

**FACT FINDING TRIBUNAL  
STATE EMPLOYMENT RELATIONS BOARD  
COLUMBUS, OHIO**

STATE EMPLOYMENT  
RELATIONS BOARD

2002 JUN -3 A 10: 22

**IN THE MATTER OF FACT FINDING :**

**BETWEEN :**

**WASHINGTON TOWNSHIP :**

**-AND- :**

**AMERICAN FEDERATION OF STATE:  
COUNTY, MUNICIPAL EMPLOYEES, :  
OHIO COUNCIL 8, LOCAL 101, :  
DAYTON PUBLIC SERVICE UNION, :  
AFL-CIO :**

**REPORT OF THE FACT FINDER**

---

**SERB CASE NUMBER:** 01-MED-08-0679

**BARGAINING UNIT:** All Employees in the Public Works Department, including Service Worker I, II, and III, Mechanic I, and Horticultural Groundskeeper, but excluding all Management Level, Professional and Supervisory Employees, all seasonal and casual Employees and all other Township Employees.

**FACT FINDING PROCEEDING:** May 2, 2002; Dayton, Ohio

**FACT FINDER:** David W. Stanton, Esq.

---

**APPEARANCES**

**FOR THE EMPLOYER**

**LEGAL REPRESENTATIVE**

Daniel G. Rosenthal, Attorney

Gary Huff, Administrator  
Bill Johnson, Director of Public Works  
Jackie Curl, Administrative Services Coordinator

**FOR THE UNION**

**LEGAL REPRESENTATIVE**

William Sams, Staff Representative

Scott Thomasson, Lead Staff Organizer  
John Hoehn, Service Worker II  
Bob Welker, Service Worker II  
Steve Musgrove, Service Worker II

## ADMINISTRATION

By correspondence dated October 2, 2001, from the 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 attempts to negotiate the initial Collective Bargaining Agreement, by and between the Parties, proved unsuccessful.

As the record demonstrates, these Parties have met to engage in collective bargaining prior to this proceeding on the following dates: October 3, October 24, October 30, November 20, November 28, December 6, December 19, January 10, and January 22, 2002. Additionally, the Parties engaged in mediation efforts (prior to the Fact Finding proceeding) on February 6, February 29, March 5, and March 6, 2002. Unfortunately, the Parties were unable to reach resolution of all issues, but were able to reach tentative agreement in those prior proceedings on the following issues:

- Preamble
- Recognition
- Discrimination
- Management Rights
- No Strikes; No Lock-out
- Effect of Laws
- Compliance with ADA
- Union Representation
- Labor/Management Committee
- Bulletin Boards
- Seniority
- Bereavement Leave
- Injury Leave
- Vacation
- Safety and Health

- Personal Days
- Maternity Leave
- Jury Duty/Court Time
- Holidays
- Americans with Disabilities Act
- Grievance Procedure

Prior to commencement of the Fact Finding proceeding on May 2, 2002, the undersigned offered his services to engage in mediation with the Parties in an effort to hopefully reach resolution of the various Articles that remained at impasse. The Parties informally met with the Fact Finder to address those issues that remained and through informal mediation were able to reach agreement on the following issues:

- Article XIII; Discipline and Discharge (Employer's language)
- Article XX; Personal Day (Employer's language)
- "Allowances" - Hazardous Materials/CDL Reimbursement
- "Miscellaneous" "Entry Level Position"
- Article XVII - Promotions
- Article XXVII - Call-in Pay

At the conclusion of these informal mediation proceedings wherein the above-noted Articles were indeed tentatively agreed to, each Party requested the Fact Finder to so note those tentative agreements in the body of this Fact Finding Report and Recommendation.

Following certain procedural considerations, the Fact Finding proceeding commenced forthright. During the course thereof, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record in this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and the issues subject hereto that remained at impasse are the subject matter for the issuance of this report hereunder.

The following findings and recommendations are hereby offered for consideration by these Parties; were arrived at based on their mutual interest and concerns; and are made in accordance with statutorily mandated guidelines set forth in Ohio Administrative Code Rule

4117.9 which recognizes certain criteria for consideration in the Fact Finding process as follows:

1. Past Collective 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 settlement procedures in public service or in private employment.

**THE BARGAINING UNIT DEFINED;**

**ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY;**

**AND, GENERAL BACKGROUND CONSIDERATIONS**

The evidentiary record demonstrates this represents the initial Collective Bargaining Agreement between the above-captioned Parties. The approximate number of Employees within the Bargaining Unit is 18. That Unit, as defined by the Parties, includes:

all Employees in the Public Works Department including Service Worker I, II, and III, Mechanic I, and Horticultural Groundskeeper. Excluded therefrom, are all Management Level, Professional and Supervisory Employees, all seasonal and casual Employees and all other Employees of the Township.

As characterized by the Parties, this Fact Finding proceeding is the culmination of lengthy negotiations, including mediation, for this initial Collective Bargaining Agreement between AFSCME Ohio Council 8, Local 101, or the Dayton Public Service Union and the Washington Township Trustees, located near the Dayton, Ohio area. Based on the scope of the

survey utilized, this Township could be viewed based on geographical factors with other Townships within a 20 mile radius having a population of 25 to 50,000 citizens. The types of services that these Employees perform include: snow removal, leaf pick-up, road maintenance and repairs, cemetery, greenspace, or median maintenance, concrete work including sidewalk installation/repair, catch basin repair, and gutter repair, signage, and/or striping of roadways, etc. According to documentation provided by the Employer, the population is in excess of 29,000, while the Union indicates the population exceeds 50,000.

The Fact Finder is required to consider comparable employee units with regard to their overall make-up and services provided to the members of their respective communities. As is typical and is required by statute, both Parties in their respective Pre-hearing statements; and, supporting documentation provided at the Fact Finding proceeding, have relied upon comparable jurisdictions and/or municipalities concerning “comparable work” provided by this Bargaining Unit. As is typically apparent, there is no “on-point comparison” relative to this Bargaining Unit concerning the statutory criteria as will be addressed by the Fact Finder based thereon. It is, and has been, the position of this Fact Finder that the Party proposing any deviation, deletion, or modification of either current contract language; or, a *status quo* practice, where an initial Collective Bargaining Agreement may exist, bears the burden of proof and persuasion to compel the change, deviation or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that be previous Collective Bargaining language or a practice previously engaged in between the Parties. It is important to note that based on the statutory criteria, the Public Employer herein has not raised any inability to pay or finance arguments relative to its overall economic status. It is clear that the Parties have engaged in painstaking efforts to reach this level of the statutory process with relatively few, but important to both sides, issues that they simply could not reach agreement on.

While the Employer has not raised any inability to pay considerations, it emphasizes its accountability to the Community concerning fiscal prudence and its ability to finance economic enhancements that may be recommended herein under this initial Collective Bargaining Agreement, without jeopardizing the level of service it currently provides. The Union seeks what it characterizes necessary contractual, as well as, economic improvements to assist with its ability

to provide a fair and equitable Collective Bargaining Agreement for this Bargaining Unit.

As was previously identified, numerous Articles were tentatively agreed to during the course of the various negotiations, as well as, those exchanged in mediation as they are listed above. It is hereby recommended that those not opened; or, those previously agreed to by and between the Parties either during the numerous negotiation and/or mediation sessions, or the informal mediation that occurred prior to the Fact Finding proceeding, be “transferred” for inclusion into the initial Collective Bargaining either unchanged or as modified by the Parties during those discussions.

## **I. UNION BUSINESS**

### **UNION POSITION**

The Union contends that its final position is that as set forth in the Firefighter’s Collective Bargaining Agreement, the only other unionized bargaining unit in the Township. Such provides for release time up to three(3) members for contract negotiations up to a total of 96 hours and allows these Employees the right to conduct business meetings after hours on the Employer’s premises with release time to investigate grievances and attend grievance hearings. It emphasizes that three(3) mediation sessions were conducted at night with the negotiating team commencing at 7:00 a.m. and lasting until nearly 10:00 p.m.

### **TOWNSHIP POSITION**

The Township takes the position that Union business be conducted on the Employee’s own time except for attendance at meetings of the agreed upon Labor Management Committee or for attendance specified in the agreed upon Grievance Procedure. To be paid for attending negotiations and perhaps other Union business is simply not appropriate for taxpayers to bear.

### **RECOMMENDATION & RATIONALE**

It appears that the Employer takes issue with employees conducting Union business “on its nickle” or that of the taxpayer except for Labor Management Committee meetings and Grievance Procedure meetings. Paid attendance is the issue for consideration herein. It is apparent, and each advocate in this proceeding can appreciate, that the existence of a collective bargaining relationship with a public employer both directly and indirectly affects that which the taxpayer ultimately bears with respect to administering and engaging in the process of developing

a Collective Bargaining Agreement under which the collective bargaining relationship exists. Indeed, the taxpayers are impacted by the existence of the exclusive representative and the duties and responsibilities it has with respect to its lawful existence in this process. It is important to note that the Firefighter's Agreement allows for such paid release time. Some of the external comparables relied upon by the Union also indicate that the Employees engage in such activities without loss of time. The Fire Agreement seemingly takes into consideration the 24-hour shift that the Firefighter works based on the "96 hours" for the two(2) bargaining units - or 48 hours each - represented by Local 3369 under that Collective Bargaining Agreement. In this regard, it would seem that some consideration based on the "normal work week" that these employees perform be identified and recommended herein.

As such, it is recommended that the Parties adopt similar considerations for these employees to engage in collective bargaining beyond that of the Labor Management Committee and/or Grievance processing and administration of the Contract. Such would include negotiations to hopefully bring about resolution of an impasse. In this regard it is recommended that they be allowed to engage in such activities for negotiations but will not exceed 40 hours, at each employee's straight-time rate, for this collective bargaining unit.

## **II. UNION DUES - DEDUCTIONS**

### **UNION POSITION**

The Union contends that all Bargaining Unit members, whether Union members or not, receive the benefit of the Collective Bargaining Agreement and the exclusive representative's efforts in administering and negotiating its terms. It has the duty of fair representation of all bargaining unit members to wherein it incurs expenses for rent, salary, utilities, arbitration costs, etc. To allow these employees to "free ride" would be counter-productive. It also seeks a voluntary PEOPLE'S Check-off for its Political Action Committee.

### **TOWNSHIP POSITION**

The Township proposes voluntary dues payment and revokable check-off contrary to what the Union is seeking as dues payment as a condition of employment. Such is opposed by the Township both philosophically and practically and believes such should not be required since to do so would risk one perspective employee being lost to another Township. It also opposes

the voluntary paycheck contributions to the Union's Political Action Committee as it not being in the best interest of the Township.

### **RECOMMENDATION & RATIONALE**

As the evidentiary record demonstrates, there were 18 employees who voted for certification of the Union, and according to the documentation provided, 17 voted in favor of the Union. Such represents a strong majority for the Union's existence. While the Fact Finder is indeed mindful that this is the initial Collective Bargaining Agreement by and between the Parties, those numbers, represent strong and overwhelming support of the Union's existence. Therefore, it is hereby recommended that the Parties' adopt the inclusion of the Union's language relative to Fair Share Fee considerations.

With respect to the voluntary paycheck deduction, it is certainly at the choice of the employee, but the perception of the employer's acquiescence to whatever activities the Union supports may send the wrong message to the Township's employees. In this regard, such is not recommended for inclusion in the initial Collective Bargaining Agreement. If indeed members have a desire to support the Political Action Committee of this, or any other Union, they can certainly make whatever voluntary payments outside the employment relationship in support thereof.

### **III. SUBSTANCE ABUSE AND REHABILITATION**

#### **TOWNSHIP POSITION**

The Township proposes several modifications, as proposed by the Union, regarding language similar to that of the Fire and Dispatcher contracts. While it recognizes the Union's opposition may center around the standards surrounding a positive test result, it is willing to commit that the company administering testing under the policy, determine positive substance levels. It recommends an alcohol level of .04% or above, be considered the positives, that the company administering such testing will determine the positive levels for other substances.

#### **UNION POSITION**

The Union proposes that those standards mandated by the Department of Transportation relative to testing is indeed appropriate based on this regulatory agency's scientific measures that are utilized. Such allows the third party to set these standards based on CDL requirements. Such

is an objective, uniform standard recognized by a regulatory agency that routinely addresses these types of matters.

#### **RECOMMENDATION & RATIONALE**

The Fire and Dispatch contract provides guidance relative to the Substance Abuse and Rehabilitation language being considered for inclusion in this initial Collective Bargaining Agreement. It appears that inasmuch as some of these employees are required to maintain a commercial driving license, they are likely subject to DOT regulations. It would seem that indeed the standard of testing at issue with respect to a positive test for alcohol - or .04% and above - is agreeable. Who determines what constitutes a positive test result for other substances is problematic. While consistency and uniformity is indeed an important consideration, the utilization of standards mandated by the Department of Transportation would seemingly address the need for uniformity and consistency relative to administering such a process. The Company responsible for determining such "other" levels deemed "positive," can likely administer such tests based on what levels are dictated to them by the Parties and could mirror those followed by the DOT. Based on the need for uniformity and consistency, the internal comparable found in the Fire Agreement, with the noted modifications as characterized by the Township, is recommended, including the Parties' agreement on the "positive" level for alcohol.

#### **IV. LAYOFF & RECALL**

##### **TOWNSHIP POSITION**

The Township proposes that job decisions be based on ability and performance with seniority as the tie breaker verses the Union's position as seniority being the determining factor. It urges that its obligation to the Community is to employ the best available employee for a certain position. It contends that seniority can be an artificial factor based on the varying levels of ability and performance that employees invariably possess.

##### **UNION POSITION**

The Union contends that it is seeking language that of the Fire Agreement since such is straight forward and provides for Layoffs due to financial conditions of the Township while compelling the Township to explore reasonable alternatives prior to laying off bargaining unit

members and allows bumping rights and layoffs in inverse order of classification seniority and recall rights for three(3) years.

### **RECOMMENDATION & RATIONALE**

It is recommended that the Parties adopt the definition of Seniority as seemingly agreed to during the course of the Fact Finding proceeding. Again, the Township emphasizes that job decisions be based on ability and performance which would include training, skill, and experience and the Employee's work record, and when those factors are relatively equal, Seniority would then serve the determining factor. The Fire Agreement, which recognizes Seniority and recall in inverse order of Seniority and such recall rights being for three(3) years duration, is indeed worthy of consideration herein. However, the three-year recall period seemingly and presumably takes into consideration the difficulty and expense incurred to hire a Firefighter in comparison to those employees within this Bargaining Unit. This is not, in any way, intended to demean the nature of the work or the quality of the work that these employees perform, but simply that the training necessary to perform fire suppression is intense, time consuming and expensive.

In this regard, the recall aspect of this provision would be for a period of two(2) years. Such would also include, as recommended herein, recall in inverse order of classification seniority; and, it is also recommended that the Parties adopt what is commonly recognized as a "hybrid" seniority provision which also takes in consideration the skills and qualifications of employees with respect to promotions and/or vacancies, etc. In this regard, it is recommended that the Parties adopt such language that would recognize Seniority as a factor, but not as the only factor, with qualifications, skill, ability, and work performance being identified as other factors to be considered.

### **V. STEP-UP PAY** **TOWNSHIP POSITION**

The Employer urges the Fact Finder to recommend language that only would increase the employee's pay if they are reassigned for three(3) months or more due to the tremendous overlap of the classification levels of Service Worker, etc. Such would allow the Employer greater flexibility to staff and address staffing needs as they arise. The internal comparables require

flexibility based on the overlap in responsibilities within this Bargaining Unit.

**UNION POSITION**

While there is some question about whether this issue is even properly before the Fact Finder, the Union urges that the Hours of Work letter to counsel for the Township does indeed address this issue. It seeks an increase in pay if an Employee works four(4) consecutive hours or more in a higher rated classification and should therefore receive the increase in pay.

**RECOMMENDATION & RATIONAL**

The Employer's language that would not require an increase in pay until such time an employee works three(3) calendar months in a higher rated classification before being entitled to receive step-up pay based on the level of the job to which he has been temporarily reassigned, while in the opinion of the Fact Finder, is too long, is otherwise reasonable to insure staffing flexibility it seeks and based on the overlapping functions within the classifications. Placing a shorter duration of thirty (30) calendar days would address considerations that employees not be routinely and perpetually reassigned without reaping the benefit of the rate of the higher classification.

**VI. ARTICLE XIX - SICK LEAVE**

**TOWNSHIP POSITION**

The Township proposes to maintain the Sick Leave provisions that govern all Township employees that would be applied uniformly to this department as well. All Employees accumulate 12 days per year throughout the Township as opposed to the expansion of 15 days as sought by the Union. It notes that there is potential for abuse and seeks its language relative to the policing Sick Leave usage.

**UNION POSITION**

The Union proposes that the Sick Leave Article provide for annual accrual of 15 days and sets forth grounds for using Sick Leave, capping conversion and providing for documentation when absences of three(3) or more days or if a pattern of abuse is detected.

**RECOMMENDATION & RATIONALE**

For this particular Article, consideration of internal comparable is indeed appropriate and compelling since, as the Employer notes, the other employees within the Township receive 12

accrued sick days per year. It would be an easier task of maintaining uniformity if indeed all employees, including this bargaining unit, were to identify and recognize the same Sick Leave as other Township employees. Moreover, the Employer's language relative to utilization and accrual and abuse thereof shall be recommended as well. It seems as though uniformity in this initial Collective Bargaining Agreement outweighs any consideration for expanding that which is already within reasonable limits based on external and/or state-wide considerations. The Employer's need to police utilization is reasonable even if abuse has not become an issue. Providing a standard to follow allows for consistency of penalties and notice to employees of what can be expected if abuse is detected.

With respect to the Bereavement Leave, it is apparent that this particular Article had been, as identified in Article XVIII, tentatively agreed to on February 28, 2002 and, as such, it is recommended that the Parties follow that tentative agreement agreed upon on that date.

#### **VII. ARTICLE XX - PERSONAL DAYS**

As previously indicated, the Parties reached tentative agreement relative to this Article during the course of the informal mediation that occurred prior to the initiation of the Fact Finding proceeding. Accordingly, it is hereby recommended that the Parties adopt that which was tentatively agreed to during that time for inclusion in this initial Collective Bargaining Agreement.

#### **VIII. ARTICLE XXVI - PROBATION**

It is apparent that the time frame relative to what constitutes "probation" for a new hire is at issue between the Parties.

#### **TOWNSHIP POSITION**

The Township proposes a one-year probationary period which is consistent with the Firefighter and Dispatcher terms of probation based on the fact that the job responsibilities performed by Public Works employees are seasonal in nature and therefore change throughout the year. In this regard, it contends that an employee's performance cannot be adequately evaluated in a mere six-month period as proposed by the Union.

#### **UNION POSITION**

The Union notes that the current practice is 180 days as set forth in the Employee Policy

Manual. It also notes that the City of Troy recognizes 130 work days; Piqua 180 days; Monroe 180 days; and, Kettering 12 months. As such, six months is indeed adequate.

**RECOMMENDATION & RATIONALE**

While I recognize that the current policy manual sets forth a six-month probationary period, the type of work performed by members of this Bargaining Unit, is seemingly seasonal in nature. It would seem reasonable to expand that time-frame recognized under the current Policy Manual to address this concern as raised by the Employer. Twelve(12) months may be longer than some of the comparables relied upon, but nonetheless it provides an adequate testing vehicle by which a new employee can be determined worthy of retention. In this regard, it is recommended that the Parties adopt the Employer's language relative to the time frame for probationary status.

**IX. ARTICLE XXVII - CALL-IN PAY**

During the course of the informal mediation and further discussions that ensued during the course of the Fact Finding proceeding, this Article came up for consideration with presentation of evidence, the Parties reached tentative agreement. Call-in pay, currently available to all of the Township Employees of two(2) hours at time-and-one-half, as agreed to for inclusion in this initial Collective Bargaining Agreement.

**X. ARTICLE XXVIII - MEDICAL INSURANCE**

**TOWNSHIP POSITION**

The Township, as it characterizes, proposes a provision seemingly identical to the Firefighter and Dispatch provisions, but would omit the so called "me too" language. That language in the Firefighter contract provides that the Township's flexibility in cost-sharing or making other insurance arrangements will apply only if applied to all other employees. There exists increasing insurance costs and complexity relative thereto mandating flexibility to handle each group of employees as circumstances dictate.

**UNION POSITION**

The Union contends that there is absolutely no reason to treat these employees differently verses other Bargaining Units within the Township; wherein there is no premium contributions. It proposes language set forth in the Fire Contract wherein the Township agrees to treat the

Bargaining Unit members, as it relates to Medical Insurance, in the same manner as other Township regular, full-time employees. To delete this “me too” language or “favored nations” language, could subject this unit into being the only unit required to make contributions to subsidize the free health insurance enjoyed by non-bargaining unit members.

### **RECOMMENDATION & RATIONALE**

There seems to be no compelling reason to potentially take away that which these Bargaining Unit employees would enjoy based on the language contained in the Fire Contract. The internal comparable, as set forth in the Fire Agreement, is compelling with respect to maintaining that currently enjoyed by these members. The Township could seemingly address its potential concerns regarding increasing costs and overall complexity of the insurance industry, by involving *all* Township employees. Typically, governmental entities seek such coverage on a Township-wide plan to insure cost containment and uniform coverage. Moreover, larger groups of insured members generally reduce the premiums that are charged. These types of benefits of following that language contained in the Fire Agreement are compelling and warrant its inclusion in this Agreement.

### **XI. ARTICLES XXX AND XXXIV -**

#### **AGREEMENT COMPLETE AND TERM OF AGREEMENT**

The Parties requested, and the Fact Finder agreed to address, these two(2) Articles together because of the impact each has on the other.

#### **TOWNSHIP POSITION**

The Township indicates that these provisions protect the Township from claimed obligations expressly stated in the Agreement or those that may occur outside the effective dates thereof. Additionally, the Term of the Agreement provision requires the Union to notify the Township of any proposed changes in advance of negotiations. The Township also emphasizes the legal effect of the expiration of the Contract wherein the Grievance procedure would carry on, but Arbitration would not. Such, it contends, becomes one of a matter of law as opposed to that arising under the Collective Bargaining Agreement.

#### **UNION POSITION**

The Union proposes, what it characterizes as standard, statutory language, providing for

notice to negotiate a successor Collective Bargaining Agreement being provided to the other side during the 90 day window and that the Duration of the Agreement be for three(3) years. It notes that the Township indicated in bargaining that in the event that an incident occurred after the Agreement expired, and during negotiations for successor, the Union would have no redress. The Union also proposes that this Article contain a “zipper clause.”

### **RECOMMENDATION & RATIONALE**

It is hereby recommended that the Parties incorporate that proposed by the Union relative to the notice for negotiating the successor agreement.

The Parties seemingly agree that this contract be for three(3) years duration.

Moreover, it is also recommended that the Parties’ adopt the Union’s proposal in its Duration Article that contains the zipper clause which seemingly affords, in conjunction with, the existence of this collective bargaining relationship, the ability to secure and/or seek redress for that which may be deemed a violation thereof and provide a quicker and more economical avenue or vehicle by which the Parties could seek redress even after the expiration of the Agreement occurs. While indeed the termination of the Contract, as a matter of law, may have a profound impact on that which may exist thereunder, the proposal as sought by the Union herein is indeed commonplace and simply provides it an avenue for redress.

### **XII. ARTICLE XXX - OVERTIME**

#### **TOWNSHIP POSITION**

The Township proposes that the Overtime standard which is recognized by the Fair Labor Standards Act of time-and-one-half for hours over 40 during a work week. It notes that the Firefighters, Dispatchers, and non-union Township employees receive overtime after 40 hours per week. To provide Overtime pay for hours over eight(8) hours per day is unnecessarily expensive and would create incentive for attendance abuse. Moreover, the Union’s proposal is rigid with regard to scheduling breaks, scheduling *per se*, overtime scheduling and distribution of overtime and that of standby pay that does not exist for other Township employees. It suggests that such is inconsistent with providing efficient and quality services to the residents of this Township. Moreover, it opposes the Union’s proposal relative to the protection of Bargaining Unit work. Currently, flexibility is exercised and much of the work is contracted out. Such a

“carving out” of so-called “bargaining-unit work” would be artificial and inconsistent with the flexibility needed by the Township, as well as, those rights already granted Management in the Management Rights clause previously agreed to by the Parties.

### **UNION PROPOSAL**

The Union’s proposal defines a work week as five(5) consecutive, eight-hour days and further defines Overtime entitlement for those hours in excess of eight(8) hours per day or 40 hours per week. It also provides language for four(4) ten-hour days and defines “active-pay status” as a criteria for measuring hours worked for Overtime calculation. Its proposal prohibits pyramiding and further defines the work day, provides for rotation of overtime opportunities by job classification and prohibits mandatory overtime. Its proposal also defines call-in pay with a four-hour minimum at time and one-half. It provides for rest periods, prohibits non-bargaining unit employees from performing bargaining unit work except in cases of emergencies; where no bargaining unit member is available; when a bargaining member is on layoff; and, those times when training or instruction occurs. It also proposes that Stand-by pay would be for eight(8) hours per day, Monday through Friday, and 16 hours per day on Saturday and Sunday.

### **RECOMMENDATION & RATIONALE**

As previously addressed, certain internal comparable considerations were afforded those Articles wherein compelling arguments had been made to follow that recognized within the Township with regard to other Township employees and/or those who have been organized. However, under this particular Article, it is recommended that the Parties adopt the language as proposed by the Union relative to the type and protection of work performed by these Employees and recognizing the fact that the type of services they provide are more a-kin to the private sector even though the performance thereof falls under the auspices of a governmental entity. Typically, Overtime is paid for those hours over eight(8) or those over 40 in a work week. The Union’s proposal recognizes the definition of the work week, what constitutes Overtime, a prohibition against pyramiding, an explanation of work schedules and equalization of Overtime. (Call-in pay has been tentatively agreed to as previously addressed in this report.) It recognizes other types of leave as being counted for the purposes of computing entitlement to Overtime. It also affords the Township the ability to work non-bargaining unit personnel in certain situations

which, in my opinion, affords the Township the flexibility it seeks to maintain.

While I recognize this indeed creates an additional cost relative to the payment of Overtime over eight(8) hours verses 40 hours, it also is consistent with "...other factors recognized in the Collective Bargaining process..." under Collective Bargaining Agreements relative to the payment and calculation of Overtime. Those fundamental and longstanding considerations are found to be compelling herein.

### **XIII. ARTICLE XXX - WAGES**

#### **TOWNSHIP POSITION**

The Employer proposes a three-year contract as previously addressed in the Duration Article with the Employee's receiving a 3 ½ % increase in each of the three-year agreement. The first year, however, would become effective upon the signing of the Agreement and therefore no retroactivity considerations would apply. It contends that the Township provides wages that are in line with the averages provided by the other comparable jurisdictions and that these employees are paid above that average based on the comparables relied upon by the Township. In its hearing documentation it emphasizes that the "Average Total Salary" of Service Worker II Classification of comparable jurisdictions is \$35,924.00 and that of Washing Township including the 3 ½ % increase would be \$37,738.00. The additional documentation concerning pay comparisons, the classifications recognized by other comparable jurisdictions that are consistent with this Township, have these Employees rated favorably with regard to their status with surrounding jurisdictions. Based on the total package of benefits, as well as, Salary, these Employees are indeed in line with the survey of comparables provided.

It notes that for internal comparable consideration, the Firefighters receive 3 ½, 4, and 3 ½, but did so in conciliation.

#### **UNION POSITION**

Simply stated, the Union proposes that the same wage proposal offered by the Township at the final mediation session of 4%, 3 ½, and 3 ½, with an effective date of January 1, 2002 be recommended herein. While it recognizes that such was part of the package settlement, the Township reverted to the 3 ½ for each year of the agreement after impasse was determined. The Union contends that the Township's final proposal at the last mediation session is indeed in line

of that of the Fire Division and with what the Township has historically provided.

The Union contends that there are absolutely no factors to deny retroactivity to January 1 since there was no dilatory conduct or bad faith exhibited by either Party, particularly the Union; therefore, these Employees should not be penalized for not rewarding retroactivity. These increases represent the same or similar increases as other Employees within the Township. It proposes that the Contract for years two(2) and three(3) run 12 months after the effective date of the initial effective date for year one(1).

### **RECOMMENDATION & RATIONALE**

Based on the data provided, the Parties are in agreement relative to years two(2) and three(3), respectively, relative to an increase of 3 ½% for each of those two(2) years. As such, such is recommended. As was previously addressed in the initial stages of this Fact Finding Report, there are never any “on-point” comparisons relative to comparable jurisdictions as they relate to that jurisdiction that is in the midst of the statutory dispute resolution process relative to its Collective Bargaining Agreement. While indeed some of these jurisdictions provide basic guidance with respect to ranges of increases and other benefits, they certainly do not provide the final calculation that can be deemed palatable with both Parties. The increases, as recommended herein, 4 %; 3 ½ %; and 3 ½ %, are indeed reasonable based on either Parties’ comparable data or that recognized state-wide.

The record is devoid of any evidence that would suggest that either Party acted in a dilatory manner or in bad faith relative to engaging in and/or concluding the negotiation process that resulted in the impasse which is the subject of this Report. As such, these Employees shall not be penalized for the Parties’ inability to reach settlement during the course of various negotiations sessions, as well as, the mediation that occurred even informally with the Fact Finder.

---

Certain gains have been made by both Parties herein and certain other items may be in further need of addressing. The Collective bargaining process is incremental in nature and certain goals and/or objectives cannot be achieved overnight. The exclusive representative is

subject to the same considerations as is the Public Employer when the neutral Fact finder seeks to make recommendations that require very little to reject. Simply stated, neither Party can expect to “hit the Mother load” under an initial Collective bargaining Agreement. Again it must be emphasized that collective bargaining is an on-going process - an incremental creature that must be addressed based on the idea that the “ideal” may never be realized.

In this regard, it is hereby recommended that based on the comparable data provided, the increases that were proposed at the final mediation session preceding the Fact Finding hearing, be incorporated into the initial Collective Bargaining Agreement by and between these Parties. Moreover, the effective date thereof, with respect to economic enhancements only, which also has an impact of the Duration Article, as previously addressed, would be retroactive to January 1, 2002. And, that year two(2) be effective January 1, 2003, and year three(3) be effective January 1, 2004. There is absolutely no evidence in this record to suggest that a recommendation other than that be set forth herein.

#### **XIV. ALLOWANCES**

As discussed by and between the Parties during the course of the informal mediation as well as the Fact Finding proceeding, the manner in which the Hazardous Material and/or CDL reimbursement has occurred shall be recommended herein. The Township’s current practice regarding CDL and the Hazardous Material reimbursement will continue under the initial Agreement. Based on the information provided, the Township will pay the difference between the CDL license and a regular license to which the Union agreed.

#### **XV. MISCELLANEOUS**

This language dealt with a proposed new “entry level” Service Worker position at the existing salary level Grade II., recognizing that Service Worker I are a Grade IV. During the course of the Fact Finding proceeding, the Parties reached tentative agreement relative thereto agreeing to incorporate the Township’s position and proposed language relative to this provision. As such, it is recommended for inclusion in the initial Collective Bargaining agreement.

#### **CONCLUSION**

In light of the data presented, the representations made by the Parties and based on the common interest of both entities, it is recommended that the Parties adopt these

recommendations so that this impasse can be brought to closure and this initial collective bargaining relationship can continue without further interruption. These recommendations were made on the comparable data provided, stipulations of the Parties, the positions indicated to the Fact Finder during informal mediation, as well as, the formal Fact Finding proceeding and were based on the mutual interests and concerns of each Party to this initial Collective Bargaining Agreement.



DAVID W. STANTON, ESQ  
Fact Finder

Dated: May 30, 2002  
Cincinnati, Ohio

**CERTIFICATE OF SERVICE**

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been delivered, via Fax transmission and Overnight US Mail Service, to Daniel G. Rosenthal, Legal Representative for the Employer and Attorney for Denlinger, Rosenthal, & Greenburg, 425 Walnut Street, Suite 2310, Cincinnati, Ohio 45202; William Sams, Staff Representative for AFSCME Ohio Council 8, Local 101, Dayton Public Service Union, AFL-CIO, 15 Gates Street, Dayton, Ohio 45402; and, to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 on this 30<sup>th</sup> day of May, 2002.



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