining unit. The Employer does not dispute that the majority of deputy sheriffs received an effective increase in their base wages exceeding 2%, while deputy lieutenants received an effective wage increase of 2.66% in 2015. The conciliator notes that neither of the aforementioned bargaining units agreed to the Employer's requested health insurance concessions.

The U.S. Bureau of Labor Statistics Metropolitan Statistical Area of Cleveland-Elyria-Mentor covers the counties of Cuyahoga, Geauga, Lake, Lorain and Medina. (Union Ex. 10). Based upon the evidence of record presented in this case, the conciliator determines that corrections officers and sergeants employed by the Sheriff's Offices in Cuyahoga County, Geauga County, Lake County and Lorain County shall be referenced for purposes of comparability with the bargaining unit representing the Employer's corrections officers and sergeants. (Union Ex. 14; Employer Ex. 8).

The Union's position relies heavily upon external comparables and it points out that the Employer's proposed wage increase is below the average afforded corrections officers in the above jurisdictions. The evidence of record reveals that in 2014 ten-year corrections officers employed by Sheriff's Offices in comparable jurisdictions received the following total compensation:

Cuyahoga County	$46,667.15[2]
Geauga County	$56,266.80
Lake County	$47,779.68
Lorain County	$54,354.50
Medina County	$50,440.00

(Union Ex. 14).

The average total compensation received in 2014 by ten-year corrections officers employed by Cuyahoga County (including built in structural overtime), Geauga County, Lake County and Lorain County is $51,267.03. Without considering the built in structural overtime for Cuyahoga County corrections officers, the average total compensation received by comparable employees drops to $50,417.64 per year. As indicated above, in 2014 Medina County corrections officers received $50,440.00, an amount equal to 98.39% of the $51,267.03 average for corrections officers employed by comparable jurisdictions, and almost precisely the same total compensation as the average when the built in structural overtime for Cuyahoga County corrections officers is removed from the equation.

In order for the Employer's corrections officers to maintain this relative standing regarding compensation as compared to their peers, any wage rate increase should factor in those

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2. The above total compensation for Cuyahoga County corrections officers includes an amount which the Union refers to as built in structural overtime. The total compensation (base annual rate of pay- $42,469.58; uniform allowance- $250.00; longevity- $550.00) is $43,269.58 without the built in structural overtime.

agreed to by comparable jurisdictions. The SERB wage report and documentary evidence presented in this case reveals the following wage rate increases for corrections officers: Geauga County- 3% in 2015 and 3% in 2016; Lake County- 2.5% in 2015 and 2.5% in 2016; Lorain County- 2.5% effective July 1, 2015; Cuyahoga County- 2% in 2015 and 2% in 2016.[3] It is clear that the Employer's proposed 1.5% wage rate increase in 2015 is below the average received by corrections officers in the area. It is also below the average wage increase of 1.98% received by county employees in 2014 according to the SERB annual wage settlement report. (Union Ex. 13).

In further support of its position of a 2% wage rate increase in 2015, rather than the 1.5% increase offered by the Employer, the Union points out that the population of Medina County is increasing and its residents are considered to be "affluent." Additionally, the poverty rate in Medina County is one of the lowest in the State of Ohio. As noted by the Employer, these factors do not necessarily translate into more revenue. The conciliator agrees with this general proposition. However, a review of the County's finances indicates that General Fund revenue has increased each year from 2011 to the present. (Employer Ex. 5). Although General Fund expenses have also increased slightly over the same period, the carryover balance in the General

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3. The collective bargaining agreement between Cuyahoga County and its corrections officers bargaining unit represented by the OPBA effective January 1, 2014 through December 31, 2016, provides the following language setting forth a wage increase in 2015 in addition to the 2% increase referenced above: "Effective the first day of the first full pay period in January 2015, the salary schedule shall be reduced from 7 steps to 6 steps by the elimination of the first current salary step (new hire step) and the establishment of a new step, and a 40 cent per hour equity adjustment shall be added to steps 1 through 5. An across-the-board wage increase of 2% shall then be applied to the above equity adjusted wage schedule . . ." (Employer Ex. 9).

Fund has remained relatively stable, albeit not at the same level that it was in 2007 prior to the economic downturn. The evidence indicates that the carryover balance is actually projected to increase over the next several years from 8.97% in 2014 to 10% in 2018. (Employer Ex. 5). The Employer maintains that its goal is a 20% carryover balance in the General Fund.

Notwithstanding the Employer's goal to increase the carryover balance in the General Fund, the evidence presented at hearing reveals that the financial condition of the County is stable. The Employer expressed no serious financial concerns. The conciliator notes that the County received a "AA" bond rating by Standard & Poor's, which provided the following summary:

* * *

> The 'AA' long-term rating on Medina County, Ohio's limited-tax GO bonds reflects the following credit characteristics:
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> - Access to employment throughout the Cleveland and Akron, Ohio region;
> - Economic indicators Standard & Poor's Ratings Services considers to be favorable;
> - Solid financial performance despite recent reductions in the general fund balance; and
> - A debt burden we consider to be low.
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> Outlook
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> The stable outlook reflects our expectation that the county will continue its efforts to produce balanced operations and be able to maintain a general fund balance that is consistent with the rating category. In addition, we expect the county to continue to benefit from its location near the large and diverse Cleveland and Akron area.
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(Union Ex. 4).

Although neither party presented any evidence regarding the cost of their respective wage proposals, the conciliator has calculated the difference in base wage cost to the Employer between a wage rate increase of 1.5% as compared to an increase of 2% in 2015 to be approximately $14,479.00. An additional incremental increase in cost would result in the second year of the contract if a wage increase of 2% is ordered in 2015 instead of the 1.5% proposed by the Employer. Other than expressing a need for some "belt tightening" regarding its finances, no evidence was presented by the Employer that it does not have the ability to pay the wage rate increases requested by the Union in this case.

For each of the aforementioned reasons, the conciliator determines that the Union's proposed wage rate increases of two percent (2%) effective January 1, 2015, and two percent (2%) effective January 1, 2016, is the last best offer.

Issue 3: Article 30 - Rates of Pay (corrections sergeants rank differential)

Fact-finding Report

The fact-finder's Report and Recommendation provides the following recommendation regarding Article 30, Section 30.4, Corrections Sergeant Differential:

> On the surface it would appear, as the Union argues, that this proposal is one of parity and equity. But the Employer has a long term plan to phase out the Deputy Sergeant position from the Corrections Division, and the Union proposal would basically derail this cost effective plan. The Employer could have eliminated the Deputy Sergeant position but allowed incumbent employees to retain their positions in Corrections until resignation or transfer to another position in the appropriate bargaining unit. In light of these considerations, the Union's proposal to increase

> the rate of pay of Corrections Sergeants by approximately $6,000.00 is not recommended. The recommendation is to retain the current wage structure for Corrections Sergeants.
>
> (Union Ex. 2; Employer Ex. 2).

Position of the Union

The Union proposes an increase in the corrections sergeant rank differential which is currently based upon the corrections officer rate of pay. It seeks to achieve greater parity between the corrections sergeants and Medina County deputy sergeants. In an effort to achieve greater parity and in recognition of their supervisory authority over certain deputy sheriffs within the jail, the Union proposes an alteration in the existing rank differential language contained in Article 30 of the collective bargaining agreement. The Union has proposed that sections 3.04 through 3.06 of Article 30 should be deleted and replaced with the following language: "Effective the first pay period of 2015, all employees holding the rank of Corrections Officer Sergeant shall, at all times, be paid one percent (1.0%) greater than the highest paid deputy sheriff." (Union's Pre-Hearing Statement, Exhibit 1).

The Union presented testimony that the rate of pay for corrections sergeants is "too low for the job they perform." Sergeant Newman confirmed that there were previously six deputy sergeants in supervisory positions in the jail. However, since 2011 "only one deputy sergeant has been moved out" and there are still two deputy sergeants assigned to the jail at the present time. According to Sergeant Newman, the two deputy sergeants assigned to the jail have five years and 14 years respectively until retirement. Nonetheless, the Employer has indicated that they will be moved out of the jail. He pointed out that the deputy sergeants do not leave the building and they perform the same duties as corrections sergeants. Although they perform the same duties, deputy sergeants receive $68,409.00 per year as compared to $55,564.00 per year paid to corrections sergeants. The Union simply seeks "parity and equity" for the corrections sergeants and it notes that its position at the fact-finding hearing has been "rolled back from the deputy sergeants pay." It requests that corrections sergeants be paid one percent above the top wage rate for deputy sheriffs. As such, "the distinction between corrections sergeants and law enforcement sergeants is not the Union's focus." The Union maintains that it is "not right" that corrections sergeants have supervisory authority over employees who earn more money than them. The Union urges the conciliator to correct this situation.

Position of the Employer

The Employer requests that the conciliator award the fact-finder's recommendation and retain the current language regarding the corrections sergeants rate of pay. At the fact-finding hearing, the Union proposed a wage increase for corrections sergeants to provide that they would be paid at Step 1 of the deputy sergeants' scale. The Step 1 rate for deputy sergeants in 2014 was $62,544.71, while corrections sergeants received $55,564.00 in 2014. As such, the requested increase for corrections sergeants in 2015 would be approximately $6,000.00, which represents an increase of more than 10 percent.

At conciliation, the Union reduced its proposal and now seeks an award which provides that corrections sergeants will be paid at a rate that is one percent above the highest paid deputy sheriff. In 2015, the highest paid deputy sheriff will receive a salary of $59,330.00. Therefore, one percent above that would mean that corrections sergeants would receive $59,923.00. The Union's proposed increase would result in corrections sergeants receiving approximately $4,359.00 more than they did in 2014, which is nearly an 8% pay increase.

The fact-finder acknowledged that there are two sworn sergeants working in corrections at the jail. However, the fact-finder also heard testimony that the Employer is eliminating the positions in corrections held by sworn deputy sergeants through attrition. The Employer points out that the number of sworn sergeants working in corrections has been reduced from eight to two. Thus, the fact-finder concluded that the Union's proposal would "derail this cost effective plan." The Employer maintains that the Union's proposal at conciliation is still exorbitant and would derail the cost savings plan.

The Employer points out that the fact-finder "heard the same arguments" which the Union presented at the conciliation hearing. There is a "built in rank differential" for corrections sergeants and the Employer has a savings plan to eliminate the higher paid sergeants from the jail by attrition. The Employer further asserts that the duties of corrections sergeants and law enforcement sergeants are "vastly different." Specifically, the jurisdiction of corrections sergeants is only in the jail. As such, they "only have power over deputies in the jail." Captain Baca pointed out that sworn sergeants can transport inmates outside the jail to the hospital while corrections sergeants cannot do so. He also indicated that the corrections sergeant rank differential of 14 percent is "standard and close to the average." Additionally, the Employer cannot afford the increase in corrections sergeant rank differential requested by the Union.

Last Best Offer

The evidence of record establishes that the Employer is in the process of phasing out deputy sergeants from the corrections division, whether through attrition or transfer to other assignments. Although the Employer's plan appears to be quite extended in duration, the testimony reveals that the number of deputy sergeants assigned to the jail has been reduced from six to two. The Union's request to increase the corrections sergeant rank differential by approximately $4,359.00 per year detracts from the Employer's cost effective plan to phase out deputy sergeants from supervisory positions in the corrections division.

Unlike its position at the fact-finding hearing, the Union does not focus its attention at conciliation solely upon the wage disparity between corrections sergeants and deputy sergeants, but also takes issue with the fact that some employees occupying deputy sheriff positions receive higher wage rates than corrections sergeants. The Union asserts that corrections sergeants should not receive lower wages than employees whom they supervise. While it is true that a corrections sergeant has supervisory authority over law enforcement deputies, this is only the case when the later are performing duties inside the jail. The Union does not dispute the Employer's assertion that the jurisdiction of corrections sergeants does not extend to areas outside the jail. Therefore, on those limited occasions when a law enforcement deputy is inside the jail he or she may receive directives from a corrections sergeant. However, this does not mean that a corrections sergeant should receive higher wages than a deputy simply because part of a deputy's job description involves transporting inmates to and from the jail facility. The conciliator notes that no evidence was presented involving any duties performed at the jail by sheriff deputies other than those pertaining to picking up and dropping off inmates. It is clear that the supervisory authority of a corrections sergeant over a deputy does not extend to matters outside the jail, the work environment in which a majority of the duties conducted by a deputy occur. The Union presented insufficient evidence to support its proposed alignment of the rank differential afforded corrections sergeants with the wage rate received by deputy sheriffs with whom they have very limited supervisory interaction.

In accordance with the terms contained in Section 30.04 of the collective bargaining agreement, corrections sergeants at Step One on the pay schedule receive 7% above the base wage of the highest paid corrections officer for the first year following promotion, and corrections sergeants at Step Two on the pay schedule receive 14% above the base wage of the highest paid corrections officer. In contrast to the nature of the relationship between sheriff deputies and corrections sergeants, corrections officers are under the supervision of their shift sergeants at all times. Captain Baca testified that the 14% rank differential afforded corrections sergeants is “standard and close to the average.” The Union did not rebut this assessment and no evidence was presented to demonstrate that the current rank differential is insufficient to compensate corrections sergeants for their supervisory role over corrections officers. The conciliator notes that the County’s deputy sergeants at Step 2 receive 14.5% above the base wage rate of the highest paid deputy sheriff, a nearly identical rank differential as that afforded corrections sergeants.

Upon consideration of the evidence and arguments presented by the parties, the conciliator determines that the Employer's proposal to retain the current wage structure for correction sergeants contained in Section 30.04 of the collective bargaining is the last best offer.

/s/ Jonathan I. Klein
Conciliator

Dated: December 1, 2015

CERTIFICATE OF SERVICE

A copy of this Last Best Offer Award was served on William F. Schmitz, Esq., Attorney for Employer, at 635 West Lakeside Avenue, Suite 600, Cleveland, Ohio 44124, wschmitz@ealegal.net; and upon Max Rieker, Esq., Ohio Patrolmen's Benevolent Association, Attorney for Union, at 10147 Royalton Road, Suite J, North Royalton, Ohio 44133, maxrieker@sbcglobal.net; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, donald.collins@serb.state.oh.us; and med@serb.state.oh.us; each by electronic mail this 1st day of December 2015.

/s/ Jonathan I. Klein
Conciliator