

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

STATE EMPLOYMENT
RELATIONS BOARD
2002 AUG 21 A 10: 28

IN THE MATTER OF FACT FINDING :
:
BETWEEN :
:
CITY OF SPRINGDALE, :
EMPLOYER :
:
-AND- : **REPORT OF THE FACT FINDER**
:
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC., :
EMPLOYEE ORGANIZATION :

SERB CASE NUMBER(S): 01-MED-09-0824

BARGAINING UNIT: All Employees of the rank of Patrol Officer,
excluding sworn personnel of the rank of Sergeant
and above, and any and all Civilians.

FACT FINDING PROCEEDING: June 21, 2002; Springdale, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

FOR THE EMPLOYEE ASSOCIATION

LEGAL REPRESENTATIVE

LEGAL REPRESENTATIVE

Paul R. Berninger, Attorney

Thomas J. Fehr, Staff Representative

Derrick Parham, Asst., City Administrator

Wayne Hubbard, Officer Representative

Michael Laage, Police Chief

Jeff Witte, FOP Rep/Alternate

Jeff Williams, Tax Commissioner/Finance Officer

ADMINISTRATION

By correspondence dated November 30, 2001, from the State Employment Relations Board, Columbus, Ohio, the Undersigned was notified of his designation to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); in an effort to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after attempts to negotiate the successor Collective Bargaining Agreement, by and between the Parties, proved unsuccessful. Prior to the commencement of the Fact Finding proceeding on June 21, 2002, the undersigned offered his services to engage in mediation in an effort to reach resolution of those issues that remained at impasse. The Parties declined to engage in mediation and the Fact Finding proceeding commenced forthright.

Following the explanation of certain procedural considerations relative to the Fact Finding statutory process and the statutory criteria set forth therein, which mandates the recommendations contained herein, the Fact Finding proceeding commenced forthright. During the course thereof, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and those issues that remained at impasses are the subject matter for the issuance of this Report hereunder.

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by these Parties; were arrived at based on their mutual interest 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 statutory 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 affect of the adjustment on a normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and
6. Such other factors not confined in those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon settlement procedures in public service or in private employment.

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

The Collective Bargaining Agreement between the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the "Union," and/or the "FOP," and the City of Springdale, hereinafter referred to as the "Employer," has, in Article III, titled "Recognition," the designation of the Bargaining Unit as so certified by the State Employment Relations Board on May 2, 1984, via SERB Case No. 84-VR-04-0156. Article III of the Parties' Agreement which expired on December 31, 2001, reads as follows:

ARTICLE III - RECOGNITION

Section 1

The Employer recognizes the Fraternal Order of Police, Ohio Labor Council, Inc., as the sole and exclusive Bargaining Agent for the purpose of representation and collective bargaining in any and all matters related to wages, hours, and terms and conditions of Employment of all permanent, full-time Employees in the Bargaining Unit consisting of Patrol Officers in the Springdale Police Department excluding sworn personnel of the rank of Sergeant and above and Civilians. It is understood that membership in the FOP is at the discretion of each individual Employee. Employees in the Bargaining Unit covered by this Agreement have the right to participate or not participate in the FOP as they see fit. Neither Party to this Agreement shall exert pressure on any Employee to join or refrain from joining the FOP.

As is obvious, based on the type of Unit represented herein, the Employees provide emergency and safety services for the City of Springdale, Ohio, and are considered under the

statutory scheme as “strike-prohibited Employees” under 4117.14(d). The various duties associated with the classification of this Bargaining Unit are those typical and peculiar to the types of services provided by a City or municipality relative to protection of the citizens and law enforcement generally. Those duties include, but are not limited to, patrolling the City, investigating crimes, investigating automobile accidents, apprehension and arrest of violators of City Ordinances and State Laws, collection of evidence, and the keeping of records relating to the above-listed duties. And from time to time these Officers are required to appear in Court to provide testimonial evidence relative to their involvement in the above-noted areas of law enforcement.

Based on this evidentiary record, the Parties have met to engage in collective bargaining on: October 5; October 30; November 13; November 16; and, November 21, 2001. During the course of these negotiation sessions, the Parties have agreement on the following Articles set forth herein as follows:

- **Article I - Agreement**
- **Article II - Purpose**
- **Article V - Conflict of Contract and Ordinances**
- **Article VI - Management Rights**
- **Article VII - No Strike**
- **Article VIII - FOP Business**
- **Article XII - Work Schedule**
- **Article XIII - Overtime**
- **Article XIV - Court Time**
- **Article XV - Vacation**
- **Article XVI - Holidays**
- **Article XVII - Vacation and Holiday Time Requests**
- **Article XVIII - Longevity Pay**
- **Article XIX - Acting Supervisor**
- **Article XX - Uniforms**
- **Article XXI - Allowance**
- **Article XXII - Call-in Pay**
- **Article XXIV - Injury Leave**
- **Article XXV - Bereavement Leave**
- **Article XXVII - Jury Duty**
- **Article XXVIII - Special Leaves**
- **Article XXX - Layoffs**
- **Article XXXI - Bulletin Board**

- **Article XXXII - Publicizing Job Opportunities**
- **Article XXXIV - Labor/Management Meetings**

The Parties, to their credit, had reached tentative Agreement to various aspects of other Articles during the course of the negotiation sessions previously identified. Those Articles are as follows:

- **Article IX - Grievance Procedure** - as tentatively agreed November 21, 2001 except Arbitration issue
- **Article X - Discipline** - as tentatively agreed to on November 21, 2001, except Arbitration issue
- **Article XX - Uniforms**
- **Article XXXIII - Tuition Reimbursement**

The record further demonstrates that there are approximately 27 sworn police officers within the Bargaining Unit. As some items in the evidentiary record demonstrate, the Parties apparently reached a “package” tentative Agreement during the course of the final negotiation sessions that occurred prior to the impasse being declared. The Parties deliberately did not disclose the entire package to the Fact Finder and basically both are taking the position, at this point, that that presented, in the way of a package proposal that was ultimately rejected by the Bargaining Unit, is not economically feasible at this time according to the number relied upon by the City, and not acceptable to the Bargaining Unit, based on the first year increase. The data presented by the City was accompanied by testimony that overall indicated that the City was in a “downward spiral” relative to its General Fund carry-over balance and that its expenditures were increasing. The FOP countered noting that there are several capital improvements that are being undertaken within this City and the matter of spending is simply based on the priorities of the City officials. The City, on the other hand, said it is a difficult proposition to be an employer and provide law enforcement services, as well as, other services required within a Community to the residents that reside therein.

The record demonstrates that this City is not in “financial dire straights” and there were no “inability to pay” arguments raised, simply that fiscal prudence must be exercised relative to the economic strains that are being experienced not only in this Community but that compounded by the current economic state of the National economy. As the City indicates, it has entered a

period of fiscal restraint wherein 2001 expenditures substantially exceeded the original appropriations. The 2002 revenues are projected to climb by 7.4% or equating to 1.1 million dollars. It has engaged in a program of budget cuts in order to achieve a balanced budget and its year-end General Fund balance is projected to decline from 2.8 million to 410,00 for the year in question. The Employer, based on the financial data provided, both by the Assistant City Manager, and the City's Financial Advisor, projects a decline in revenue in 2002 of more than 1.1 million or 7.4% of the 2001 revenues. The income tax revenues, which are a large portion of the General Fund budget are projected to be more than 480,000 lower than they were in 2001 and based on various other tax changes and funding issues, at the State level, would further reduce revenue by more than 437,000. The data also provides that internally the Fire Department received a 3.5% salary increase in comparison to the 3% offered to the Police Officers. In comparison to the Firefighter's hourly rate, as relied upon by the City, the 2002 rate is \$16.76 per hour and the Paramedics are paid \$17.60. If the Police Officers received a 3% increase at the top step rate, that rate will be 24.28 per hour. The entry level rate of \$19.98 would make the salary range of a Police Officer the highest entry level position within the City.

As previously indicated, those issues that remain at impasse at this stage of the statutory process are the subject matter of this Report and Recommendations issued by the Fact Finder. Moreover, those Articles that were not opened or those previously agreed to shall be transferred to the successor Collective Bargaining Agreement as so requested by the Parties.

Within the Statutory process, the stage of Fact Finding for strike-prohibited Employees is the stage wherein recommendations are provided by a neutral third Party based on the data presented by the respective advocates concerning those issues that are at impasse. 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 community. Both Parties have provided data relative to other municipalities and jurisdictions regarding comparable work provided by this Bargaining Unit and as is typically apparent, there are no "on-point" comparisons relative to this Bargaining Unit based on the overall make-up of the jurisdiction, either geographically or externally. While there may be similarities, and there will be based on the type of work performed, and those will certainly be recognized, each jurisdiction is unique relative to

composition, logistics, population, geographic boundaries, and other economic considerations. Whatever similarities that may exist must be taken into consideration by the Fact Finder based on the above-noted statutory criteria.

It is, and has been, the position of this Fact Finder that the Party proposing any deviation or deletion of the *status quo* bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice and where the Parties have reached tentative Agreement, that shall be afforded compelling weight. In instances where the Parties are proposing deviation from that tentatively agreed to by and between the Parties during the course of the negotiation process, the proponent of the change will have a stronger burden of proof and persuasion to compel a recommendation other than that previously agreed to by the Parties. Based thereon, the Parties are in Agreement as to those issues that remain at impasse as follows:

- **Article III - Recognition**
- **Article IV - Dues Check-Off**
- **Article IX - Grievance Procedure**
- **Article X - Discipline**
- **Article XI - Wages**
- **Article XXIII - Sick Leave**
- **Article XXIX - Insurance**
- **Article XXXIX - Duration of Agreement**

The overall theme of this Report recognizes that the package Agreement, tentatively agreed to, wherein the Employees would receive 5% for the first year, 4% the second year, and 4% of the third year, respectively, was rejected and a clear message was sent by the FOP wherein the Employees wish to see 6% in the first year. It was also indicated that during the course of negotiations, the Parties had on the table, at one time, a 6% increase in the first year, followed by 3%, respectively for years two and three. That was deemed unacceptable as well. Based on these considerations, it appears that some enhancement to that is necessary in order for the Parties to bring this impasse to closure short of exercising their right to engage in the final and binding component of the statutory process, or conciliation. While it is important to note that indeed tentative Agreements are generally viewed as providing compelling, if not outcome determinative weight, the Parties deliberately did not disclose the complete tentative Agreement

reached during the course of negotiations prior to this Fact Finding proceeding. Nonetheless, there are certain aspects of that tentative Agreement that were disclosed during the course of the Fact Finding process that are part of this evidentiary record and must be given consideration by the Fact Finder.

Overall, the following Report and Recommendation takes into considerations the Employer's desire, based on the testimony of the Assistant City Manager and its Director of Finance, that fiscal prudence is indeed warranted based on the downward trend of its revenues in comparison to the rising expenditures while the Union seeks to maintain certain levels of benefits without providing concessions particularly in the area of insurance, as well as, seeking increases that will better position this Bargaining Unit in comparison to neighboring and other geographically near jurisdictions. Based thereon, the Report and Recommendation is set forth as follows:

IV. ARTICLE III - RECOGNITION AND
ARTICLE IV - DUES CHECK OFF (SECURITY)
FOP POSITION

The FOP has combined these two issues relative to its proposal seeking provisions for a Fair Share Fee deduction. The FOP takes the position that all members receive service and economic benefits from the Contract and therefore they should pay for those benefits. That language contained in both Articles III and IV, respectively, allows only for dues to be collected from those Employees electing to join the FOP. Of the comparable jurisdictions provided, Loveland, Montgomery, and St. Bernard, Wyoming and Springdale do not contain Fair Share Fee provisions. The FOP also emphasizes that 85% of Police Contracts within the State of Ohio have a Fair Share Fee provision.

CITY POSITION

The City opposes the implementation or the inclusion of a Fair Share Fee provision in the successor Collective Bargaining Agreement since, as it contends, payment to a labor organization is a matter of personal choice. Employees should not be required, as a condition of public employment, to pay fees to a labor organization. The Employer is politically and philosophically opposed to requiring its Employees to fund the FOP. It does not, and cannot, interfere with the

Employee's right to join, or refrain from joining, a labor organization and therefore it should not be compelled to be an agent of the labor organization in the extraction of the Employee's money for the support of a labor organization.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties include in its successor Collective Bargaining Agreement for this Bargaining Unit Fair Share Fee language as proposed by the Union. Such would be incorporated into both Articles III and IV relative to the references made therein concerning this deduction. The language provides for indemnification of the Employer and 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. The United States Supreme Court has philosophically sanctioned, and the State of Ohio has permitted the inclusion of, Fair Share Fee provisions in Collective Bargaining Agreements within the State. The Fair Share Fee process exists to insure inherent fairness for all Bargaining Unit individuals based on the financial support the institution provides involving 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 and involvement. Indeed, such is 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 affect the comradery which is much needed and essential 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 sanctioned by the statutory criteria.

Based on this Fact Finder's experiences with other Contracts throughout the State involving safety forces, most, in fact 85% of police Contracts, as indicated by the FOP, which was gleaned from data supplied by the State Employment Relations Board, has similar language which is statutorily permitted under 4117. Based on these considerations and the sanctioning of this practice by the U.S. and Ohio State Supreme Courts, the inclusion of the Union's proposal relative to Article III, as well as, Article IV is recommended.

V. ARTICLE IX - GRIEVANCE PROCEDURE

FOP POSITION

The FOP seeks to add language that would essentially modify that contained in the current Contract which does not permit Employees to grieve disciplinary actions above a written reprimand. Discipline involving suspension, demotion, or discharge may not be processed through the Grievance procedure or to Arbitration. In this regard, the FOP seeks to change this section to allow Employees and the Union to appeal to the Grievance and Arbitration procedure, discipline that the Employees believe is without just cause. The current Contract provides for utilization of the Civil Service Commission which, as the FOP emphasizes, is contrary to the vast majority of Police Contracts in this State. It notes that 98% of City Police Contracts in the State of Ohio contain binding Arbitration.

CITY POSITION

The Employer opposes any modification of the current practice of utilizing the Springdale Civil Service Commission for all disciplinary matters above a written reprimand. That process provides for the review by a panel of three citizens appointed to oversee the civil service within the Community. It contends that the citizens of the Community, these civil service commissioners, must take responsibility for their decisions as they relate to the civil service. They live and work in the City and are the citizens that are served by the Springdale Police Officers. As citizens, they are best able to apply the community standard deemed appropriate for the conduct of a Police Officer in the Springdale Community. It emphasizes that Arbitrators almost always are individuals who do not reside within the community and sometime reside far from the locale and even from other states. Arbitrators rarely have the knowledge of the community values and they apply their own version of what constitutes good conduct or tolerable misconduct. Under the Civil Service Commission, discipline is judged and reviewed in accordance with the process of appellate review. Any potential for abuse and misuse of administrative, quasi-judicial power by the Civil Service Commission can be appealed to the Court of Common pleas. An Arbitrator's decision, however, is essentially non-reviewable in the Courts.

For these reasons, the City opposes the Union's proposal to modify the current practice

urging that disciplinary matters remain within the jurisdiction of the Springdale Civil Service Commission.

RECOMMENDATION AND RATIONALE

It is indeed difficult for any Fact Finder to not recommend that practice to which he or she is intimately involved with on a daily basis. While I do not question the expertise or the ability of the Parties to get their "fair day in Court" through the Civil Service Commission, the utilization of Arbitration over a Civil Service Process is more likely to yield an unbiased neutral conclusion for the same reasons the Employer contends are problematic. The opinion of an outside, neutral, objective hearing officer, who has no ties to the Commission, who has no ties to the City Council, and has no ties to the individual charged with the disciplinary action before him, is viewed as an expert in such personnel issues. The Arbitrator is jointly selected by both Parties and there are no ties to either relative to this selection. The Arbitration process is streamlined, generally providing a very quick decision, one that can be more cost efficient than seeking redress through the Court systems. Both Parties are jointly and severally liable for the cost that is generally split evenly between them. Arbitrators make a living adjudicating labor disputes and are not paid \$50 to \$125.00 per session, per week, per month, whatever the case might be, as are Civil Service Commissioners, but are pursuing a career as a neutral hearing officer hearing disputes between Companies and Unions, Cities, Employee Organizations, in private, public, federal and other sectors and industries.

The sole instance raised concerning Officer Pete Schultz relative to a three-day suspension in 1988 that was upheld by the Civil Service Commission based on, what the Union would have the Fact Finder believe was compelling evidence to overturn or reduce the suspension, does not provide compelling reason, based on one instance that is deemed improper, to warrant the inclusion of its proposal. The more compelling evidence for recommending binding Arbitration for all disciplinary matters, is that provided relative to City Police Contracts within the State of Ohio; wherein 98% thereof include binding Arbitration.

Moreover, the other comparables provided concerning all Hamilton County City Police Departments with Labor Agreements, all but Springdale have binding Arbitration which includes disciplinary matters. Based thereon, it is a strong and compelling case for the recommendation

that the Parties modify the current language and provide for binding Arbitration as an option relative to all disciplinary matters.

VI. ARTICLE X - DISCIPLINE

FOP POSITION

The FOP proposes in Section 1 thereof to afford the Employee the option of choosing the Arbitration process or the Civil Service proceeding for all the reasons presented in Article IX previously discussed.

CITY POSITION

Essentially for the same reason it opposes the inclusion of binding Arbitration for all disciplinary matters, the City is opposed to allowing matters of more serious discipline to be the subject of Grievance or Arbitration and therefore it opposes the modification sought by the Union.

RECOMMENDATION AND RATIONALE

Based on a theory of consistency in relation to that contained in Article IX wherein it was recommended that the Parties adopt the proposal of the Union relative to utilization of Arbitration for all disciplinary matters, the Employee would have the option of choosing that process or the Civil Service proceeding. Such is also recommended for the modification in Article X concerning disciplinary references. As such, it is recommended that the Parties adopt the Union's proposal relative to the inclusion of this language concerning the modification of the current provision.

VII. ARTICLE XI - WAGES

FOP POSITION

The FOP emphasizes that prior to the impasse being declared, the City offered a wage increase of 6%, 3%, and 3%, respectively, on November 21, 2001. The negotiations committee rejected this offer based on the 3% increases in the second and third years of the Contract which would affect this Unit's ability to remain in the average of comparable Cities. Further discussions ensued wherein the City offered wage increases of 5%, 4%, and 4%, respectively, and such as taken to ratification on December 10, 2001. The package, as previously discussed, was rejected and as the FOP contends the emphasis was placed on the need to see 6% in the first

year of the Contract. The Staff Representative involved in this proceeding relied upon his experiences negotiating wages since 2001 in the range of 4-7.6%. He indicated that the majority of those Contracts range between 4 and 5% and these Officers need at least 6% in the first year to remain in the average of comparable Cities. It emphasizes that 2.1% in wage increases was lost in its last Contract based on the SERB's annual wage settlement data. Wage increases of 3% in 1999, 3.5% in 2000, and 3.5% in 2001 for a total of 10% was below that recognized by SERB in its annual wage settlement data wherein 4.25% was realized in 1999, 3.95% in 2000, and 3.90% in 2001 for a total of 12.1%.

The FOP has provided comparables of Sharonville with 2001 yearly salary of \$50,690, Blue Ash, \$50,128, Montgomery \$49,296, Norwood, \$48,880 and Springdale, \$48,704. With the 6% increase as it proposes in the first year, Springdale would move ahead of Norwood and Montgomery at \$51,628. It also notes that with this increase, employees would still rank below the average of \$51,872. The current average of those five jurisdictions, including Springdale, has a 2001 yearly salary range was \$49,540. It also emphasizes that Blue Ash received a total package of 12.25%, Clermont County Deputies and Supervisors received 16.1% plus rank differentials for Corporals and Sergeants, Greene Township Police received 14%, Miami Township Police received 16% and Lebanon received 12%, with an average three-year increase of 14.07%.

The FOP emphasizes that the overall position taken by the City is based on "priority spending" and it is engaged in numerous capital improvements while arguing its expenditures are increasing while its revenues are decreasing. Overall, the FOP contends that expenditures have been made in many areas impacting its overall General Fund budget and the City certainly has the ability to allocate funding to those expenditures that are necessary while also adjusting those that may be in need of consideration such as wages for those who provide law enforcement services for this Community. As such it seeks wage increases of 6%, 5% and 5%, respectively, effective January 1, 2002.

CITY POSITION

The City proposes to increase wages by 3% effective upon ratification for the first year, by another 3% effective January 1, 2003, and by another 3% effective January 1, 2004. It argues

that no rationale can support the FOP demand since the inflation rate, depending upon which index is used, is at, or below, 2% in the Hamilton County area. The current annual top step of these Police Officers, based on a 2,065.5 hour work year is \$48,704.00 which is very comparable to other small urban communities. A 3% increase would place Springdale officers in the middle of its neighboring communities, Forest Park and Sharonville. Forest Park's 2002 Police Officer rate is \$48,089.60 and Sharonville's 2002 Police Officer rate is \$53,047. A 3% increase would place these officers at \$50,165.

It emphasizes that this City has entered a period of fiscal restraint wherein 2001 expenditures substantially exceeded original appropriations and 2002 revenues are projected to decline by 7.4% or 1.1 million dollars. It has engaged in budgetary cuts in order to achieve a balanced budget and its year end General Fund balance is projected to decline from 2.8 million dollars to \$410,000 by year's end. As such, it would indeed be irresponsible for City Council to grant an inordinate salary increase to this Bargaining Unit during a period of fiscal restraint.

Moreover, it projects a decline in revenue in 2002 of more than 1.1 million dollars or 7.4% of the 2001 revenues. Income tax revenues are projected to be more than \$480,000 lower than 2001 revenues and various tax changes and funding at the State level, will reduce revenue by more than \$437,000. Other City Employees, including the Fire Department, received a 3.5% salary increase. Its proposal of 3% for Police Officers would allow other Employees an opportunity to catch up with a higher rate of Police Officers. A Firefighter's hourly rate in 2002 is \$16.76 with Paramedics receiving \$17.60. A 3% increase in the Police Officer's top step will raise that rate to \$24.28 per hour. The entry level rate of \$19.98 would make the salary range of a Police Officer the highest paid entry level within the City.

The Employer emphasizes that it must exercise fiscal restraint in order to meet its legal obligation to balance its budget and as such, its offer of 3% in each year for the successor Collective Bargaining Agreement is indeed fair and adequate.

RECOMMENDATION AND RATIONALE

Based on the data provided, it is indeed apparent to the Fact Finder that the issue concerning Wages is perhaps that which was instrumental in causing the Bargaining Unit to reject the tentative Agreement reached during the course of negotiations. The financial data

provided, and as supported by the testimony of the Director of Finance, as well as, the Assistant City Administrator, indicates to the Fact Finder that indeed some fiscal restraint may be necessary in the overall economic picture nationally which ultimately will affect each State, each City, each Township and each Municipality, relative to what comfort level those entities are willing to enjoy and what level of risk they are willing to take concerning current and future economic considerations. Indeed, there have been no inability to pay arguments only that fiscal prudence is necessary. The stumbling block apparently relative to the tentative Agreement package was the first year of the Agreement wherein 5% was proposed by the City and the Bargaining Unit seems to think that 6% is more in line with what is necessary to maintain its status within the comparable jurisdictions.

This area of Hamilton County is one that recognizes a constant economic picture relative to the influx of new residents, as well as, the potential for new businesses relocating or expanding services within its boundaries. The weight of the evidence seems to suggest that perhaps it is indeed a matter of priority spending relative to that engaged in by the City and its obligations under various Collective Bargaining Agreements with organized labor. Apparently, the Fire Department received a 3.5% increase and indeed that must have some impact on the recommendations contained herein, but it is also compelling that the Parties agreed to 5%, 4%, and 4%, respectively, for the three year successor Agreement that was ultimately rejected by the Bargaining Unit. There was no indication of the other terms and conditions of the tentative Agreement which would provide guidance relative to this recommendation other than the wages numbers that were presented in the package.

Moreover, overall increases realized by safety forces within the State of Ohio, particularly Police Departments, have been above that of the CPI index, whichever index is utilized. It is indeed a balancing process to maintain viable funding while also exercising fiscal restraint in expenditures to provide the level of service necessary for a law enforcement agency in a community of this size. The evidence does not suggest to the Fact Finder the economic picture within this City has worsened that drastically from the time that the tentative Agreement was rejected in mid-December, wherein 5%, 4%, and 4% yearly increases were part of the package, to now. While there is some indication that expenditures have increased somewhat, there is no

indication to the Fact Finder that the entire budget is depleted to disallow the increase from the 3% offered by the City in comparison to the 5% first-year offer in the tentative package followed by 4% and 4%, respectively. The clear message has been sent by the Bargaining Unit that an increase in the first year above 5% is warranted. While it is apparent based on this record that several capital improvements have been embarked upon by this City, it would seem that those providing the essential services of law enforcement must also be part of that financial consideration. While I recognize that indeed it is necessary to attract new businesses or provide incentives for existing businesses to expand their services, it is also necessary to compensate well-trained officers to ensure that they do not seek employment in other jurisdictions that may provide a more attractive economic package and impact the attractiveness that a competent safety force provides to those looking to locate to this, or any, area. The .5% increase in year one over that proposed in negotiations, is not overly burdensome particularly given the other aspects in this Report wherein the City will recognize economic considerations in the area of Insurance with no enhancements to Sick Leave as sought by the Union.

Based thereon, in an effort to address that which served to the basis for rejection of the tentative Agreement, it is recommended that the Parties adopt the 4% increase seen in years two and three, respectively, but increase the year one base salary increase by .5% over that which was part of the tentative Agreement package. The total for year one would be 5.5% effective January 1, 2002, and subsequent 4% increases effective January 1, 2003, and January 1, 2004, respectively.

VIII. ARTICLE XXIII - SICK LEAVE

FOP POSITION

As indicated by the FOP, there are two aspects of this Article for which it is seeking enhancements. The current Collective Bargaining Agreement provides 10 hours per month or a total of 120 hours Sick Leave per year. It opposes the Employer's proposal to reduce that amount and emphasizes statements from the Employer's team during negotiation that usage is not a problem. The FOP emphasizes the Chief indicated that one Employee uses more than the yearly accumulation and two Employees use a "lot of sick leave." Three Employees represent 13% of the workforce which the FOP believes is not compelling to warrant such a change. Moreover,

the comparables demonstrate that Sick Leave accumulation is 120 hours per year on average.

Secondly, the FOP addresses the conversion at retirement of Sick Leave. It emphasizes that such was discussed during negotiations and when it appeared that a tentative Agreement had been reached, it reverted, and agreed to, current language. It notes, however, that the comparable data indicates that this City is low relative to this benefit with a maximum payout of 533 hours. It proposes a graduating scale for Sick Leave conversion with a maximum payout of 733 hours. This increase nonetheless places this City below the comparable average.

CITY POSITION

The Employer opposes the FOP's proposal to change the Sick Leave severance payment at retirement based on its overall economic impact. It emphasizes that such would triple the cost of the severance benefit and it would not encourage conversion of sick leave. Any member could use 60% of the Sick Leave earned over 25 years of employment and still reach the 1,200 hour threshold. The one-to-one conversion rate would actually encourage Sick Leave abuse because a member could still hold 1,200 hours or about 7 months of leave for a very favorable severance payment.

The Employer proposes to reduce the Bargaining Unit's Sick Leave accrual rate from 10 hours per month, or 120 hours per year, to six and 6/10th hours per month, or approximately 80 hours per year. Bargaining Unit members enjoy an abundance of Sick Leave and the Employer contends that availability of so much results in a higher usage rate. On the other hand, the less available would result in a lower usage. It indicates that the average Sick Leave usage by Bargaining Unit members for the past two years is 27.56 hours for 2000 and 37.2 hours for year 2001. Lower Sick Leave usage will result in lower overtime costs, less stress on the department and better police service to this community.

RECOMMENDATION AND RATIONALE

It appears, based on the comparable data, that the jurisdictions of Norwood and Montgomery recognize 120 hours of sick leave per year consistent with that of the City of Springdale. Blue Ash recognizes 120 hours, or 15 days, while Sharonville provides 120 hours for employees working a 5/2 work schedule, and 127.2 hours for employees working a 4/2 work schedule. The City indicates that the less amount available, the less likelihood that Employees

will utilize it therefore banking it for conversion upon retirement or severance with the City. It seems that the documentation provided by the City in its Pre-Hearing statement suggests that from year 2000 to 2001 the average of yearly usage per Bargaining Unit members has increased by approximately 10 hours. The total hours for year 2000 was 661.5 and year 2001, 930. Comparing 2001 to 2002, some Employees have seen a drastic decrease such as Roger Davis, Officer Drier, Officer Riordan and Officer Warren. Other Officers such as Bemmes, Buschmann, Hubbard, Peck and Ramono have seen increases from their 2001 number.

This evidentiary record does not suggest that abuse is indeed prevalent. In that regard the correlation between the amount of hours available and the amount of hours utilized would not bear compelling relation to the contention of excessive use. While arguably the more that is available, the more that will be utilized, is a plausible contention, that does not seem to be the case or one that is problematic within this Unit. The Ohio Legislator has seen fit to allow Employees to carry-over Sick Leave which would provide a greater incentive for Employees to bank that time for conversion purposes upon retirement.

The evidence also indicates that the Fire Department did not see any reduction in its amount of Sick Leave provided as emphasized by the FOP.

Based on the data provided, there simply exists no compelling reason to either reduce the amount of Sick Leave currently provided in the existing Collective Bargaining provision nor is there any reason to alter the conversion method as proposed by the FOP. While arguably there are jurisdictions that may have a better overall eligibility rating relative to the number of hours, the number of hours provided to these Employees are indeed within the bounds of reasonableness as supported by the comparables.

As such, it is recommended that the Parties maintain the *status quo* language relative to the accumulation and conversion of Sick Leave as set forth in this Article.

IX. ARTICLE XXIX - INSURANCE

CITY POSITION

The City proposes that Employees begin to share in the cost of health insurance. As a self-insured provider of this benefit, it offers health care services through a network of healthcare providers. Employees do not contribute to the cost of health insurance. The FOP represents the

largest number, the largest group of healthcare beneficiaries and if the Employer hopes to achieve a universal Employee contribution it must first achieve that contribution with this Bargaining Unit. Other Employees cannot be expected to accept a cost contribution from their salaries if the largest and most highly paid Employee group is not also making a contribution. It proposes to achieve what it considers a more equitable cost-sharing plan by making three changes in the current health insurance program:

1. Increase in Employee co-pay for services whenever a covered beneficiary receives services from out-of-network providers from the current 10% to a new co-pay of 25%;
2. Establish an annual deductible of \$100 per single plan and \$200 for family plan meaning that the first \$100 or \$200, respectively, for any service will be paid by the subscriber before the Employer pays any part of the cost of the service; and,
3. A monthly payroll deduction shall be made from each Subscriber's compensation in the amount of \$15 for a single plan or \$30 for a family plan.

FOP POSITION

The FOP concedes that indeed the climate is changing with regard to healthcare insurance costs and benefits. It argues, however, that 4 of its 5 comparables pay 100% of the cost for health insurance for at least some of the Employees. The Staff Representative also calls upon his experience with other FOP Contracts where Employees have agreed to, or been mandated to, pay a portion of healthcare costs have received a larger wage increase in the first year of the Contract to offset the added financial impact. If indeed the Fact Finder gives greater consideration to the City's proposal relative to this Article it requests that greater consideration be given to its wage proposal in that regard. It notes that Springdale currently receives 100% of the cost paid by the Employer as does Blue Ash and Employees in Sharonville receive 100% pay if hired before January 1, 1997 and Employees hired after that date pay 20% of the cost of a family plan while the Employer pays 100% cost for a single plan. In the City of Norwood, the Employer pays 100% of the cost of the HMP plan and Employees before 1987, the Employer pays 100% of the cost for Blue Cross/Blue Shield. Employees hired after 1987 pay 20% the cost for the Blue Cross/Blue Shield plan. The City of Montgomery recognizes the Employer and the Employee

sharing the cost of healthcare and any changes to coverages or cost are referred to a Committee for recommendations.

RECOMMENDATION AND RATIONALE

Indeed, much discussion ensued relative to the impact of health insurance to this City as a self-insured entity providing healthcare benefits to its Employees. This Bargaining Unit represents the largest Bargaining Unit of City Employees and as the City correctly indicates if indeed the FOP were required to some level of cost sharing it would indeed be easier for the Employer to get other Employees on board with this concept. It is indeed unusual to see jurisdictions where the Employer continues to pay 100% of healthcare premiums for Employees and even the comparables provided by the FOP indicate variations of those concepts wherein certain longer term Employees are given the benefit of that consideration. Based on that concept, it would seem that some consideration be given relative to the economic impact the re-insurability costs and the usage of health insurance as a self-insured provider is required. The concept of cost sharing is indeed one that, in the current state of insurance, which, based on the data supplied by most analysts, is in a state of crisis. Some consideration to address these concerns seems inevitable and reasonable.

It is recommended that the proposals made by the City concerning a co-pay for services outside the provider network be increased from 10% to 20%, given the escalating costs, the failure of carriers to continue certain level of benefits and the cost of providers to remain in that status.

The concept of an annual deductible would seem to be a reasonable means to address cost considerations to the City, as well as, provide a policing mechanism for potential abuse. If an individual knows that a cost is attached, reluctance in what they seek in the way of services may be exercised. In this regard, the level proposed by the Employer of \$100 for single and \$200 for family being paid by the subscriber before the Employer pays any part of the cost of the service, is one way to address the escalating cost of insurance which has a tremendous economic impact on any form of government. The levels proposed by the Employer, however, given the fact that this is a deviation from the *status quo* wherein Employees currently pay nothing, are too high. As such, it is recommended that a deductible be implemented for a single plan of \$50.00 per year

and \$100.00 per year for family. In the large scheme of things, this does not relate to a significant percent of increase taken away from the package that was rejected by the Bargaining Unit relative to the tentative Agreement, in light of the additional 1/2% recommended in the first year, the inclusion of the Fair Share language and the option to utilize binding Arbitration for all disciplinary matters. This is indeed a step in a direction to afford the Employer the ability to address other economic issues while not jeopardizing the level of benefit and services it provides in the way of health insurance for these Employees.

The Fact Finder does not recommend a payroll deduction from the subscriber in the amount of \$15.00 for a single plan or \$30.00 for a family plan. The current increases recommended herein are incremental in nature and any change from 100% coverage plan must be done on an incremental basis. There is no strong or compelling evidence that suggests that this City is in a crisis mode relative to its cost of insurance. While they are high and have increased and are doing so based on the market nationally, it is not to a level where extreme measures are necessary. Nor do the comparables support the inclusion of premium sharing at this time. These two incremental steps would indeed afford the Employer the ability to address what it considers, and what the evidence suggests to be, the potential for escalating costs for health insurance coverage. Based thereon, the items as previously discussed relative to this Article are recommended.

X. ARTICLE XXXVI - DURATION OF AGREEMENT

FOP POSITION

The FOP proposes a three year Contract effective January 1, 2002 through December 31, 2004. The FOP also proposes that wages be effective January 1, 2002.

CITY POSITION

The City proposes a three year Agreement effective upon ratification for the purposes of wages and other economic benefits and expiring on December 31, 2004.

RECOMMENDATION AND RATIONALE

The Parties are in Agreement to enter into a three year successor Collective Bargaining Agreement with that Agreement expiring on December 31, 2004. Based on the history of these Parties, it is recommended that indeed that concept be exercised relative to this successor

Agreement. The issue relative to the retroactivity of wages is the differing point of contention between the Parties. The City takes the position that the Employees should not be rewarded for extending the statutory process while the FOP contends that indeed the Employees should not be penalized for utilizing that which is available. The Fact Finder has long been a proponent of not penalizing Employees for utilizing the statutory process so long as both Parties have engaged in good faith bargaining. If indeed dilatory tactics have been exercised, then that would be the instance when retroactivity would not be recommended. There is no evidence in this record that would suggest that either Party has engaged in dilatory tactics and therefore retroactivity is hereby recommended. As such, it is recommended that the Parties adopt the following language relative to Article XXXVI titled "Duration of Agreement" as follows:

Section 1

This Agreement shall become effective at 12:01 a.m. on January 1, 2002. This Agreement shall remain in full force and effect for three years until midnight on December 31, 2004. This Agreement will be automatically renewed for successive one year periods unless either Party to the Agreement on or before 90 days prior to the expiration date or, if applicable, the extended expiration date, notifies the other Party, in writing, of its intention to modify or terminate this Agreement. This Agreement reflects the full and final Agreement of the Parties and may only be modified during its term by written Agreement by the Parties.

As such, the foregoing is hereby recommended.

**XI. UNOPENED ARTICLES; AND THOSE TENTATIVELY
AGREED TO THAT ARE NOT SPECIFICALLY ADDRESSED HEREIN**

Those issues that are not addressed herein or were not subject to discussion during the course of Fact Finding that occurred on June 21, 2002, are to be recommended to be incorporated into the successor Collective Bargaining Agreement based on the *status quo*.

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 and concerns of both entities recognizing that which was negotiated during painstaking efforts at the Bargaining table. It is hopeful that these 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 and without exercising and engaging in the final step of the statutory process.

These recommendations were made based on the comparable date provided; the manifested intent of each Party as reflected in their positions and accompanying documentation and the testimony adduced during the course of the Fact Finding proceeding; stipulations of the Parties; and, are based on the mutual interests and concerns of each Party to this successor Agreement.

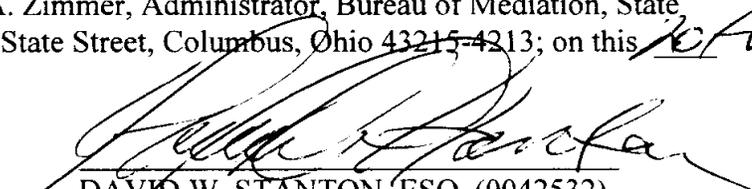


DAVID W. STANTON, ESQ
Fact Finder

Dated: August 21, 2002
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true and accurate copy of the foregoing Fact Finding Report and Recommendations has been forwarded by overnight U.S. Mail Service to: Paul R. Berninger, Esq., Wood & Lamping, LLP, 600 Vine Street, Ste. 2500, Cincinnati, Ohio 45202-2491; Thomas J. Fehr, Staff Representative, FOP Ohio Labor Council, 5752 Cheviot Road, Cincinnati, Ohio 45247; and, to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 21st day of August, 2002.



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