

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

STATE EMPLOYMENT
RELATIONS BOARD
2002 JUN 17 10:28

IN THE MATTER OF FACT FINDING :

BETWEEN :

**CITY OF WEST CARROLLTON,
PUBLIC EMPLOYER :**

-AND- :

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.,
EMPLOYEE ASSOCIATION :**

REPORT OF THE FACT FINDER

SERB CASE NUMBER:

01-MED-09-0780

BARGAINING UNIT:

Patrol Officers and Detectives, below the rank of Sergeant.

FACT FINDING PROCEEDING:

June 7, 2002; West Carrollton, Ohio

FACT FINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Janet K. Cooper, Attorney
Richard Barnhart, Police Chief
Tom Reilly, Finance Director
David Watson, Assistant City Manager
Charles Baker, Deputy Police Chief

FOR THE UNION

Thomas J. Fehr, Staff Representative
Robert M. Hygh, Negotiations Comm. Mbr.
Gene D. Jarman, Negotiations Comm. Mbr.
Ron Jensen, Negotiations Comm. Mbr.

ADMINISTRATION

By correspondence dated November 30, 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 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 with the Parties the "atmosphere" relative to the prior negotiation efforts by and between the Parties and learned that overall, these Parties enjoy, and have enjoyed, what can be characterized as an amicable Collective Bargaining relationship.

On June 7, 2002, a 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. Through the informal discussions that followed, the Parties were able to reach tentative agreement regarding three(3) issues which will be addressed hereunder in this Report. At the conclusion of those informal efforts, the Parties indicated their desire to commence forthright with the Fact Finding proceeding, which was recognized and complied with by the undersigned. 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 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 the 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 classifications involved;
3. The interests and welfare of the public and the ability of the public employer to finance and administer the issues proposed and the effect of the adjustment on the 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 the 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 City of West Carrollton, hereinafter referred to as the "Employer" and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the "Union" expired on December 31, 2001; thus triggering application of the statutory process relative to negotiating a successor thereto. As contained therein, Article II, titled, "Recognition," states as follows:

Section 2.1 - Recognition

The City recognizes the Labor Council as the exclusive Bargaining Representative with respect to wages, hours and terms and conditions of employment for the Bargaining Unit members described in Section 2.2 of this Article.

Section 2.2 - Bargaining Units

Pursuant to Section 4117.06, Ohio Revised Code, there are established two(2) Bargaining Units within this Contract, as follows:

- A. Dispatcher; and
- B. Patrol Officers and Detectives below the rank of Sergeant.

Excluded from either or both of these Units are all managerial, confidential, seasonal, casual employees, supervisors, as defined by Section 4117.02(f) Ohio Revised Code, and all other Employees. By 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. References throughout this Contract to bargaining unit members (hereinafter "Members") shall mean Employees within both Bargaining Units, unless specified otherwise.

As the evidentiary record demonstrates, there are approximately 17 employees within this Bargaining Unit that were certified by the State Employment Relations Board on May 9, 1996, case number 96-REP-01-0005. As is typical with respect to the law enforcement agencies, its duties and responsibilities to this community are "to protect and serve" the members thereof with respect to law enforcement and other policing activities generally recognized for any law enforcement agency within the State of Ohio. According to the record, the Parties have met to negotiate a successor Collective Bargaining Agreement on the following dates: October 18, November 19, November 20, December 4, December 6, December 11 and December 13, 2001; and, January 15, and January 24, 2002. The Parties engaged in mediation with a state appointed mediator on January 31, 2002; however, those efforts did not resolve the impasse subject for consideration herein by this Fact Finder under the statutory process.

The following Articles and/or sections thereof were either "unopened" by the Parties during the course of these negotiations proceedings or withdrawn during the course thereof as follows:

- Article I - Contract
- Section 1.1 - Contract
- Section 1.2 - Purpose
- Section 1.3 - Service to the Public
- Section 1.4 - Severability
- Section 1.5 - Amendment to Contract - Withdrawn 11/20/01
- Article II - Recognition
- Article III - Labor Council Rights

- Section 3.2 - Labor Council Responsibility
- Section 3.3 - Labor Council Bulletin Board
- Article IV - Non-discrimination
- Section 4.1 - Joint Pledge
- Section 4.2 - Gender
- Article VI - Bargaining Unit Business
- Section 6.1 - Bargaining Unit Business
- Section 6.2 - Negotiating Committee
- Section 6.3 - Notification of Supervisor
- Section 6.4 - City Cooperation
- Section 6.5 - No Loss of Pay
- Article VII - No Strikes/No Lockouts
- Section 7.1 - No Strikes
- Section 7.2 - No Lockout
- Article VIII - Corrective Action
- Section 8.1 - Discipline - Withdrawn 12/13/01
- Section 8.2 - Presence of Representative at Discipline
- Section 8.3 - Labor Council Representation
- Article X - Pre-disciplinary Hearing
- Section 10.1 - Pre-disciplinary Hearing
- Section 10.2 - Employee Notification
- Article XI - Personnel Files
- Section 11.1 - Personnel File Inspection
- Section 11.2 - Information in Personnel File
- Article XII - Labor Management
- Section 12.1 - Committee
- Section 12.2 - Purpose and Meetings
- Section 12.3 - Excluded Subjects
- Section 12.4 - No Waiver of Bargainability

- Section 12.5 - On Duty Attendance
- Article XIII - Probationary Employees
- Section 13.1 - Probationary Employees
- Article XIV - Performance Evaluation
- Section 14.1 - Performance Evaluation - Withdrawn 12/11/01
- Article XV - Seniority
- Section 15.2 - Seniority List
- Article XVI - Work Rules
- Section 16.1 - Work Rules
- Article XVIII - Miscellaneous
- Article 18.1 - Copies of Contract
- Article XIX - Wages
- Section 19.3 - Eligibility for Merit Step Increases
- Section 19.4 - Maximum Steps
- Section 19.5 - Officer in Charge
- Article XX - Hours of Work and Overtime
- Section 20.2 - Time Trade
- Section 20.5 - Pyramiding
- Article XXI - Call in
- Section 21.1 - Call in Pay - Withdrawn 12/11/01
- Article XXII - Outside Employment
- Section 22.1 - Outside Employment
- Article XXIII - Holidays
- Section 23.2 - Pay for Holidays
- Section 23.4 - Overtime on Holidays
- Article XXIV - Vacations
- Section 24.1 - Amount of Vacation
- Section 24.2 - Supplemental Days
- Section 24.5 - Vacation Days Crediting

- Section 24.6 - Vacation Transfer
- Section 24.7 - Separation
- Section 24.8 - Vacation Service Credit
- Article XXV - Sick Leave
- Section 25.4 - Reporting Absence
- Section 25.6 - Sick Leave Transfer within the City
- Section 25.7 - Sick Leave Credit
- Article XXVI - PFDPF/PERS Pick-up
- Section 26.1 - PFDPF/PERS Pick-up
- Article XXVII - Uniforms
- Section 27.2 - Plain Clothes Allowance
- Article XXIX - Insurance
- Section 29.2 - Coordination of Benefits
- Section 29.3 - Subrogation
- Article XXX - Injury Leave
- Section 30.1 - Service Connected Illness or Injury
- Section 30.2 - Workers' Compensation
- Section 30.3 - Reinstatement
- Section 30.4 - False Claim
- Section 30.5 - Light Duty
- Article XXXI - Layoff and Recall
- Section 31.1 - Layoff
- Section 31.2 - Exercise of Relative Length of Service
- Section 31.3 - Recall
- Section 31.4 - Reinstatement
- Article XXXII - Health and Safety
- Section 32.1 - Medical Examination for Leave of Absence
- Section 32.2 - Medical Examinations for Health and Safety
- Section 32.3 - Medical Issues

- Section 32.4 - Examination at City's Request
- Article XXXIII - Other Leaves
- Section 33.3 - Jury Duty

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 II, Section 2.2 - Recognition/Bargaining Unit
- Article VIII, Section 8.1 - Corrective Action/Discipline
- Article VIII, Section 8.4 - Corrective Action/Polygraph/Similar Technology
- Article VIII, Section 8.5 - Corrective Action/Internal Investigations
- Article VIII, Section 8.6 - Performance Statistics/Quotas
- Article IX, Section 9.1 - Grievance and Arbitration/Grievance Procedure
- Article IX, Section 9.2 - Grievance and Arbitration/Grievance Processing
- Article IX, Section 9.3 - Grievance and Arbitration/Arbitration
- Article XI, Section 11.3 - Personnel Files, Duration of Records
- Article XV, Section 15.1 - Seniority/Seniority
- Article XIX, Section 19.6 - Shift Differential
- Article XX, Section 20.3 - Lunch Breaks
- Article XX, Section 20.6 - Hours of Work and Overtime/Overtime Distribution
(all except (L) of the Collective Bargaining Agreement)
- Article XXIII, Section 23.1 - Holidays/Designated Holidays
- Article XXIII, Section 23.3 - Holiday/Premium Pay for Holidays Worked
- Article XXIII, Section 23.5 - Holiday/Application of Personal Leave Days
- Article XXIV, Section 24.3 - Vacation/Vacation Usage
- Article XXIV, Section 24.4 - Vacation/Non-prescheduled Vacations
- Article XXV, Section 25.1 - Sick Leave/Accumulation
- Article XXV, Section 25.2 - Sick Leave/Granting Sick Leave
- Article XXV, Section 25.3 - Sick Leave/Sick Leave Application
- Article XXV, Section 25.5 - Sick Leave/Conversion

- Article XXVIII, Section 28.1 - Tuition Reimbursement/Educational Incentive/Tuition Reimbursement
- Article XXVIII, Section 28.2 - Tuition Reimbursement/Educational Incentive - Educational Incentive Pay
- Article XXXIII, Section 33.1 - Other Leaves/Family & Medical Leave
- Article XXXIII, Section 33.2 - Other Leaves/Bereavement Leave
- Article XXXIII, Section 33.4 - Other Leaves/Labor Council Business
- Article XXXIII, Section 33.5 - Other Leaves/Military Leave

As previously set forth herein, the Parties engaged in informal mediation with the undersigned prior to the presentation of evidence relative to those issues that remained at impasse. During the course thereof, the following three(3) Articles were tentatively agreed to by and between the Parties. Article V - "Management Rights" (withdrawn by the FOP with agreement to current language). New Article, "Drug and Alcohol Testing" - FOP withdrew new article for consideration. Article XXIX - "Insurance," Section 29.1 - "Coverage."

As was noted in the Fact Finding Report issued by Frank A. Keenan, the Parties' Collective Bargaining Agreement represented what was characterized as a "unified Contract" for the Dispatcher Bargaining Unit and that compromised herein of the Patrol Officers and Detectives below the rank of Sergeant. The Parties, in that Agreement, in Article II, titled "Recognition," Section 2.2 provided language that allowed either Party to exercise its right to insist on separate Bargaining for the two(2) units for the purpose of negotiating a successor Collective Bargaining Agreement. Inasmuch as Fact Finder Keenan issued a Fact Finding Report and Recommendation relative to the Dispatchers within this unit, it is clear that the Parties have exercised that right with the existence of this second Fact Finding Report and Recommendations issued herein by the undersigned.

According to the evidence provided, the City of West Carrollton located in Montgomery County, Ohio, has a population of approximately 14,000 people. While the record seemingly indicates that some major businesses have left the area, there are some smaller scale businesses that have moved into the area; but nonetheless, according to the testimony of record provided by

Tom Reilly, City Finance Director, it appears that the City is in the midst of a downward turn relative to its economic strength and ability to recognize the type of growth it had experienced in years prior. The previous Collective Bargaining Agreement provided various benefits for these Employees in the term of economic enhancements. For the past two(2) Collective Bargaining Agreements, the Employees received a 3.5% increase for each year of that Agreement. As will be discussed in greater detail later in this Report, the economic status of the City does have some impact on what is recommended herein based on the downward spiral of its economy. Specifically, the overall economy recognized on a national basis, will ultimately have an affect, while not immediate, over the next several months and possibly years.

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, filed in accordance with the procedural guidelines of the statutory process; and, the supporting documentation provided at the Fact Finding proceeding, have relied upon comparable jurisdictions and/or municipalities concerning what they deem “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 further by the Fact Finder based thereon. It is, and has been, the position of this Fact Finder, that the Party proposing any addition, deletion or modification of either current Contract language; or, a *status quo* practice, where an initial Collective Bargaining Unit may exist, bears the burden of proof and persuasion to compel the addition, 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 the 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. Nonetheless, the Fact Finder is mindful of the apparent need of this City to engage in prudent financial endeavors including the funding for this Collective Bargaining Agreement. It is clear to the Fact Finder that these Parties have engaged in painstaking efforts to reach this level of the statutory process with relatively few, but important to both sides, issues on which they simply

could not reach agreement. 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 those economic enhancements that may be recommended herein under this Collective Bargaining Agreement without jeopardizing the level of services it currently provides. The Union seeks what it characterized “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 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 negotiations and/or mediation sessions, or the informal mediation that occurred prior to this Fact Finding proceeding, be “transferred” for inclusion into the successor Collective Bargaining Agreement either unchanged or modified by the Parties during those discussions.

The following issues remain at impasse between these Parties and are listed as follows:

- Article XIX - Wages
- Article XX - Hours of Work and Overtime, Section 20.7(L)
- Article XXVII - Uniforms, Section 27.1; and, Section 27.2
- Article III (New)- Labor Council Rights, Fair Share Fee
- Article XX, Hours of Work and Overtime, Section 20.1(A)
- Article XX, Hours of Work and Overtime, Section 20.4(A); (B); and, (C)
- Article XXXIV (New) - Pagers
- Article XXXV - Duration

III. ARTICLE III - LABOR COUNCIL RIGHTS

FOP POSITION

The FOP is proposing to re-write Section 3.1 to include a Fair Share Fee provision, as it emphasizes, is permitted under Ohio Revised Code, Section 4117. It urges that all Bargaining Unit Members should pay for services provided to avoid “free riders.” It emphasizes that such is not a cost item to the City and that the City consults with and pays for Labor services that the Union does not philosophically oppose and the opposition by the City is not profound enough to

deny this Fair Share Fee provision. It notes that 85% of the Safety Forces Contracts within the State of Ohio contain a Fair Share Fee provision. The FOP emphasizes that of the 11 comparables, it has relied upon, six(6) have Fair Share Fee; four(4) do not; and, it is questionable whether the other one has it or not. It believes that it is “ludicrous” to give up any economic enhancements to get something which is a no cost item to the City. The FOP emphasizes that Fact Finder Keenan, awarded the Fair Share Fee provision it is seeking herein, to the Dispatchers.

CITY POSITION

The City’s position in this Fact Finding proceeding does not differ from that proposed during the Dispatchers’ proceeding. While the City recognizes that indeed this is an important issue to any Labor Organization, it emphasizes that it is philosophically opposed to its inclusion herein. Imposing upon the City to collect the Fair Share Fee, is something that the Parties should negotiate between them. It emphasizes that the City’s Collective Bargaining Agreements have never contained a Fair Share Fee provision until that awarded by Fact Finder Keenan. Moreover, the Union has not showed any willingness to “give up something significant” for its inclusion in this successor Agreement. It emphasizes that indeed the Dispatchers paid a significant price for its inclusion and such must be the case relative to the other economic enhancements the Union is seeking.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties include in its successor Collective Bargaining Agreement the Fair Share Fee language as proposed by the Union. Such provides for indemnification of the Employer, or essentially “hold harmless” language which basically protects the Employer from any allegations of participation other than what it collects through the dues check off process based on the Fair Share Fee amount determined by the State Union. Indeed, as set forth in the Keenan report, the United States Supreme Court has philosophically sanctioned and the State of Ohio has permitted its inclusion in Collective Bargaining Agreements, the Fair Share Fee process to insure inherent fairness of all Bargaining Unit individuals based on the financial support the institution provides based on improved working conditions and the avoidance of “free riders” - those who choose not to become a member, but reap the benefits gained from the Union’s presence. It is indeed a morale issue with respect to

the type of services members and non-members alike, are provided under the Collective Bargaining Agreement. If such language were not present, non-members would pay nothing for the benefits they receive from the collective efforts of the exclusive representative. Such separation of members and non-members would adversely effect the comradery that is much needed in the public service of law enforcement. Indeed, poor morale and the lack of comradery would not be in the best interest and welfare of the public as set forth in the statutory criteria.

This record demonstrates that 85% of the Safety Forces Contracts within the State of Ohio have similar language, which is statutorily permitted under 4117. The compelling weight of evidence, based on the fact that 85% of the State's Safety Forces Contracts contain Fair Share Fee language and recently, the internal comparable relative to the Dispatchers, warrants a recommendation for inclusion of the Union's proposal in the successor Agreement. As such, it is hereby recommended that the Parties adopt the Union's proposal relative to the inclusion of the Fair Share Fee provision.

IV. ARTICLE XIX - WAGES

FOP POSITION

The FOP is seeking a 4.5% across-the-board increase for each year of the successor Collective Bargaining Agreement including an 8% differential for the Detective Classification. It is also proposing a new wage scale for the classification of Detective which has been a separate classification since SERB certified this unit in 1996. It notes that a majority of the agencies that have an assignment to a classification of Detective, pay them at a higher rate of pay.

It notes that it must deviate from the 3.5% increases for each of the last three(3) years under the predecessor Agreement and that the average increases, based on data obtained from SERB, was 4.5% in 1999, 3.95% for 2000 and 3.90% for 2001 for a total of 12.1%. This, it asserts, resulted in these Patrol Officers and Detectives losing 1.6% over the life of the last Collective Bargaining Agreement. The FOP Representative indicated that the Contracts he has negotiated between 2000 and 2002 have been in the area of 13 to 14% for three(3) years which the comparable data supports. It utilizes for its wage comparison the jurisdictions of Bexley; Vandalia, Dublin, Miamisburg, Bedford; Moraine; Beavercreek; Mason; Bellbrook and, Troy; wherein, based on those comparisons, the City of West Carrollton is third from the bottom and is

below the hourly average of those jurisdictions of \$24.42 verses \$22.64 as recognized in West Carrollton.

The FOP Representative indicated that he has negotiated Contracts during 2001-2002 for the following jurisdictions: the City of Blue Ash received a 12.25% package for three(3) years, Clermont County, Deputies and Supervisors, 16.1% plus rank differentials for Corporals and Sergeants, Green Township, 14%, Miami Township 16% and Lebanon Police, 12% for an average of 14.07% for three(3) years.

It emphasizes that there are new businesses locating to this area and several annexation issues to add to the overall geographic area under the jurisdiction of the City of West Carrollton to generate additional revenue. It emphasizes that the General Fund budget shows a 3.6 million dollar surplus and the City's reliance on a 3-3.5% increase results in this Bargaining Unit remaining stagnant in comparison with the wage pool from which it competes and these officers deserve more than their overall ranking, relative to comparable jurisdictions, demonstrates.

CITY POSITION

The City contends that the comparables relied upon by the FOP do not accurately reflect the wage pool from which it draws to hire officers for this police force. It contends that several of those jurisdictions are not geographically near and there is no comparison to the top wage rates based on those comparisons. It asserts that its 2002 comparables, those of Moraine, which includes a 10% Pension pick-up, Montgomery County, Kettering, Vandalia, Middletown, Miamisburg, Fairborn, Englewood, which includes a 5% Pension pick-up, Springboro, Huber Heights, which includes a 1% Pension pick-up, Tipp City, Miami Township, which includes a 10.1% Pension pick-up, and Franklin which includes a 10% pension pick-up, are more geographically near. It emphasizes that the FOP's 4.5% increase it is seeking would place it 11% above the average thereof while it would be 9% above the average wage of \$36,110.00, if its 3% increase were recommended, based on "Minimum" base salaries. Based on the "Maximum" base salary levels, the FOP's 4.5% increase would place the City of West Carrollton 2nd to the City of Kettering, at \$49,210.00, whereas its 3% increase would place it at \$48,506.00 above the \$47,091.00 it is currently and in the middle of the City's comparables. Its 3% increase, as proposed, would place the City of West Carrollton 4% above the average of \$46,630.00, or at

\$48,506.00, and the FOP's proposal would place it 6% above that average. Both scenarios are calculated without West Carrollton.

It also emphasizes that the cumulative, annual CPI-U is 34.3% whereas the FOP's increases would be 46%, an increase of 11.7% over that amount. The City proposed increases would place it 1.9% above the CPI index whereas the FOP would be 4.9%. It emphasizes that historically, under the last two(2) Collective Bargaining Agreements, this unit has received a 3.5% increase yearly and based on the economic downturn, wherein expenditures are exceeding revenues for 2002 and have continued that trend since 2001, its 3% increase is indeed reasonable. It emphasizes that the City's "Budgeted" verses "Actual Receipts," as of March, 2002, are \$188,000 below budget and as of May, that amount was approximately \$231,000. Moreover, its largest tax receipt months of April and May have passed and its deficit increased, demonstrating its abysmal financial status.

City Finance Director, Tom Reilly, provided testimony concerning the manner in which the City conducts business based on a "conservative approach," one that does not want to consider revenue options but focus on cutting expenditures to meet its budget. General economic downturn, the state financial crisis and the need to cut back funding to cities and importantly the recent loss of a major employer and revenue source, Fraser Papers, has placed the City in a financial position that is less than desirable. He indicated that the City is projecting a \$700,000 to \$800,000 loss of revenue in year 2002. Annexations would provide minimal assistance based on the fact that it takes years to construct the infrastructure, such as utilities, necessary for developing those annexed properties. Reilly characterized the loss of Fraser Paper as losing a "crown jewel". He also characterized the economic condition within this City as the "worst he has seen in the 10 years he has been associated with the City government here at West Carrollton."

The City also contends that, with respect with the FOP's 8% differential for Detectives, the historical practices within the City are that they are treated equally. Additionally, they are provided take-home vehicles, which is an economic benefit to these employees and exists with eight(8) of its comparables. Therefore, it does not justify any departure from that historical practice.

RECOMMENDATION AND RATIONALE

As the record demonstrates, the current Collective Bargaining Agreement in Section 19.1 pertains to "Police Officers," wherein a five-step incremental increase format is represented. Section 19.2 previously titled as "Dispatcher," which the Parties are apparently in agreement to seek separate Collective Bargaining Agreements for those two(2) units, would change that language and incorporate a five-step format for the classification of "Detectives." Section 19.3 titled, "Eligibility for Merit Step Increases;" Section 19.4 titled, "Maximum Steps;" Section 19.5 titled, "Officer in Charge; and Section 19.6 titled, "Shift Differential," would remain unchanged and are thereby recommended as such herein.

It is clear that this Bargaining Unit is bargaining its own separate contract and exercising its right to no longer participate with the Dispatchers in a unified contract format, to which the City and Union have apparently agreed. The Wage Scale set forth therein would be set forth in Section 19.1 as previously discussed. For this Collective Bargaining Agreement, the establishment of the Detective classification and that of Police Officers would exist and that of Dispatcher would be deleted. Such format is therefore recommended.

As is readily apparent and has been previously indicated in this Report, there are no on-point comparisons relative to the wage comparison aspect of the comparable work performed by law enforcement agencies relied upon by both Parties. While the "work" may be similar, the jurisdictions to which another is ultimately compared, often take on varying aspects that render it unique. What is apparent to the Fact Finder is the downward cycle that this City is apparently recognizing concerning its economic growth, the loss of key players or "crown jewels" as characterized by City Finance Director Reilly and the increasing expenditures that are exceeding the revenues that are being generated. The historical practice of the Parties relative to the types of increases this Bargaining Unit has experienced from the last two(2) Collective Bargaining Agreements has consistently been 3.5% yearly. In comparison to the internal comparable, the Dispatcher unit, wherein Fact Finder Keenan recommended a 3.2% increase for year one(1), 3.5% increase for year two(2) and 3.8% increase for year three(3) thereof, recognizes the fiscal restraint emphasized by the City, as well as, consideration of the comparable jurisdictions and the need for improvement relative to this Bargaining Unit's "ranking" amongst the comparables so

provided. It is in that spirit that the Fact Finder recommends that the Parties adopt an across-the-board increase that is slightly higher than the Dispatcher Unit. The type of work performed internally is indeed distinguishable and therefore warrants additional consideration from that received by the Dispatchers. The Police Officers are the front line employees that are enforcing the law and performing tasks that provide potential for great risk of harm that is not experienced within the Dispatcher Unit. Moreover, such also recognizes this Unit's requirement to be accessible via Pager that was the subject of lengthy debate.

Moreover, the City must compete for Employees in the job market is that closer to the comparables it has provided that are geographically near to West Carrollton. These factors, peculiar to the area and in light of the fact that no other economic enhancements have been recommended herein, serve as the basis for this recommendation. The FOP has chosen some jurisdictions that are not geographically near and skew its Wage comparison. The evidence suggests that fiscal restraint, as urged by the City, based on that job pool or the labor market within which the City must compete, are more compelling. While balancing must occur between the job risks involved of a Police Officer in comparison to that of a Dispatcher, with respect to the respective Wage Scale, it is this balancing that compels the Fact Finder to recommend a .5% (point five(.5)) increase above that which was recommended by Fact Finder Keenan that was either "accepted," or, "deemed accepted," by these Parties. As such, it is recommended that the Parties' successor Collective Bargaining Agreement reflect an across-the-board increase at 3.7% effective December 17, 2001 (as agreed to by these Parties); an across-the-board increase of 4% effective January 1, 2003; and an across-the-board increase of 4.3% effective January 1, 2004 - a total Wage package of 12%, which is 1.5% above that recognized in the two(2) previous Contracts; and, that recoups nearly the 1.6% the FOP claims was lost from the predecessor based on the 10.5% three-year Wage package contained therein in comparison to the averages compiled by SERB. The logic utilized by Fact Finder Keenan is indeed sound based on incremental escalating increases over the course of the Collective Bargaining Agreement based on the efforts of obtaining new business to the area, the prospects of an improving economy and recently annexed acreage which suggests to this Fact Finder, as well, that indeed the fiscal position in the City of West Carrollton will eventually improve.

The FOP's proposal concerning the 8% differential being sought between the Police Officer and Detective Classification, is not recommended. Indeed based on the escalating, incremental increases, of .5% increase for each of the three(3) years over that recommended by Fact Finder Keenan, taken in conjunction with the awarding of the Fair Share Fee provision sought by the Union, the differential between Police Officer classification and that of Detective, would not be economically prudent at this time.

V. ARTICLE XX - HOURS OF WORK AND OVERTIME

(ALL SUB-ISSUES INCLUDED AND ADDRESSED)

FOP POSITION

The FOP is proposing in Section 20.1, that shift picks be assigned based upon seniority subject to operational needs and that operational needs be defined therein. It defines operational needs as an essential function normally performed 24 hours a day and that those positions are filled when an Employee is scheduled off. It proposes certain exceptions to that definition.

In Section 20.2, the FOP proposes to delete the rotating shift language since all members are on permanent shifts. If such language is retained, it proposes to eliminate the overtime penalty. It also proposes that all hours worked in excess of the work day and work period be at an overtime rate and to delete the multiple work week language which is a violation, it contends, of the FLSA. If that language is retained, it proposes to delete the overtime penalty due to averaging. By allowing Employees to receive overtime in excess of the work day, they would not be penalized for the additional time off if they were on an unpaid leave or a holiday.

It also proposes the creation of compensatory time since such is allowed under the FLSA and based on the stressful nature of the job. These Employees only have access to vacation, holidays or personal days for time off and comp time would provide another avenue to relieve fatigue and improve morale.

With respect to Section 20.6, relative to mandatory overtime, it emphasizes that the mandatory overtime procedure has been agreed to wherein an Employee must work until relieved. It does not wish to have language to allow the City to force an Employee to work 16 hours. It also seeks language that would address the possibility of 16 hour shifts to allow the Employees to have compensatory time if they desire to do so. Such is necessary so employees do

not have to return to duty with only 8 hours of rest. It also requests language that would provide at least 12 hours off for rest following a 16 hour shift. In the event the Fact Finder decides against its compensatory time language, it requests language that would establish such time in the event the City decides to grant that for any other non-union member of the Police Department.

CITY POSITION

The City seeks language that would require holdover of Employees from a prior shift, if necessary, to insure appropriate coverage. This is being resisted by the FOP. The City also asserts that the FOP's proposal relative to other considerations within this Article are expensive, particularly comp time that would devastate scheduling based on the size of this Bargaining Unit. The City contends that the language set forth in Section 20.1 concerning shifts is indeed necessary for the Chief to exercise his authority based on operational needs to manage the workforce as he deems appropriate. If indeed such is not exercised fairly then it simply implies that the aggrieved Employee can seek redress under the Grievance procedure. Such are based on seniority subject to the operational needs of the Department as set forth in its counter-proposal to the Union. To hold otherwise, would infringe upon its managerial right to operate this workforce and is not properly bargainable. It emphasizes that the shifts are currently not rotated and therefore the language should not be deleted simply because it is not being exercised at this time as suggested by the FOP.

With respect to overtime over 8 hours, the current practice is over 40 hours. All time over 8 hours be calculated at the applicable Overtime rate, as proposed by the FOP, is not supported by the comparables. Only Fairborn, Franklin, Huber Heights, Moraine, Springboro, and Vandalia have overtime over an eight-hour day. Kettering is over 9 hours in a day. Englewood, Middletown, Montgomery County, and West Carrollton are over 40 per work week, while Miami Township is over 80 in 14 days. As such, there is no compelling reason to change this language based thereon.

With respect to holidays off with pay to be considered hours worked, such is a potential very expensive item and only Englewood, Middletown, and Montgomery County out of its comparables have that consideration. As such, there is no justification for this change.

With respect to the comp time sought by the FOP, the City emphasizes that this is indeed

a small department and it is difficult to find enough Employees to staff the shifts as they exist. To establish comp time, as proposed, would result in more overtime which is obviously an increased cost that this City does not need at this time based on the downturn in economic stability.

RECOMMENDATION AND RATIONALE

The proposals being sought by the FOP in this Article, would place undue operational and financial restraints on the City during this economic downturn that is simply unwarranted at this time. The City's position relative thereto is more persuasive and the additional costs and potential costs, associated with the FOP proposals, are simply unwarranted.

The City's reliance on the "emergency overtime" language it is seeking, is indeed a reasonable request to insure the shifts are manned in accordance with the operational needs of the department, based on the Chief's inherent, statutory and contractual right to manage and maintain the workforce. Based thereon, these concerns override the proposal sought by the FOP which must be viewed based on the economic increases previously recommended herein, as well as, that which would include the inclusion of the Fair Share Fee provision.

VI. ARTICLE XXVII - UNIFORMS

FOP POSITION

The FOP proposes to accept the City's proposal in Section 27.1 if the City would agree to its dollar amount of \$200.00 relative to Section 27.3 wherein all Police Officers shall receive a uniform allowance of \$200.00 annually.

CITY POSITION

The City contends that it would provide Patrol Officers with uniform and equipment at the time of hiring and replace them on an as-needed basis as would be recognized under a quartermaster system. Such would be similar to that in the jurisdictions of Englewood, Springboro and Vandalia.

RECOMMENDATION AND RATIONALE

It is hereby recommended, based on the internal comparable, that now, is relative to the Dispatcher's Unit, that the Parties adopt the quartermaster system as proposed by the City. Such takes into consideration the need for fiscal restraint and the financial enhancement relative to that

of Wages that equates to an additional 1.5% over the current Agreement, in which, as the FOP contends, 2% equates to approximately \$600.00. As such, the City's proposal recognizing the quartermaster system is recommended.

VII. ARTICLE XXXIV - PAGERS

FOP POSITION

The FOP proposes that Employees not be required to carry City issued pagers and those who voluntarily do so be compensated for answering them. It emphasizes that the FLSA addresses pager compensation, but has no exacting requirements. It contends, therefore, that if Employees are not compensated for answering pages that the City stop issuing them to Bargaining Unit members. It emphasizes that this Fact Finder adopt the position of Fact Finder Paolucci based on his City of Miamisburg Fact Finding Report, dated November 12, 1998 recognizing that the use of pagers is, "an intrusion into one's private life." Based thereon, the FOP proposes that members have the ability to decide whether they wish to carry a pager and when they answer them, they be compensated time and one-half for all time spent answering pages calculated to the nearest 1/10th of an hour with a minimum of one(1) hour of overtime for each page. If an employee is required to be called into work, the time for compensation shall start with the time the page was sent.

CITY POSITION

The City emphasizes that the use of mandatory pagers, based on City policy set forth in its Exhibit, dates back some 12 years. Moreover, they are utilized to reach these Employees in an emergency situation and are necessary based on the small size of this Department. It notes that in late 80's/early 90's, answering machines were utilized in the same fashion Pagers are today. When it became apparent that answering machines would not be "answered" or were ignored by Employees, the use of Pagers became a necessary reality. Moreover, the overtime sought by the FOP relative thereto, would be burdensome to maintain. Clearly, Employees who are out of range are "off the list" for consideration and there is a very rare instance where this has become a problem with the Officers. It contends that the FLSA deals with being "on-call," while at home and these Employees are not required to remain at home when they carry their Pagers. Its Exhibit demonstrates that from 12-2-00 to 5-31-02 a total of 545 days, the "Number of people receiving

this number,” for this time period was one(1) employee for each number category reflecting the, “Number of pages in time period,” with 16, 12, 11, 9, 8, and 7, City generated pages, respectively. Two(2) Employees received 6, three(3) Employees received 5, two(2) Employees received 4, four(4) Employees received 3, one(1) Employee received 2, and three(3) Employees received one page during this time period. Based thereon, it is simply not an intrusion upon one’s privacy but a necessary avenue by which the Chief can man shifts left vacant or fill needs for overtime as they arise.

RECOMMENDATION AND RATIONAL

Much discussion ensued relative to the mandatory use of Pagers within this Department. While indeed I recognize that once an Employee is off his regular duty shift, they do not want to be bothered or sought after relative to coverage for overtime or requested to come in based on vacant shifts, etc. The use of Pagers has become, with the advent of this technology, a reliable means to “reach” someone. Such is apparent in law enforcement today. Indeed, being “married” to one’s Pager can become an intrusion into one’s private life, however, the type of work involved, the size of this workforce and the foreseeable staffing hardship without their use, overrides the intrusion into one’s private time away from the workforce. It would seem that 16 hour days would become rampant without their mandatory use, in comparison to those times when very few Employees have been paged - 6 employees received from 7 to 16 over a 545 day tracking period; while 15 received 6 or less.

It seems through the testimony given, that the Department is not unreasonable when Employees are off work, on vacation, out of range, etc., by simply notifying their supervisors that they will be “out of range” of the pager or indisposed. It is important, based on the size of this Department, to staff in accordance with the operational needs of the Department. The examples provided by Mr. Jensen, with the FOP, relative to the disciplinary action he received based on his failure to answer a page while at home, was properly processed through the Grievance procedure. That avenue will remain for Employees who feel that they have been “wronged” based on the Employer’s decision to take disciplinary action in some way relative to their failure to answer a page.

Based on this record, it is clear that the use of Pagers for manning and staffing is an

integral component of the job and while arguably the time spent answering pages is a benefit to the Employer and job related, voluntary usage, as urged by the Union, or compensation for time spent in connection therewith, is not supported by the "numbers" represented by the City. Based on this Record, the *status quo* is recommended.

VIII. ARTICLE XXXV - DURATION

Based on the discussions that occurred during the course of informal mediation and those during Fact Finding, it is apparent that both Parties are in agreement to a three-year successor Collective Bargaining Agreement. As such, such would be recommended herein. Moreover, during the course of the Fact Finding process, the Parties agreed that any Wage increases would be retroactive to December 17, 2001. Accordingly, the language of Article XXXV, titled, "Duration," for inclusion in the successor Agreement, is recommended as follows:

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 120 days and not less than 90 days prior to the expiration date or the end of any yearly extension period.

IN WITNESS WHEREOF, the Parties have hereto set their hands this ____ day of _____, 2002.

Moreover, as previously indicated, all tentative Agreements reached during negotiations, all unopened Articles and those items tentatively agreed to during the course of the Fact Finding process preceded by informal mediation, are recommended for inclusion in the successor Collective Bargaining Agreement, as are incorporated herein and set forth herein above.

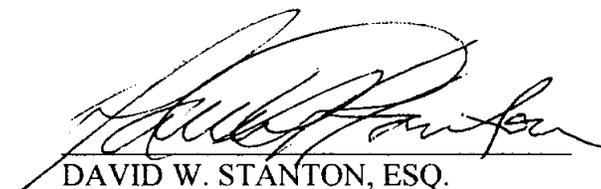
IX. ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Moreover, it is recommended that those issues, if any, not subject to the presentation of evidence in this Fact Finding Hearing, or those not referenced by either Party herein, shall be subject to a recommendation that the *status quo* be maintained for consideration in the successor Agreement.

X. 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

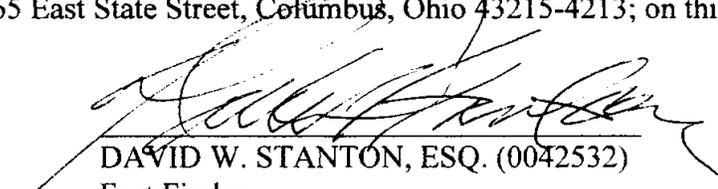
both entities recognizing that painstaking efforts at the Bargaining table resulted in tentative Agreements being reached. It is hopeful that the Parties can adopt these recommendations so that the successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without further interruption. Moreover, these recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; those tentative Agreements reached by and between them; any stipulations of these Parties; the positions indicated to the Fact Finder during the course of informal mediation and during the course of the Fact Finding proceeding; and, are based on the mutual interests and concerns of each Party to this successor Agreement.


DAVID W. STANTON, ESQ.
Fact Finder

Dated: July 16, 2002
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: Janet K. Cooper, Esq., Cooper & Gentile Company, 118 West First Street, Talbott Tower, Suite 850, Dayton, Ohio 45402; Thomas J. Fehr, Staff Representative, FOP, Ohio Labor Council, Inc., 5752 Cheviot Road, Cincinnati, Ohio 45247; and, Dale A. Zimmer, Administrator, Bureau of Administration, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 16 day of July, 2002.


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