

STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

STATE EMPLOYMENT
RELATIONS BOARD
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IN THE MATTER OF FACT FINDING :

BETWEEN :

CITY OF MIAMISBURG, OHIO,
PUBLIC EMPLOYER :

-AND- :

MIAMISBURG POLICE ASSN.,
FOP/OHIO LABOR COUNCIL, INC.,
EMPLOYEE ORGANIZATION :

REPORT OF THE FACT FINDER

SERB CASE NUMBERS:

01-MED-04-0399
01-MED-04-0400

BARGAINING UNIT:

Full-time paid employees assigned to the
classifications of non-probationary police officers
and public service officers (dispatchers).

FACT FINDING PROCEEDING: October 1, 2001; Miamisburg, Ohio

FACT FINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Donald L. Crain, Attorney/Chief Spokesperson
John Weithofer, City Manager
Doris B. Bruck, Assistant City Manager
Kathy Weisgarber, Director, Human Resources
Thomas R. Schenck, Police Chief

FOR THE UNION

Dennis E. Sterling, Staff Rep.
Tammera Sims, President
Thomas N. Thompson, MPA Rep.
Shelly West, MPA Rep.

ADMINISTRATION

By correspondence dated May 31, 2001, from the Ohio State Employment Relations Board, Columbus Ohio, the undersigned was notified of his mutual selection to serve as Fact Finder, to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j), in an effort to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed the atmosphere relative to the prior negotiation efforts by and between the Parties and learned that overall, these Parties enjoyed a "good" collective-bargaining relationship.

On October 1, 2001, the Fact Finding proceeding was conducted where prior to the commencement of the presentation of evidence and supporting arguments, the Parties were offered mediation with the Fact Finder concerning those issues that remained at impasse. Based on the Parties' desire to commence forthright with the Fact Finding proceeding, the Fact Finder recognized and complied with each Parties' request to do so. During the course of the Fact Finding proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The Fact Finder offered each Party the opportunity to provide a written summation at the conclusion of the Fact Finding proceeding which was declined.

The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and those issues that remain at impasse are the subject matter for the issuance of this Report hereunder.

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by these Parties and were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(K) which recognizes certain criteria for consideration in the Fact Finding process as follows:

- (1) Past collectively-bargained agreements, if any, between the Parties;
- (2) Comparison of unresolved issues relative to the Employees in the Bargaining Unit with those issues related to other Public and Private Employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the Public and the ability of the Public Employer to finance and administer the issues proposed and the affect of the adjustment on a normal standard of public service;
- (4) The lawful authority of the Public Employer;
- (5) Any stipulations of the Parties; and,
- (6) Such other factors not confined in those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in Public Service or in private employment.

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

The Collective Bargaining Agreement between the Miamisburg Police Association, Fraternal Order of Police/Ohio Labor Council, Inc., hereinafter referred to as the "Union", and the City of Miamisburg, Ohio, hereinafter referred to as the "Employer", expired on June 30, 2001, thus triggering application of the statutory process relative to negotiating a successor thereto. Article III, titled "Recognition and Dues Deductions," in Section 1 thereof, recognizes the Fraternal Order of Police as the exclusive Bargaining Representative for hours, wages, terms, conditions of employment, for the following Employees:

...all full time, non-probationary police officers and public service officers (i.e., communication officers and jail wardens) excluding sergeants and officers of higher rank and all other supervisors as defined in Chapter 4117 of the Ohio Revised Code. ...

As the evidentiary record demonstrates, there are approximately 39 Bargaining Unit Employees of which 31 are police officers, 8 are public service officers, noting that sergeants and officers of higher rank and all other supervisors as defined in Chapter 4117 of the Ohio Revised Code are excluded from this Bargaining Unit. The public employer, the City of Miamisburg is a municipal corporation operating under a city charter per the "home rule" provisions of the Ohio Constitution set forth in Article XVIII, Section 7 thereof. These Employees within the Bargaining Unit perform general duty police and related law enforcement or dispatch and other communication services. As the evidentiary record demonstrates, these Parties had met on May 3, May 8, May 14, May 23, May 30, June 19, June 26, and June 28 of 2001.

During the course of these negotiation sessions, the following Articles were "unopened" by the Parties during the course thereof:

Article 1	Agreement
Article 2	Statement of Purpose
Article 5	Labor Management Relations
Article 6	No Strike - No Lock-out
Article 7	Grievance Procedure
Article 9	Overtime Opportunity
Article 17	Military Leave
Article 19	Non-Departmental Training
Article 20	Substance Abuse
Addendum	Scheduling

The following Articles were tentatively agreed to by and between the Parties during the course of the negotiation sessions previously identified and are set forth as follows:

Article 3	Recognition and Dues Deduction
Article 4	FOP/OLC and Association Business
Article 8	Policies & Procedures
Article 11	Holiday Pay
Article 12	Vacations
Article 13	Sick Leave and Injury Leave
Article 16	Call-back and Call-in Pay
Article 18	Other benefits

Article 21 Disciplinary Procedures and Employee Rights
Article 22 Duration

As the evidentiary record demonstrates, the City of Miamisburg has a population of approximately 20,000 and is located in the southern border of Montgomery County approximately 8 miles south of the City of Dayton. The City covers approximately 11.3 square miles and employs approximately 185 full-time employees. Its size and location make it large enough to attract and depend upon major business while it is also small enough to suffer significantly if any of those large scale businesses lay off employees, fail in business endeavors or relocate to another area. Prior to the unfortunate terrorist attacks on September 11, 2001, the economy of the United States has been, for a lack of a better characterization, uncertain and the effects of those attacks as it relates to the economy as a whole which ultimately will have a "trickle-down" effect to cities throughout this nation, must be met with a degree of caution and prudence in the manner in which certain activities are conducted. The record in this proceeding demonstrates that Miamisburg's largest employer is now Monarch Paxar and for years Mound Nuclear Weapons Facility was its largest employer, employing over 2,400 employees, many of them highly paid scientists.

As a result of downsizing the federal government, many of these jobs were cut and its contractor, BWXTO, is scheduled to cease operations by year 2006 subject to federal funding. As of May, 2001, the current payroll at this facility is \$624,542.27. As a result of these job losses and cuts, the City's employment rate and related tax income have been affected and will likely sharply decline based on these trends and recent events. The City, according to its legal representative has realized a decline in its income tax revenues and receipts wherein last year the City budgeted for a \$300,000 increase in its income tax revenue for fiscal year 2001; however, that predicted increase never was realized, but decreased by \$31,153.00 as of June 30, 2001. By August 30, 2001, the actual income tax revenue had declined 1.8% over what was collected in the same time period in the year 2000. Business payments are down 12.45% and individual payments are down 10.31%.

The majority of this City's expenditures for salaries, wages, and benefits for the police

comes from its income tax revenues. As much as this City's income tax revenues have declined, such will have an impact on the expenditures it must make over the term of this Collective Bargaining Agreement.

Historically, the police officers and public service officers; police supervisors; service union; the firefighters and the non-organized employees have all realized at least a 3.25% increase for years 2000 and 2001 and for year 2002, the firefighters are scheduled to receive a 3.25% increase.

During the course of negotiations, the Parties were able to reach a tentative agreement as set forth in Employer Exhibit - 8 which was subject to the approval of the Bargaining Unit and the City Council. Unfortunately, for whatever reasons, the Union rejected this tentative agreement package by a vote of 21 to 2. Moreover, during the course of these negotiations, members of the Miamisburg Police Department collectively wrote a letter to the city council addressing issues the department members felt were important to the police department. That letter is contained in City Exhibit - 9 and was apparently presented to City Council at a Council meeting. That letter expressed concerns relating to turnover rates, morale, deficient hiring processes, overburdened work forces, scheduling and retention. It also stressed that, "[p]rospective and current members of this department are met with low entry level salaries, stagnant pay increases and the knowledge that reaching the top salary in every position... will take years longer than their counterparts elsewhere." While normally such would be met with the filing of an Unfair Labor Practice Charge, the City as it characterized looked carefully at the issues raised by these individuals and developed a plan by which to address the concerns within the limitations of the City's budget.

Such included, a plan to bring police officers and the public service officers or dispatchers wages into the mainstream of agreed upon comparable jurisdictions. Those comparable jurisdictions were agreed to by and between the Parties and include the jurisdictions of:

Beavercreek;
Centerville;
Fairborn;
Moraine;
Piqua;
Springboro;
Vandalia; and

West Carrollton.

During the course of negotiations following the presentation of this "letter of concern," each Party conferred with their constituencies and reached tentative agreements subject to the approval of the Bargaining Unit and the City Council. The Union membership voted down the tentative Agreement by a vote of 21 to 2, requiring that the Parties engage in this aspect of the statutory process of the mandates of the Ohio Revised Code, Chapter 4117.

III. THE IMPACT OF THE TENTATIVE AGREEMENT

As the evidentiary record demonstrates, these Parties' reached tentative agreement on the unresolved issues on or about June 27, 2001 that was subsequently rejected by a 21 to 2 vote by the Bargaining Unit. While that vote may seem overwhelming, the undersigned cannot and will not ignore the fact that these Parties have demonstrated their manifested intent to be bound by Agreement when they reached this tentative agreement. This factor is deemed in concordance with the statutory criteria as one that is "normally or traditionally" relied upon in this process and must therefore provide the cornerstone by which Collective Bargaining exists, not only under this statutory process, but generally speaking. It is incumbent upon each Party to any dispute to place at the Bargaining table those individuals that will seek the best available "deal" and to be assured that its constituents will support what it brings back for final approval. These individuals are charged with the responsibility, based on the authority bestowed upon them by their selection, to "close the deal" and then most importantly support that which they have represented to the undersigned as being worthy of labeling it as a tentative agreement.

The stability and trust that is tantamount to any Collective Bargaining relationship will diminish and erode when "good faith" is factored out of the equation when tentative agreements are not honored or supported. Painstaking bargaining generally precedes any agreement and to ignore or to discount that which is "hammered out" at the Bargaining table by those selected to represent the group, will only lead to a demise of the relationship between the Parties. It is with these time honored, basic and fundamental notions that the undersigned places significant, if not outcome-determinative weight on that which was tentatively agreed to by and between these Parties.

As previously indicated, those issues that remain at impasse at this juncture of the

statutory process are the subject matter for the contents of this Report and Recommendations by the Fact Finder. They are listed and addressed as follows and will be discussed more fully herein below. Moreover, those Articles that were not opened or those previously agreed to shall be transferred to the successor Collective Bargaining Agreement either unchanged or as modified by the Parties.

The Fact Finder is required to consider comparable employee units with regard to their overall makeup and services provided to the members of the respective community. Both Parties have agreed to comparable data relative to other municipalities and jurisdictions concerning comparable work provided by this Bargaining Unit and as is typically apparent, there are no "on point" comparisons relative to this Bargaining Unit in the jurisdiction within which it performs its functions. While there may be similarities, and those will certainly be recognized, each jurisdiction is unique relative to composition, logistics, population, and economic status. Whatever similarities that may exist must be taken into consideration by the Fact Finder based on the above noted statutory criteria.

It is and has been the position of this Fact Finder that the Party proposing any deviation or deletion of the current language or of the "*status quo*" bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties' maintain the *status quo* practice, the current language; and, where, the Parties have reached tentative Agreement, that shall be afforded compelling weight. In fact, the Party proposing any deviation from the tentative Agreement reached by and between the Parties during the course of the negotiations process will have the burden of proof and persuasion to compel a recommendation other than that previously agreed to. Based on the aforementioned considerations, the following issues remain at impasse between these Parties:

-Article 10 - Wages, Section 1 -

Wage Schedule "A," Wage Schedule "B" - Police Officers

Wage Schedule "A," Wage Schedule "B," - Public Service Officer

- Article 10 - Wages, Section 2 - Incremental Step Increases

Police Officers

Public Service Officers

- Article 10 - Wages, Section 9 - Field Training Officer
- Article 10 - Wages, Section 10 - Officer in Charge
- Article 10 - Wages, Section 12 - Longevity
- Article 10 - Wages, Section 13 - Shift Premium/Differential
- Article 14 - Insurance, Section 1 - Health Insurance
- Article 15 - Uniform Allowance
- Retroactivity

1. ARTICLE 10 - Wages, Section 1

Wage Scales - Police Officer & Public Service Officer

FOP CONTENTIONS

The FOP is seeking raises for both police officers and public safety officers at 7% for year one, 5% for year two and 5% in year three - equaling 17% for the life of the successor Agreement. It contends that such would be necessary to not only bring these Employees up to the comparable jurisdictions relative to wages, but increase morale and provide a better financial package to attract qualified candidates. It notes that the City is paying \$3,700 less than average for the comparable entry level wages for police officers and \$2,000 less than the average comparables for entry levels for dispatchers or public safety officers. At the maximum wage police officers are paid \$1,947 less than the comparable averages and the dispatchers, \$1,233 less than the comparable averages.

CITY CONTENTIONS

The City contends that its pay package averaging 15% plus tentatively agreed to at the Bargaining table is indeed significant based on the comparables provided, but must also take into consideration the fact that two steps in the incremental increase structure were dropped thereby bringing Union employees to an average beginning rate and average salary greater than the comparable cities. The City contends that the tentative Agreement reached by the Parties addresses the "attractiveness" argument that the employees raised with City Council. And by the end of the three year contract, the City's top salaries would exceed those in neighboring West Carrollton. It also notes that even though the national and local economy is in a deteriorating state, it has "stayed the course" with its wage offer that was made at the table when the Parties

reached tentative Agreement. In this regard, the City requests that the Fact Finder adopt that which was tentatively agreed to by and between the Parties.

RECOMMENDATION AND RATIONALE

It is recommended that the Parties adopt the wage package that was tentatively agreed to by and between them during the course of negotiations for the successor Collective Bargaining Agreement. It is clear that relative to the wage package that was proposed, the actual increase is at or exceeds 15% for the life of the Agreement - the average salary for police officers at 6.74% with the top step realizing \$1.256/hour increase and public service officers realizing \$.885/hour increase - and is only 2% below the three(3) year proposal made by the Union. This clearly exceeds the increases seen throughout the state based on state-wide considerations and particularly exceeding that which is recognized for the comparable jurisdictions provided by the Parties. Secondly, the fire department, which is often times compared to police, received a 3.25% increase for the 2002 contract year. The package, as provided, would relative to minimum and maximum salary schedules, place Miamisburg slightly above the average at \$36,332.59 for a police officer, minimum entry level and \$48,039.79 recognized as the maximum level under the tentative agreement. The dispatcher rate would recognize the City at \$28,773.31 as an entry level and the maximum rate of \$37,099.96. On each level, the City of Miamisburg, based on the average of the comparable jurisdictions of Beavercreek, Centerville, Fairborn, Moraine, Piqua, Springboro, Vandalia, and West Carrollton, is above the average so recognized.

It is clear to the Fact Finder that indeed the Parties put painstaking effort into the consideration of this financial data in light of the local and national economies, to address the concerns raised by the Bargaining Unit members during the course of the City Council meeting wherein the "letter of concern" was presented. It is clear, and the City manager recognized as he testified, that despite the fact that arguably what was presented constituted an unfair practice, the City nonetheless recognized the concerns of its employees and proposed a package that, in the opinion of the Fact Finder, is more than fair, reasonable, and exceeds that of the comparable jurisdictions that the Fact Finder must rely upon. In consideration thereof, it is recommended that the Parties maintain that which was agreed to and set forth in the City of Miamisburg and the FOP tentative Agreement.

2. ARTICLE 10, Wages, Section 2

Incremental Step Increases - Police Officer & Public Service Officer

With respect to the “steps” for incremental increases, it is also recommended as it relates to the financial package that was presented, that the Parties eliminate the first two steps (“at the bottom”) of the pay scale at the same percentage as the spacing between the steps now and only one step be eliminated for the dispatchers. Again, based on the financial package presented and the impact these incremental steps have thereon, it is indeed imperative that this remain at that level.

It is also important to note that with respect to the dispatchers, the rate of \$44,446.00 was apparently a mistake and should have been at \$40,446.00 and such is exemplified by reviewing pay scale relative thereto.

3. ARTICLE 10 - Wages, Section 9

Field Training Officer

FOP CONTENTIONS

The FOP seeks an increase in the pay that the Field Training Officer receives from \$1.00 to \$2.00 per hour in addition to that employee’s normal pay for the hours actually worked in this capacity. It contends that the liability and requirements have increased along with the documentation necessary for new employees.

CITY CONTENTIONS

The City contends that this benefit currently provides an additional dollar per hour for each hour during which an officer acts as a Field Training Officer; thereby recognizing the additional responsibilities connected with this activity. The City’s current benefit is equal to a better than 7 out of 9 comparable cities agreed upon by the Parties and therefore it is requested that the *status quo* be recommended.

RECOMMENDATION AND RATIONALE

This City has a current benefit level equal to, or better than, the majority of the comparable jurisdictions agreed to by the Parties. And, the nature of this additional pay recognizes the additional responsibilities attendant therewith. It is recommended that the *status quo* be maintained since no compelling evidence exists that would warrant any additional increase.

4. ARTICLE 10, Section 10

Officer in Charge

FOP CONTENTIONS

The FOP requests that the Officer in Charge pay be increased from the current one(1) dollar per hour in addition to one's normal pay and be changed to the entry-level pay for a Sergeant. It contends that the Officer in Charge is required to act in the same capacity as a Sergeant in the Sergeant's absence and therefore should receive pay comparable to that classification under the Sergeant's Collective Bargaining Agreement.

CITY CONTENTIONS

As with Field Training Officer increase being sought by the FOP, the City contends that this existing benefit of an additional \$1.00 per hour already contemplates and takes into consideration the importance in the activities of these assignments. And this City's current benefit is equal to or better than 7 of the 9 comparable jurisdictions relied upon. As such, the *status quo* is sought.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties maintain the *status quo* relative to this benefit in that the comparable jurisdictions relied upon indicate that this City has a benefit equal to or greater than those listed except Beavercreek and West Carrollton. Moreover, such was withdrawn by the Union during the course of the Parties' reaching a tentative agreement; thereby, reverting back to that contained in current Collective Bargaining Agreement or the *status quo*. As such, the *status quo* is recommended herein.

5. ARTICLE 10, Section 12

Longevity

FOP CONTENTIONS

The FOP is seeking Longevity Pay to be implemented for long-term employees, over five years, to reward them for their commitment to the City and this police department. Such it contends would help retain employees and attract qualified applicants seeking a career with this agency. As such, it seeks 1% of one's gross annual base pay for five years, 2% of one's gross annual base pay for ten years, 3% of one's gross annual base pay for 15 years, 4% of one's gross

annual base pay for 20 years, 5% of one's gross annual base pay for 25 years, and 6% of one's gross annual base pay for 30 or more years with the department.

CITY CONTENTIONS

The City contends that based on its generous wage proposal, made in consideration of declining income tax revenues, this new costly benefit should not be recommended. Such would lead to duplication in other Miamisburg Union contracts even if a modest amount was so recommended. It emphasizes that of the comparables listed, West Carrollton which it is normally compared to, has no longevity benefit. Based on the 15% plus wage increase over the next three years, such, would only add to the economic constraints the generous wage package will bestow upon this City.

RECOMMENDATION AND RATIONALE

Based on the comparable data provided, Beavercreek, Centerville, Fairborn, and Moraine, have in place a Longevity Pay scale. Piqua, Springboro, Vandalia, and West Carrollton, do not. It is indeed a benefit that has an economic impact and given the overall wage increase and the incremental step adjustments previously addressed, it is not economically feasible to recommend the Longevity package proposed by the Union at this time. Indeed that is something that could be addressed in future negotiations, but based on the comparables provided and in light of the tentative agreement reached, any Longevity considerations for the successor Collective Bargaining Agreement are not economically feasible at this time.

6. ARTICLE 10, Section 13

Shift Differential

FOP CONTENTIONS

The FOP seeks a shift premium for those employees that work the less than desirable evening and/or night shifts which necessarily deprive those employees from family commitments and disrupt their sleeping patterns. Such would provide more senior officers an incentive to choose other than a day shift to assist the Chief in scheduling a better blend of experience on those respective shifts.

CITY CONTENTIONS

It contends that based on the City placing "all of its financial eggs in one basket,"

addressing wages, as recommended and requested by the Union, in its letter to City Council, the Union cannot now seek even more economic enhancements . Moreover, no shift differential exists for the comparable cities, Centerville, Piqua, Springboro, Vandalia, or Miamisburg as set forth in its Exhibit - 19. The higher wage increases go to the newer employees under the City wage proposal in order to increase the starting pay. And since shift preference is by seniority, the less senior employees that work the less desirable evening shift and night shifts would receive a proportionately higher wage benefit which in turn would militate against the shift differential benefit. Moreover, based on internal comparables, no other City employees receive any shift differential payments. As such, it requests that this not be recommended.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties do not adopt any language that would address a shift differential. It is clear that the rate in which new employees start and the fact that shifts are bid upon, the more senior employees would work the more desirable shift, that being day shift. And those employees working the less than desirable shifts or those with less seniority who would be receiving greater incentives on the wage scale, would also receive a windfall with any shift differential consideration. Such is inconsistency with the desire of the Union, based on its letter to City Council and would again place an additional economic hardship on the City that has already reasonably addressed the concerns of this Bargaining Unit based on its letter to City Council. It is clear that a 15% plus package specifically addressed in wages with an adjustment/elimination of the steps within the incremental step scale, clearly exceeds that recognized in this geographic area or state-wide.

As such, it is not recommended that any shift differential be included in the successor Collective Bargaining Agreement.

7. ARTICLE 14 - Insurance

Section 1. Health Insurance

FOP CONTENTIONS

The FOP is seeking an employee contribution for health care insurance that would remain at the current 5% with the City paying 95% of the premium. Based on City information, the City insurance premiums have gone up approximately 13.89% and as such, the cost increase with the

same employee contribution rate would also go up proportionately. The FOP is proposing that the insurance cap wording be removed from this language as it is dated and the current language is no longer in effect.

CITY CONTENTIONS

The City emphasizes that the tentative Agreement relative to health insurance recognized employee premiums share at 7.5% and that such represents a concession on its part based on the Parties' reaching a tentative Agreement. It emphasizes that it sought a 10% employee premium share for the successor Agreement based on the City's medical insurance cost increasing over 22% in the last two years. It emphasizes that approximately 70% of Ohio public employees pay 10% or more in their premium share for medical insurance. Moreover, several of the comparable jurisdictions, pay at least 10% premium share. It seeks a 10% premium share for employees based on its initial proposal.

RECOMMENDATION AND RATIONALE

Just as consistency has been the theme of this Report based on and emphasized by, that reached in the tentative agreement by and between the Parties, it is hereby recommended that the Parties' insurance premium share for the Employees be increased modestly to 7.5% as set forth in the tentative Agreement. Moreover, based on a review of the comparables relied upon by the Parties, only Beavercreek, Centerville, and Moraine, pay 100% of the employees' health insurance premiums. Fairborn recognizes a 90% premium share and effective 7-1-2001, 85% thereof. Springboro and Vandalia pay a designated amount, with no indication of what the percentage rate might be. West Carrollton pays 90% of health insurance premiums. While the data presented is consistent relative to Beavercreek, Centerville, Miamisburg and Moraine, Piqua represents data which is inconsistent. The FOP data indicates that 100% is paid up to \$2,374.00 presumably for a single plan and \$6,391.00 presumably for a family plan. Whereas the City's information represents employee paying \$15.84 and \$38.73 for a family and the maximum the City pays is \$2,492.84 and \$6,711.38, respectively.

Despite the inconsistencies relative to the City of Piqua, it is indeed clear that of the comparable jurisdictions relied upon by each Party, a slight majority favors an employee contribution ranging from 5% to Miamisburg, to 15% to Fairborn, which also recognizes an "opt

out” at \$50 per month. Again, there is no definitive and compelling evidence that would lead the Fact Finder to recommend that being sought by the City, that it be increased from 5% to 10% or that it remain at 5% as requested by the Union. The premium increases of 13%+ overall, notwithstanding.

It is hereby recommended that the Parties maintain that which was agreed to during the course of bargaining, i.e., that the Employee contribution for healthcare premiums be at 7.5% of the total premium thereby requiring the employer to pay 92.5% of remaining balance.

8. ARTICLE 15 - Uniform Allowance

FOP CONTENTIONS

The FOP seeks to increase the uniform allowance and also build into this process an opportunity to keep the issue of uniform allowance increases from being a contract issue each negotiation session. It proposes to make the uniform allowance equal to one-week’s salary as of January 1 of each year. It is currently taxed by the IRS prior to the employee obtaining the allowance to purchase the uniform, and taxed again when the uniform equipment is purchased. Over 20% of the uniform allowance is affected before the first item is ever purchased. Such costs are rising and employees can do little to offset the increases.

CITY CONTENTIONS

The City emphasizes that the Agreement reached by the Parties resulted in all uniforms being purchased by the Employer and supplied to the Employee instead of a cash allowance. This “quartermaster system” is used by the majority of the comparable cities including Beavercreek, Centerville, Springboro, Vandalia and West Carrollton. It saves the individual and the City money, recognizing that 20% of the uniform allowance is lost to taxes and the City could take advantage of group purchasing clout which allows more net funds available for uniform expenditures. Based on the comparable cities, the majority of those use a quartermaster system and Piqua is equal to what Miamisburg now pays.

It contends that the Fact Finder should not be tempted to provide the Union an increase in clothing since the Employer’s wage proposal is so generous. As such, if the tentative agreement it is not recommended, then at least *status quo* be maintained.

RECOMMENDATION AND RATIONALE

Based on the comparable data provided, all the jurisdictions relied upon, are different relative to certain aspects of the uniform allowance. However, it is clear, based on the tentative Agreement, that the Union dropped its proposal relative thereto and since the comparables relied upon are relatively close in their amounts, it is recommended that the Parties maintain the *status quo* relative to uniforms and no increases be realized at this time.

9. RETROACTIVITY

FOP CONTENTIONS

The FOP requests that Retroactivity be award until such time that the Agreement has in fact been executed by and between the Parties.

CITY CONTENTIONS

The City contends that it initially agreed that any Agreement that was made by the Parties and ratified by the Union would be Retroactive to the expiration date of the prior Contract. Inasmuch as such was not ratified, and the Union rejected the tentative Agreement, it now contends that applying the new Agreement retroactively would be unfair and serve as an injustice upon the City and the taxpayers.

RECOMMENDATION AND RATIONALE

As the record demonstrates, the current Collective Bargaining Agreement has an expiration of June 30, 2001. The Fact Finding process is not intended to provide Employees with numerous "bites at the proverbial apple" to continue to "roll the dice" to see if they can "do better" if they continually reject that which the Parties painstakingly attempt to negotiate. In this regard, it is clear that the Parties reached tentative Agreement that was "blessed" by the four members of the Union's Bargaining table. Unfortunately, upon ratification, the tentative Agreement was voted down by a margin of 21 to 2. As stated previously, the Fact Finder is of the opinion that the wage package the Parties tentatively agreed to is indeed a generous one and exceeds that which has been recognized as a standard throughout this state generally, and this geographic region specifically. In fact, the internal comparables for the City's firefighters are at 3.25% for contract year 2002.

Indeed, some consideration for this financial gain is worthy in this matter, but in the

opinion of the Fact Finder should only be recognized in light of the Union's rejection of the tentative Agreement.

City Exhibit - 16 represents calculations performed by Kathy Weisgarber dated September 9, 2001, wherein retroactive pay based on the time frame of July 1, 2001, through October 15, 2001, (the date of issuance of this Fact Finding report and recommendation) taking the current top step and increases it by the proposed top step from the police officers as well as the public service officers. Based on 40 hours a week, excluding overtime, it would equate to approximately 600 hours recognizing the increase of \$1.256 per hour equaling \$753.60 for the police officers; and, for the public service officers based on the same number of hours, \$.885 per hour equaling \$531.00. Clearly, this calculation, that relates to Retroactive pay, also emphasizes the significance of the wage package tentatively agreed to by and between these Parties.

It is hereby recommended that those amounts be adopted. As previously stated, the additional costs for Fact Finding and representatives' time and efforts relative to the additional work involved in this process, based on the Union's rejection of the tentative Agreement, should not serve as a means to reward that which was painstakingly obtained through the course of the Collective Bargaining process. In this regard, it is recommended that the Retroactive pay be that set forth in Employer Exhibit - 16.

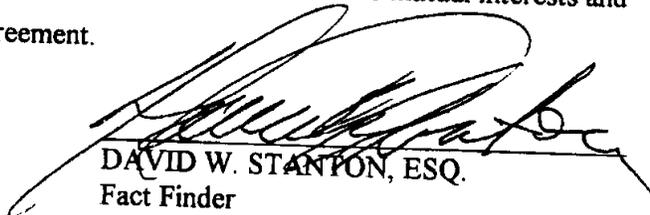
10. UNOPENED ARTICLES; AND, THOSE TENTATIVELY AGREED TO THAT ARE NOT SPECIFICALLY ADDRESSED HEREIN

It is hereby recommended that the Parties adopt and incorporate into the successor Collective Bargaining Agreement, those Articles that remained unopened or those that were tentatively agreed to prior to the tentative agreement reached on or about June 27, 2001. And that they exist in the Collective Bargaining Agreement as written in and gleaned from the predecessor Collective Bargaining Agreement. Moreover, any such issue not subject to presentation of evidence in the Fact Finding Hearing or not referenced by either Party shall be subject to a recommendation that the *status quo* be maintained for consideration in the successor Agreement.

CONCLUSION

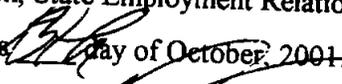
Hopefully the recommendations contained herein can be deemed as reasonable in light of

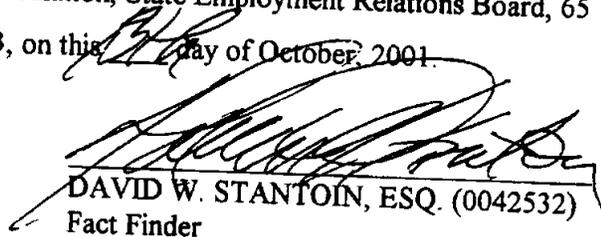
the data presented, the representations made by the Parties; and, based on the common interests of both entities recognizing that which was tentatively agreed to following painstaking efforts at the Bargaining table. It is hopeful that the Parties can adopt these recommendations so that the successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without interruption. Moreover, these recommendations were made based on the comparable data provided; the manifested intent of each Party as reflected in the Tentative Agreement reached between them; the stipulations of the Parties; the positions indicated to the Fact Finder during the course of Fact Finding; and, were based on the mutual interests and concerns of each Party to this successor Agreement.


DAVID W. STANTON, ESQ.
Fact Finder

Dated: October  2001
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations have been forwarded by overnight U.S. mail service to Donald L. Crain, Frost, Brown, Todd, LLC, 300 North Main Street, Ste. 200, Middletown, Ohio 45042; Dennis E. Sterling, FOP/OLC, Inc., Staff Representative, 222 E. Towns Street, Columbus, Ohio 43215; and to Dale L. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this  day of October, 2001.


DAVID W. STANTON, ESQ. (0042532)
Fact Finder