

STATE EMPLOYMENT  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD RELATIONS BOARD

In the Matter of Fact Finding Between:

2002 MAY 23 A 10:10

City of West Carrollton, Ohio

- and - S.E.R.B. Case No. 01-MED-09-0779

Fraternal Order of Police,  
Ohio Labor Council, Inc.

Appearances:

For the City: Janet K. Cooper, Esq.  
Cooper & Gentile Co.  
Dayton, Ohio

For the Union: Thomas J. Fehr  
Staff Representative  
F.O.P., O.L.C., Inc.  
Cincinnati, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan  
Fact Finder

BACKGROUND:

This case came on for hearing on April 23, 2002. Preceding the hearing the parties had been through a mediation process with the rightfully highly regarded FMCS Mediator Steve Anderson, and both parties expressed the view that the remaining unresolved issues were probably best moved toward resolution by means of the statutorily provided Fact Finding process and the issuance of a Fact Finding Report. Accordingly, mediation was not undertaken by the undersigned prior to the opening of the Hearing.

The bargaining unit is comprised of the City's Police Department Dispatchers some six (6) in number.

The parties are negotiating for a successor Agreement. The predecessor Agreement was a unified contract for this Dispatcher bargaining unit and the bargaining unit comprised of Patrol Officers and Detectives Below The Rank of Sergeant. In the predecessor Agreement the parties expressly provided therein at Article 2 - Recognition, Section 2.2 that "[b]y agreeing to a single unified contract for both bargaining units, neither party waives its right to insist on separate bargaining for the two units in negotiations for a successor contract," and indeed this proceeding is part and parcel of separate bargaining for the Dispatcher bargaining unit.

In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth in O.R.C. 4117.14 (G)(7)(a) to (f), to wit: the factors of past collectively bargained agreements; comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standard of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The format includes the Record, comprised of each party's position on the issue, their evidence, and their arguments; Rationale, setting forth the reasons for the undersigned's recommendation; and the undersigned's Recommendation with respect to the issue. The expired predecessor Contract will be referred to as the current or predecessor Contract.

ISSUE #1: ARTICLE 19 - WAGES

Record

The current Contract at Section 19.1 sets forth the five (5) step wage scale for Police Officers for each year of that three year Contract, and Section 19.5 Officer in Charge pertains only to Police Officers. Since the bargaining unit is bargaining its own separate Contract, exercising its right to no longer participate, along with the Police Officers, in a unified contract, the F.O.P. proposes the deletion of these two Sections. The City is agreed to these deletions. The parties are agreed that the wage scales and wages for each year of the Contract will be set forth in Section 19.1.

The current Contract provides for six (6) pay steps. The F.O.P. proposes the elimination of Step 6, and a 10% increase between Steps 4 and 5. The F.O.P. also proposes an across-the-board increase of 4.5% for each year of a three year Contract. The City would maintain the current Contract's six (6) steps; resists the F.O.P.'s proposed 10% increase between Steps 4 and 5; and proposes an across-the-board increase of 3% for each year of a three year Contract.

Both parties would retain Section 19.3 - Eligibility for Merit Step Increases of the current Contract, redesignating same as 19.2. Both parties would retain Section 19.4 - Maximum Steps

of the current Contract, redesignating same as 19.3, and striking therefrom the terms "and 19.2."

The F.O.P. proposes as Section 19.4, the creation of a "Dispatch Coordinator" position, in the nature of a lead dispatcher, to be paid at a rate of pay 4% above the rate of pay of the top step dispatcher. Specifically, the F.O.P. proposes as follows:

"Section 19.4 Dispatch Coordinator The City shall assign one employee to serve as the Dispatch Coordinator. The Dispatch Coordinator shall provide training, resolve problems, coordinate work, draft schedules, and perform such other tasks as are assigned by the Chief of Police.

The rate of pay for the Dispatch Coordinator shall be four percent (4%) above the rate of pay of the Top Step Dispatcher."

The City resists the creation and pay scale for a position of Dispatch Coordinator, asserting it is a permissive subject of bargaining, and, in any event, the creation of a new position which is a uniquely managerial prerogative.

The F.O.P. proposed that Section 19.6 Shift Differential of the current Contract be improved by an additional 10 cents an hour for midnight shift, and the following additional language: "The Shift Differential paid to an employee will be included in the base rate for purposes of determining the overtime rate payable." This provision has been tentatively agreed to by both parties.

The F.O.P. further proposes that premium pay of 5% be added to the base rate of pay of employees working weekends. The City resists this proposal.

Understandably these Wage issues received much time and attention at the hearing.

In support of its contentions the F.O.P.'s advocate notes that an average three year increase of 14.07% was obtained in five of his recent law enforcement bargaining unit contracts, namely, Blue Ash, Clermont County, Green Township, Miami Township, and Lebanon. The F.O.P. also points to SERB's Ten Year (1992-2001) Annual Wage Settlement Data, and notes that the average wage increase for Police units was 4.25% in 1999; 3.95% in 2000; and 3.90% in 2001. The F.O.P. would use as comparables the following cities: Bexley; Miamisburg; Bedford; Moraine; Dublin; Maumee; Beavercreek; and Oakwood. The F.O.P. notes that the average top salary in these jurisdictions is \$38,789.77, compared to West Carrollton's top salary of \$36,233.60. The F.O.P.'s SERB generated data also reflects wide variations in the number of steps in the wage scale.

The F.O.P. notes that the City recently has annexed tracts prime for rural manufacturing development, which will add to the City's tax base. It also points to certain recent announcements of new business coming to West Carrollton, and the expansion of existing businesses. The F.O.P. notes that the City's proposed

2002 Annual Budget forecasts an unencumbered ending balance of \$3,601, 179. It notes that historically, between 1996 and 2001, actual expenditures have come in under budget, within a range of 4% to 10.4%. The F.O.P. also notes that the City has several revenue enhancement options open to it, e.g., increases in the current very modest income tax rates and/or most reasonable existing property tax rates, or the imposition of a refuse collection fee, which is common in other nearby communities, etc. Addressing the budgetary impact of the closing of Fraser Papers namely, a loss of \$210,000.00, the F.O.P. notes that Council agreed to end its mandate of a 2% growth in the General Fund Reserve reducing the Fraser loss to in essence \$75,000.00, an insignificant amount in light of the City's six million dollar plus operating budget.

Dispatcher Linda Rickert testified in support of the creation of the Dispatch Coordinator position proposed by the F.O.P. Rickert indicated that there are too many non-bargaining unit supervisory Sergeants handling time off and scheduling matters, with the consequence that confusion reigns and there is inconsistency in scheduling. The Chief's recent memo designed to alleviate these problems is not being followed asserts Rickert. Moreover, according to Rickert, the dispatchers believe they would benefit if one of their own held the

scheduling position; a dispatcher would better put forth the dispatcher's concerns and issues to administrative staff.

Rickert also testified in support of the bargaining unit's compensation proposals, stating that whereas most P.D.'s had a Records Section or required the Police Officers to prepare their own paperwork for Court, here the Dispatchers do that paper work, as well as other paper work, in addition to their normal covering of the phone and radio.

The F.O.P. notes that the City has never made the claim, nor can it truthfully do so, that it is not financially able to meet the F.O.P.'s compensation demands.

The City takes the position that the F.O.P.'s comparable jurisdictions are flawed. Thus it notes that several are not geographically near and that in any event, the F.O.P. would have the Fact Finder compare top wage rates two or more years out to the City's top rates, now sixteen months old. The City also points out that Oakwood is a joint fire and police service and hence not comparable because they do different work.

The City also points out that all but one of the 6 Dispatchers is already at the top step, suggesting that this fact stands alone as the explanation as to why the F.O.P. seeks abolition of Step 6, and an increase in the differential between Steps 4 and 5 to 10%. The City notes that the present step differential is 5%.

The City asserts that its comps are all geographically near and/or contiguous, and better represent the labor market with which the City competes. In this regard the City's comparables are: Moraine, Kettering, Montgomery County Sheriff; Vandalia; Miamisburg; Englewood; Springboro; Huber Heights; Fairborn; Franklin; Miami Township; and Middletown. The City's proposal would put the bargaining unit entry rate .5% above the average without West Carrollton, whereas the F.O.P. would have them 4.8% above average; the City's proposal would put the bargaining unit top rate .3% above average amongst the comparables, whereas the F.O.P.'s proposal would put them 3.8% above average. Moreover, asserts the City, its proposal is some 15% greater than the CPI increase, and historically, going back to 1990, the City has kept the bargaining unit ahead of the CPI rate of increase.

City Finance Director Tom Riley testified that City Council is very conservative and does not want to consider any revenue options; rather they focus on cutting expenditures. Riley noted the general economic downturn; the State's financial crisis, and the need therefore to cut back funding to Cities; and the City's recent loss of a major employer and revenue source, Fraser Papers. Riley noted that the City tries to keep one-half of its operating budget in reserve. A projected \$700,000 to \$800,000.00 loss of revenue in 2002 is possible. Annexations are of minimal help, asserts Director Riley, for it will take

years to construct the infrastructure, such as utilities, necessary for development. Thus, as noted, the City proposes an across-the-board increase of three threes.

As for the Dispatcher coordinator position sought by the F.O.P., the City contends that it is a permissive subject of bargaining, which it has not agreed to bargain about, and in any event, the creation of a new position is uniquely a managerial prerogative. Middletown, which concededly does have a Lead Dispatcher, is a much larger P.D. than the City.

As for weekend premium pay, comparables, including the F.O.P.'s comparables, do not support it.

#### Rationale

The Dispatch Coordinator position will not be recommended. The creation of a new position is, as the City asserts, a uniquely managerial prerogative. This proceeding has served to bring to light that, notwithstanding his recent memo addressing the concerns of the bargaining unit with respect to their scheduling, problems apparently remain. Presumably the Chief will take another look at the matter in light of the potential efficiency and morale problems these purported problems create.

The 5% premium pay for weekend work will likewise not be recommended. Not even the F.O.P.'s comparables support it.

The F.O.P.'s proposed abolition of Step 6 and increasing the differential between Step 4 and 5 to 10% (step differentials

are currently 5%) will also not be recommended. Both parties' comparables show great variance in the number of steps amongst dispatchers and in that manner there is no "comparables" support for these step changes. Nor is there any independent evidence of either internal or external inequity in the current step and step differential structure. Rather, it appears that since five of the six bargaining unit members are at the top step, the motivation is to achieve a greater real increase by way of first the step adjustments, and then an across-the-board increase on top of such. There is no match between this motivation and any of the statutory factors which must be considered by the Fact Finder.

As for the across-the-board increase proposed by the parties, the record shows that the City's comparables are more pertinent. Thus, as noted in the Background Section of this Report, with respect to comparables the Statute at O.R.C. 4117.14 (G) (7) (b) provides that consideration shall be given to "factors peculiar to the area." This phrase has long been construed by neutral panelists as a reference to the geographical "area" of the Employer. The logic of this construction was expressed by the City: the city competes chiefly for labor, which is geographically near. Here, several of the F.O.P.'s comparables are jurisdictions geographically distant from West Carrollton.

The evidence of record clearly calls for fiscal restraint. The City has recently lost some large and significant revenue producers (e.g., Fraser Papers); new business revenue producers fail to fill the gap Fraser's loss creates; annexations for the near future will not be of assistance; the general economic slowdown comeback is uncertain; and State funding sources are imperiled by the State's fiscal crisis. In my judgment increases in the threes are justified, incrementally escalating over the course of the Contract. Efforts getting new business, a more likely than not improving economy; and the coming on line of development of recently annexed acreage, all point to an eventual improving fiscal position. Hence it is my:

Recommendation:

That the parties' Contract reflect an across-the-board increase of 3.2% effective December 17, 2001; an across-the-board increase of 3.5% effective January 1, 2003; and an across-the-board increase of 3.8% effective January 1, 2004.

ISSUE #2: ARTICLE 29 - INSURANCE

The Record

The City proposes that bargaining unit employees share increases in health insurance premiums equally until such time as the employee's contribution equals 15% of the total monthly premium. The City notes that by ordinance this health insurance premium-sharing concept is in place with respect to the City's

unorganized work force and Command Staff. The City introduced the excerpt below from a recent publication, "Employee Benefit News" put out by McGohan Brabender Employee Benefits Broker & Consulting Services, which reads as follows:

" **Healthcare Overview**

A disturbing trend in medical costs is again taking root on both a national and local level. The minimal increases resulting from the emergence of managed care products of the last decade seem to have run their course and employers are again facing double-digit medical inflation trends. Fueled by the rapid advancements in medical and drug technology, employers will be forced to make difficult choices in their plan designs and employee contribution philosophies in order to combat the effect of these increases to their bottom line."

The City introduced evidence of such double-digit increases. The City notes that the trend of increasing premium costs in the Miami Valley is greater than the national trend. The City's data shows that amongst its own comparables Miami Township, Huber Heights, Fairborn, and Englewood require its employees to contribute more toward their health insurance premium than does West Carrollton. Of the City's comparables, Springboro, Kettering, Vandalia, and Moraine require no employee contribution. The City ranks 5<sup>th</sup> amongst its 13 other comparable jurisdictions. Given its fiscal position, the City asserts that it cannot absorb all of the anticipated double-digit increases in premiums over the course of the Contract.

The F.O.P. resists any increases in employee contributions to the health insurance premium and seeks retention of current Contract language at Section 29.1. The F.O.P. asserts that several of its comparable jurisdictions contribute no less than 90% of the health insurance premium costs, namely, Beavercreek (100%); Bedford (100%); Bexley (90%); Dublin (100%); Miamisburg (100%); Moraine (100%); and Oakwood (100%). The F.O.P. asserts that any increase in health care costs to employees reduces the wage increase percentage. With respect to the City's insurance ordinance, the F.O.P. notes that it does not bargain for non-bargaining unit employees. The F.O.P. also notes that the City is in the process of receiving funds from the demutualization of Anthem Insurance Companies, which is to yield \$170,000.00, and some of these proceeds should be shared with the employees by way of absorbing oncoming insurance increases. On this latter point the City asserts that it intends for employees to share in this demutualization fund, but even if all \$170,000.00 were used for the health insurance premiums of City employees, it would be eaten up in one year.

Rationale:

There can be no question but that health insurance premiums are rising at double-digit rates. The fiscal restraints at present warrant a modest increase in the level of participation by employees in the payment of the premium. The psychological

barrier to employee participation at all has already been breached here. However, in my judgment, the City proposed 50% increase over the current level of participation is too great. An up to twelve percent (12%) participation is more appropriate.

Recommendation:

It is recommended that the parties' Contract read as follows at Article 29 - Insurance, Section 29.1 Coverage:

A. The City shall make available to employees covered here under a group health care program which is the same as or similar to Community Mutual's Health Maintenance Program. Each employee who elects or has coverage under this Section will contribute ten percent (10%) toward the applicable premium, and the City will contribute ninety percent (90%) toward the applicable premium. In the event of an increase, the City and employee will equally share any increase in the premium for group health insurance. The employee contribution shall not exceed 12 percent (12%) of the total monthly premium with the City contributing the remainder. Each employee must elect to subscribe to such plan before insurance payments for same will be made by the City. In the event the employee should elect not to subscribe to the plan, additional compensation shall not be paid to the employee. Employees not electing to subscribe to the plan must sign a waiver form. An employee shall become eligible for said insurance upon being hired in a full-time non-temporary status.

ISSUE #3 - ARTICLE 27 - UNIFORMS

Record:

The current Contract at Article 27, Section 27.1, provides as follows:

"Section 27.1 Articles of Uniform. The City will continue its existing policy of providing articles of uniform."

The City proposes the following: "Section 27.1 The City will provide dispatchers with uniforms and equipment at time of hire, and will replace on an as needed basis." The City asserts that every Spring and Fall it issued two (2) new suits, a policy the Chief changed to but one (1) suit, because employees leaving the Department were turning in suits with the sales tags still on them, thereby indicating that they weren't needed.

The F.O.P. proposes current Contract language. It would delete the current Section 27.2 because it deals with Police Officers only. It would replace Section 27.2 with a uniform allowance for the purchase of shoes, which are not included in the items currently furnished, nor under the City proposed quartermaster system. Both parties' comparable data show that among their respective comparables some give clothing allowances. The City's data show that one-half of its comparable jurisdictions utilize a quartermaster system and the other half utilize a uniform allowance, ranging from \$90.00 to \$750.00 per annum. The City notes, and the F.O.P. concedes, that initially the F.O.P. characterized its proposal as a vehicle for "hidden money."

Rationale:

Given the present need for fiscal restraint, and in light of the recommendation for a Fair Share provision, as more fully

explained under Issue #6 hereinafter, the F.O.P.'s proposal is not recommended and the City's quartermaster system will be recommended.

Recommendation:

It is recommended that the City's proposal for Section 27.1 be adopted by the parties.

ISSUE #4 - ARTICLE 20 - HOURS OF WORK AND OVERTIME -AND- PAGERS

Record:

The City seeks to amend Article 20, Section 20.7 L to require holdover of employees from the prior shift, if necessary to ensure appropriate coverage. The F.O.P. resists this. The F.O.P. additionally proposes to require overtime payment after 8 hours worked in a day; include Holidays as days worked for purposes of computing overtime pay; and allowing dispatchers to elect compensatory time in lieu of being paid overtime, up to 480 hours. The City resists these proposals. The F.O.P. concedes that its own comps are not helpful.

The City asserts that all of the F.O.P.'s proposals are inappropriately expensive for this point in time and that the comp time proposal would be "devastating" to scheduling and covering schedules in this small bargaining unit. It defends its Section 20.7 L proposal as akin to emergency overtime.

The F.O.P. proposes that employees not be required by City and Department Policy to carry City issued pagers. It further

proposes that employees who voluntarily carry pagers be compensated for answering them. The F.O.P. takes the position that if employees are not compensated for answering pagers, that the City stop issuing pagers to bargaining unit members. The F.O.P. points to Fact Finder Paolucci's Fact Finding Report of November 12, 1998 In re City of Miamisburg and F.O.P., O.L.C., Inc. SERB Case No. 98-MED-04-0385 and 0386, wherein he held that "[t]he use of pagers while off duty is a constant reminder that the off-duty private life of an officer could end at a moment's notice and interferes with each officer's ability to live a private life. As such, it is an unreasonable intrusion into the officer's private life." The F.O.P. urges that the undersigned take the same viewpoint as Fact Finder Paolucci did. The City correctly notes that the Paolucci Report sets forth no facts or evidence to support his recommendation for doing away with pagers. The City also notes that the mandatory pagers Policy came into effect some twelve years ago, when dispatchers could not be reached by telephone. The City further notes that looking back 506 days, the most an employee was paged was six times. The City asserts that the point is that pagers are not that much of a burden to the dispatchers, whereas disallowing pagers would put a great burden upon the City.

Rationale:

I believe the city is correct when it argues that both issues here are interrelated. At bottom the issue is assuring coverage with a small work force and a 24-7 coverage requirement. This being so, I find the City's contentions and positions to be the more persuasive. Additionally, the F.O.P.'s proposals are expensive. As for the Paolucci finding, of course pagers are an intrusion, but they are directly related to the job. Additionally, as the City points out Fact Finder Paolucci's finding is in a vacuum, unsupported by any reference to any evidence of record or to any statutory factor which must be considered. I find more persuasive Fact Finder Paolucci's concession that, quote "the City makes a reasonable argument in justification of the use of pagers" unquote. In my view the City's Section 20.7 L proposal is necessary to ensure coverage, and a persuasive case has not been made for the F.O.P.'s proposals. Accordingly, the F.O.P.'s proposals are not recommended. The City's proposal for Section 20.7 L will be recommended.

Recommendation:

It is recommended that the parties' Agreement provide at Article 20, section 20.7 L as follows:

Section 20.7 Overtime Distribution.

- L. When employee absences require non-prescheduled overtime, the employee with the least number of overtime hours on the preceding shift, scheduled to go off duty, will, in the absence of a volunteer, be assigned carry-over overtime. Every effort will be made to find a dispatcher to work the overtime, so that the hold-over dispatcher is not required to work a period of time exceeding the first half of the next shift. Should additional coverage be needed beyond the first half of the next shift, the City will attempt to contact personnel from the oncoming shift and will require the person contacted with the fewest charged overtime hours to work the last half of the shift to be covered. Should there continue to be a need for additional coverage because of a failure to reach oncoming personnel, the procedure of mandatory overtime will be used to obtain coverage. The dispatcher who is held over from the previous shift to work the overtime will be required to work until replaced.

ISSUE #5 - ARTICLE 5 - MANAGEMENT RIGHTS

Record:

The current contract provides in pertinent part as follows:

"Section 5.1 Reserved Rights

\* \* \*

Nothing impairs the right and responsibility of the City to:

. . .

(10) Maintain a drug and/or controlled substance random testing program.

This section is not a waiver of the City's right to refuse to bargain about any right of management contained in Section 4117.08 (C), Ohio Revised Code, except to the extent that right is expressly modified elsewhere in this Agreement.

Article 17 - Drug & Alcohol Testing

Section 17.1 Testing The City may require an officer to undergo random testing for use of controlled substances and/or alcohol on a random basis. Such testing will be done using accepted and recognized procedures, including procedures to protect individual privacy."

The F.O.P. would delete Section 5.1 (10) and supplant Article 17, Section 17.1 with a detailed Drug & Alcohol Program. The F.O.P. asserts that the major problem with the status quo is that the City changes the policy without negotiating with the Union. The F.O.P. wants the Policy spelled out in the Contract, it asserts, so that it doesn't change whenever Management wants it to change. The F.O.P. identified issues in the current Policy which it has problems with, such as how to handle an employee with a shy bladder, and how to define a reasonable suspicion, and other problems. The F.O.P. has proposed a very detailed Drug & Alcohol Policy for inclusion in the Contract at Article 17. The City resists any change to the terms of the current Contract in these matters. It notes that this City's Policy is longstanding and that no grievance concerning it or its application has ever been filed. It notes that employees receive a copy of any changes to the Policy. It also notes that only one of the F.O.P.'s

comparables has their Drug Policy spelled out as a contract term.

The F.O.P. would revise and add to the last paragraph of Article 5, Section 5.1, and have it read as follows:

"This section is not a waiver of the City's right to refuse to bargain about any right of management contained in Section 4117.08 (C), Ohio Revised Code, except to the extent that right is expressly modified elsewhere in this Agreement, nor is it a waiver by the Labor Council to waive any of its rights to bargain over the mandatory subjects listed in the same Section [4117.08 (C)]."

The F.O.P. explains that it could either eliminate this paragraph as it reads in the current Contract, or revise it, as above. It characterizes its version as "adding an 'affects' bargaining waiver . . . . The law is clear about mandatory and permissive subjects of bargaining. If the City needs an additional waiver to enforce the Statute of 4117, the F.O.P. also wants a waiver to reinforce their rights."

The City opposes the F.O.P.'s proposed revision, asserting that nothing has come up between the parties to make this revision necessary, and, in any event, asserts the City, there is a great deal of judicial gloss which well establishes the Union's rights to "affects" bargaining.

Rationale:

In effect, the F.O.P., in its proposed version to the last paragraph of Section 5.1, seeks tit for tat. The Fact Finder is sympathetic to the inherent "fairness" of the F.O.P.'s proposal. However, there is a meaningful distinction between "bargain[ing] over the mandatory subjects listed in . . . [O.R.C.] 4417.08 (C)" and bargaining over the "affects" of the exercise of such mandatory subjects. In my view the precise language proposed unintentionally creates a conflict within the paragraph, and fails to clearly provide for the more limited result the F.O.P. appears to desire. It fails to clarify that the F.O.P. is talking of "affects" bargaining only. Since, as the City points out, the status quo has not created any problems to date, I find it best to leave the parties where they are, rather than attempt to "fix" the language.

As for the deletion of Section 5.1 (10) and the addition to Article 17 of a greatly detailed drug policy, which, clearly, the parties did not thoroughly explore in the course of their bargaining, I find such is uncalled for at this time; again, there appears to be no problem with the status quo. Additionally, both parties' comparables

fail to support the contractualization of the Drug & Alcohol Policy the F.O.P. seeks.

Recommendation:

It is recommended that the parties retain the provisions of Article 5.1 (10), and Article 17, Section 17.1 in the current Contract.

ISSUE #6 - ARTICLE 3 - LABOR COUNCIL RIGHTS

Record:

The F.O.P. proposes to add a Fair Share Fee provision, a new provision, with necessary revisions to other provisions in Article 3, as set forth in Appendix I, attached hereto. It points out that 6 of its 9 comparables have fair share fee provisions. It also notes that SERB has advised the F.O.P. that throughout the State, of the Union organized Safety Forces, 85% of Safety Forces' collective bargaining agreements contain a fair share fee provision.

The F.O.P. represented, and Ms. Rickert testified, that there is a history within the bargaining unit of bargaining unit members dropping their Union membership, after the Union has negotiated a Contract. The Union's Advocate represented that the very day of the hearing herein, and when a new Contract via the statutory process was assured, a bargaining unit member requested to drop her

Union membership. Ms. Rickert testified that all in the bargaining unit benefit from the Union's bargaining efforts, and hence all ought to pay for those efforts, and that the failure of some doing so has created hard feelings and morale problems in this small bargaining unit.

The City asserts that it is philosophically opposed to Fair Share and that the City's collective bargaining agreements have never contained a fair share fee provision. Moreover, asserts the City, when Fair Share is recommended or awarded, typically the Union must give up something of significance, and it has indicated no willingness to do so here. Finally, argues the City, Fair Share is a permissive subject of bargaining and the City does not consent to bargain over it.

The F.O.P. counters that Fair Share is a mandatory subject of bargaining.

Rationale:

Here the external comparables, both geographically near, and Statewide, fully support recommending Fair Share. The U.S. Supreme Court has philosophically sanctioned Fair Share, noting the inherent fairness of all in the bargaining unit financially supporting the institution responsible for their improved working conditions, harshly characterizing those who decline to do so, "free riders."

Here it has been shown that "free riders" have created hard feelings and hence morale problems within this especially small bargaining unit. In my view morale issues are properly taken into account and considered pursuant to the statutory factors of "the interest and welfare of the public" and the effect of the adjustments on the normal standard of public service" inasmuch as poor morale impacts and impairs the quality of public service rendered and hence poor morale is not in the interest and welfare of the public. Historically, at the outset of collective bargaining for public employees in Ohio, commencing in 1984, neutral Fact Finders in the northern half of the State routinely recommended, or awarded, Fair Share in Fact Finding or Conciliation, respectively, pretty much exclusively on the sole ground that Fair Share was "fair." However, neutrals in the southern half of the State, including the undersigned, generally recognized and gave some weight to an Employer's philosophical opposition. Additionally, the concept arose among Southern neutrals that when Fair Share is recommended or awarded, the Union ought to give up something of significance, most often something economic. This latter concept was not dependent on the Union voluntarily doing so, albeit obviously if it voluntarily did so its Fair Share proposal was more

appealing. It seems to me, however, that with 85% of Safety Forces contracts now providing for fair share, the Southern neutrals' position is considerably weakened. Thus, here, both contiguous and nearby "comparables" have Fair Share, and at 85% it is statistically obvious that great inroads have been made vis-à-vis Employers in the southern part of the State. In my view at this juncture the statutory factors preponderate in favor of the Union's Fair Share proposal. This conclusion is supported by the fact that in recommending Fair Share the undersigned has been more parsimonious with respect to the overall economic provisions sought by the F.O.P. than would be the case if the Fair Share provisions the Union seeks were not recommended. Finally, with respect to the City's contention that Fair Share is a permissive subject of bargaining, contrary to the F.O.P.'s contention that it is a mandatory subject of bargaining, I note that neither party has cited any Board or Court precedent for their respective contentions. In any event, even if Fair Share is regarded as a permissive subject of bargaining, as the City contends, in my judgment such does not serve to bar the undersigned from recommending Fair Share. This is so because Fact Finding is an extension and continuation of bargaining, and if the City goes ahead and accepts the Fact

Finder's Report, it has simply thereby indicated that, with respect to this bargaining unit and this unit alone, it has agreed to bargain about Fair Share. For all the foregoing reasons, I will recommend that the parties adopt the F.O.P.'s proposal for Article 3 - Labor Council Rights, that is, Appendix I.

Recommendation:

It is recommended that the parties' Contract at Article 3 - Labor Council Rights, read as per Appendix I.

ISSUE #7 - DURATION

Record:

It is my understanding that the parties are in agreement to a three (3) year Contract and retroactive to December 17, 2001. And further that the following language embodies their agreement as to duration:

"Duration

This Contract shall be effective from December 17, 2001, through December 31, 2004, and for yearly periods from year to year thereafter unless either party shall give the other written notice of its intention to terminate this Agreement not more than one hundred twenty (120) days and not less than ninety (90) days prior to the expiration dates or the end of any yearly extension period.

IN WITNESS WHEREOF, the parties have hereto set their hands this \_\_\_\_ day of \_\_\_\_\_ 2002."

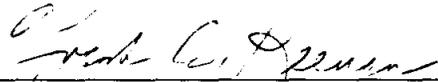
Recommendation:

It is recommended that the parties' Duration clause read as set forth above.

As the parties have requested, all tentative agreements are incorporated herein as well.

This concludes the Fact Finder's Report and Recommendations.

May 22, 2002



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Frank A. Keenan  
Fact Finder

# APPENDIX I

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F.O.P., Ohio Labor Council, Inc.

FOP/OLCI Proposal # 1

And

The City of West Carrollton



Unit: Dispatchers

## PROPOSED CONTRACT AMMENDMENTS

**BOLD IS ADDED LANGUAGE - DELETE STRICKEN LANGUAGE**

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### ARTICLE 3 - LABOR COUNCIL RIGIITS

~~Section 3.1 Labor Council Rights During the period this Contract is in effect, the City will deduct dues, fees and assessments from the wages of Members who have voluntarily authorization forms for these deductions and delivered the forms to the City. The amount of the dues, fees, or assessments shall be certified in writing to the City by a Labor Council official at least 30 days in advance, and shall in all cases be in conformity with applicable law. The authorization for dues deduction shall be revocable by the Member upon written notice to the City.~~ **The Employer agrees to deduct FOP membership dues, fees, and assessments in accordance with this Article for all employees eligible for the bargaining unit.**

**The Employer agrees to deduct FOP membership dues once each pay period from the pay of any eligible employee in the bargaining unit upon receiving written authorization signed individually and voluntarily by the employee. The signed payroll deduction form must be presented to the Employer by the employee or his/her designee. Upon receipt of the proper authorization, the Employer will deduct FOP dues from the payroll check for the next pay period in which dues are normally deducted following the pay period in which the authorization was received by the Employer.**

**As a condition of employment, sixty (60) days following the beginning of employment, or upon the effective date of the Labor Agreement, whichever is later, employees in the bargaining unit who are not members of the FOP, including employees who resign from membership in the FOP after the effective date of this Labor Agreement, shall pay to the FOP, through payroll deduction, a fair share fee. The fair share fee is automatic and does not require the written authorization of the employee. This provision shall not require any employee to become or remain a member of the FOP, nor shall the fair share fee exceed the**

dues paid by members of the FOP in the same bargaining unit. The FOP is responsible for annually certifying to the Employer the amount of the fair share fee, along with a breakdown of its use, prior to the implementation of this Section. If an employee challenges through the Courts or the State Employment Relations Board the deduction of the fair share, his/her deductions shall continue, but the funds shall be placed in an interest bearing escrow account until a resolution of his/her challenge is reached. The party in whose favor the resolution is determined shall receive the escrowed funds, including the interest, if any.

The Employer shall be relieved from making such individual "check-off" deductions upon an employee's: (1) termination of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) an unpaid leave of absence; (5) revocation of the check-off authorization; or (6) resignation by the employee from the FOP.

The Employer shall not be obligated to make dues deductions from any employee who, during any pay periods involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of FOP dues.

The parties agree that neither the employees nor the FOP shall have a claim against the Employer for errors in the processing of deductions, unless a claim or error is made to the Employer in writing with sixty (60) days after the date of such an error is claimed to have occurred. If it is found that an error was made, it will be corrected at the next pay period that the FOP dues deduction would normally be made by deducting the proper amount.

The rate of which dues are to be deducted shall be certified to the Employer or designee by the FOP during January of each year. One (1) month advanced notice must be given the Employer or designee prior to making any changes in an individual's dues deduction.

Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the duration of this Agreement or until such employee submits a written revocation of the dues deduction authorization to the Employer or designee.

~~The City shall deduct dues from the first pay in each calendar month. If the member does not have net earnings sufficient for the deduction, the deduction shall be completed in the next regular pay period.~~

~~The City shall forward a check for the dues deducted to the Labor Council's Treasurer within 30 days after making the deductions.~~

Section 3.2 Labor Council Responsibility Except as otherwise provided in Section 3.1 of this Article, the Labor Council agrees that the City assumes no obligation, financial or otherwise, arising out of the provisions of this Contract regarding the deduction of Labor Council membership dues. Upon remittance of dues deductions to the Labor Council each month, their disposition thereafter shall be the exclusive responsibility of the Labor Council.

The Labor Council hereby agrees that it will indemnify and hold harmless the City and its agents from any claim(s), action(s) or proceeding(s), including the defense thereof, by a Member or ex-Member arising out of any deductions made by the City pursuant to Section 3.1 of this Article. However, if requested by the City, the Labor Council shall provide its legal counsel at no cost to the City and/or its agents to defend the City and/or its agents in any such claim(s), action(s) or proceeding(s).

Section 3.3 Labor Council Bulletin Board The City will provide the Labor Council the use of a bulletin board. The Labor Council will provide the Chief a copy of any notice before it is posted. Labor Council bulletins and F.O.P. material only will be permitted to be posted on this board, and will include no material derogatory to the City, no inflammatory material, no material concerning local political candidates, and no advertisements for any other political candidate.