

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

STATE EMPLOYMENT
RELATIONS BOARD

2002 JUL 26 A 11: 32

IN THE MATTER OF FACT FINDING :

BETWEEN :

**CITY OF MONROE, OHIO
EMPLOYER :**

-AND- :

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

REPORT OF THE FACT FINDER

SERB CASE NUMBER(S):

01-MED-12-1119;
01-MED-12-1120

BARGAINING UNITS:

3 full-time Sergeants and 12 full-time Police
Officers

FACT FINDING PROCEEDING:

April 29, 2002; Monroe, Ohio

FACT FINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

FOR THE EMPLOYEE ASSOCIATION

LEGAL REPRESENTATIVE

LEGAL REPRESENTATIVE

Donald L. Crain, Attorney
Joseph Scholler, Attorney

Frank Arnold, Staff Representative

Donald W. Whitman, City Manager
Ernest W. Howard, Police Chief
E. David Collins, Treasurer

Brad Pelfrey, President
Michael Staples, Vice President
Frank Robinson, Committee Member

ADMINISTRATION

By correspondence dated February 11, 2002, from the Ohio State Employment Relations Board, the Undersigned was notified of his designation to serve as Fact Finder to hear arguments and issue recommendations relevant 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 an initial Collective Bargaining Agreement, proved unsuccessful. On April 29, 2002, a Fact Finding proceeding was avoided based on the Parties' efforts to engage in mediation offered by the Fact Finder wherein through the course thereof, the Parties were able to reach agreement on the unresolved issues. The Sergeant's Bargaining Unit, and the City, approved the Agreement, but the Patrol Officers rejected the tentative Agreement. By joint stipulation relative to both Bargaining Units, the Parties indicate as follows:

On April 29, 2002, the Parties scheduled a Fact Finding hearing before the Honorable David W. Stanton to start at 10:00 a.m. Through mediation, the Parties reached an Agreement on all issues (see attached A). During the mediation session, all issues were thoroughly discussed with the Arbitrator by each Party.

Subsequently, the Sergeants and City approved the Agreement, and language as set forth in attachment B.

The Patrol Officers rejected the tentative Agreement.

Accordingly, the parties hereby agree that the Fact Finder may issue a Report and Recommendation for the Patrol Officer unit based on the submissions of the Parties on April 29, 2002 and the briefs and exhibits submitted therewith.

For FOP/OLC: /s/ Frank Arnold per DLC tele-authorization 5/15/02
For City of Monroe: /s/ Donald L. Crain

Accordingly, per the aforementioned "Stipulation," this Report and Recommendation sets forth and addresses those issues that remained at impasse following the Patrol Officers rejection of the Tentative Agreement.

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by

these Parties; 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 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 determination of issues submitted to mutually agreed upon dispute settlement procedures in public service and private employment.

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

As indicated by the Parties, this represents the initial Collective Bargaining Agreement for the Sergeants and Patrol Officers Bargaining Units. As set forth in the “stipulation” by the Parties, which is recognized under the statutory criteria previously identified, the Sergeants and the City have approved the Agreement tentatively agreed to on April 29. As such, consideration of any issues relative to the Sergeant’s Bargaining Unit will not be subject to this Report. Those issues that remain at impasse concerning the Patrol Officer’s Bargaining Unit are the subject matter for consideration herein.

This is the initial Collective Bargaining Agreement for the Patrol Officer’s Unit and the City of Monroe, hereinafter referred to as the “Employer.” The Fraternal Order of Police, Ohio

Labor Council, Inc., hereinafter referred to as the "Union" is the sole and exclusive Bargaining agent for all Employees within the Patrol Officer classification. As set forth in the "Recognition Clause" of what would serve to be the Collective Bargaining Agreement by and between these Parties, Article II thereof, titled, "Recognition, Meetings, Bulletin Board," in Section 2.1, titled, "Recognition," states as follows:

The Employer recognizes the Union as the sole and exclusive Representative for all full-time Employees in the Bargaining Unit as set forth in the certification issued by the Ohio State Employment Relations Board as follows:

Included: all full-time Patrol Officers.

Excluded: Chief, all other Employees.

The members of this Bargaining Unit are employed by the Monroe Police Department and are responsible for local law enforcement duties of the City. Those duties include, but are not limited to, patrolling the City, investigation of crimes, investigation of auto 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.

Based on this evidentiary record, these Parties have met to engage in the Collective Bargaining process on January 9, 25, and 31, 2002; February 6 and 15, 2002; and March 1, 5, and 19, 2002. During the course of those negotiation sessions, the Parties have agreement on the following Articles set forth herein as follows:

- **Article I - Agreement and Purpose**
- **Article II - Recognition, Meetings, Bulletin Board**
- **Article III - Associates/Union Business**
- **Article IV - Management Rights**
- **Article V - No Strikes/No Lockout**
- **Article VI - Probationary Period**
- **Article VIII - No discrimination**
- **Article IX - Discipline**
- **Article X - Personnel Files**
- **Article XI - Grievance Procedure**
- **Article XII - Arbitration**
- **Article XIII - Miscellaneous**
- **Article XVI - Clothing and Equipment Allowance**

- **Article XVII - Holidays**
- **Article XIX - Sick Leave**
- **Article XX - Injury Leave**
- **Article XXI - Bereavement Leave, Military Leave, Jury Leave and Other Leave**
- **Article XXIII - Safety and Health**
- **Article XXV - Canine Officer (same Article number as Residency)**
- **Article XXV - Residency (same Article number as Canine Officer)**
- **Article XXVI - Drug Free Workplace**
- **Article XXVII - Modification, Separability and Conflict of Laws**
- **Article XXVIII - Outside Employment**
- **Article XXIX - Seniority**
- **Article XXX - Waiver In Case of Emergency**
- **Article XXXIV - Promotions**
- **“Appendix A” - (uniforms, etc.)**

As previously indicated, there are 12 full-time Patrol Officers in the Bargaining Unit. The City of Monroe itself is a municipal corporation operating under a City Charter per the home rule provisions of the Ohio Constitution, Article XVIII, Section 7. The City of Monroe has obtained “City” status resulting from the last census and is projected to be the fastest growing City by the Ohio-Kentucky-Indiana Regional Council of Governments for the next 20 years. Its projected growth is 193% by 2020 in comparison to the 1990 population. This City is located approximately halfway between the major cities of Cincinnati and Dayton off Interstate-75 connecting both metro areas. The City of Monroe is under the direction of a City Manager and Council form of Government providing local government and services to its residents. Currently, the City’s industrial tax base generates over 2 million in annual revenue from a 1% earnings tax. The total percentage of land area in the City of Monroe is significantly weighted toward light and heavy commercial and industrial acreage.

The Parties are in agreement that the Police Department has grown as has the Community. The area of the department services has grown from 7.5 square miles to 22 square miles and until 1995, the Chief of Police was the only full-time officer. The rest of the Department included part-time officers. Over the past six(6) years a total of 17 full-time sworn Police Officers have been added to this Department.

Capital expenditures, wages, and benefits have increased significantly from 1996 until

2002 and its expenditures for operations and maintenance of the Police Department have increased from \$802,752 in 1996 to 1,051,243.91 in 2000. At the time the 2002 budget was created, the expected Police Department expenditures were \$1,053,000 for the year 2001 and \$1,135,700 in 2002. Approximately 78% of the projected 2002 expenditures were allocated to wages and benefits. And, this commitment includes yearly contributions by the City to each Officer's pension in the amount of 19% of salary. The Department's communication system has been upgraded to an 800 MHZ radio system and cruisers are outfitted with mobile data terminals enabling officers to access the State of Ohio Law Enforcement Automated Data System, or the LEADS System.

The City's primary sources for revenue are income/earnings taxes, property and inventory taxes, a police levy, inter-governmental/local government funds, interest income, charges for services and special assessments. The single largest source of revenue for the City is the income taxes collected from the 1% municipal income tax levied by the City on income earned by its residents or businesses, as well as, Employees working within the City. The growth in the collection of this tax is directly due to the increase in the businesses relocating to or expanding services within the City. Such revenue has generally increased every year since 1996 with the exception of a small decrease in 1999 to 2000. The real estate and intangible taxes generate revenue as well wherein the City receives approximately 16% of the real estate taxes collected with a large portion of that going to the school district. Approximately 66% in year 2000 went to the school district and that amount has grown substantially in year 2001, based on the passage of a 28 year bond levy to build a new high school. A Monroe homeowner will pay approximately \$395.00 additional per year based on the value of a \$150,000 home. The City's 1% earnings tax in the near future is not an option in the event the City's expenditures exceed revenues. The Police levy which was passed in 1989 generates income of approximately \$375,000 each year which is constant.

Additionally, based on studies the City has conducted, it is projecting an average increase of 13-16% for 2002 for the cost of health insurance for Employees. Such depends on the type of health plan and the location of the Employer. Such is expected to continue until a fundamental change in the way health care is delivered.

III. THE IMPACT OF THE TENTATIVE AGREEMENT

As the evidentiary record demonstrates, these Parties reached tentative Agreement on the unresolved issues, during the course of mediation engaged in by the undersigned on April 29, 2002. As previously indicated, the Sergeants and the City approved that Agreement. The Patrol Officers rejected the Agreement reached. Based on the tentative Agreement reached, the undersigned cannot, and will not, ignore the fact that these Parties have demonstrated or manifested the intent to be bound by the tentative Agreement reached during the April 29, 2002 mediation session. This factor, deemed in accordance with the statutory criteria as one that is “normally or traditionally” relied upon in this process, provides the cornerstone by which Collective Bargaining exists, not only under this statutory process, but generally speaking. It is incumbent upon each Party to any dispute, to place at the Bargaining table those individuals that will seek the best available “deal” and to be assured that their constituents will support what it brings back for final approval. These individuals are charged with the responsibility, based on the authority bestowed upon them by their selection, to “close the deal;” and, then most importantly, support that which they have represented as being worthy of labeling - a tentative Agreement.

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

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

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 and/or economic status. Whatever similarities that may exist must be taken into consideration by the Fact Finder based on the above-noted statutory criteria.

It is, and has been, the position of this Fact Finder that the Party proposing any deviation or deletion of the *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 fact, the Party proposing any deviation from the tentative Agreement reached by and between the Parties during the course of the negotiation process, will have the burden of proof and persuasion to compel a recommendation other than that previously agreed to by the Parties.

Based on the aforementioned considerations, the following issues remain at impasse between these Parties:

- **Article VIII - Dues**
- **Article XIV - Wages**
- **Article XV - Pay Plan Administration**
- **Article XVII - Shift Differential**
- **Article XXI - Vacation**
- **Article XXII - Insurance**
- **Duration**

IV. ARTICLE VIII - DUES

FOP POSITION

The FOP contends that the current Employees all have signed cards to join the Labor Council and as such, the members feel very strongly about having a Fair Share Fee section in the Article. It cites as an internal comparable, the fact that the City has agreed to the Fair Share Fee

Article for the Fire Department and as such, this Unit feels compelled to seek that as well. Based thereon, the Union requests that its Fair Share Fee proposal be recommended.

CITY POSITION

The City objects to a “Contract of adhesion” based on the inclusion of the Fair Share Fee concept proposed by the Union. It believes that such is inappropriate for individuals to be required to join and pay a percentage of a Union due without their specific Agreement. It urges that the Employee must be convinced by moral persuasion that the benefits received by the Union Contract is something he chooses to pay for. Such is a matter of individual choice and should not be imposed on any individual by a political subdivision.

Moreover, the City is philosophically opposed to contractually requiring individuals to make this choice. Such is indeed, as previously stated, a matter of personal choice and judgment and something not to be imposed by Contract. Inasmuch as all current Bargaining Unit Members are members of the Union, a forced fair share/agency Agreement is totally unnecessary. As such, it opposes this proposal.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties include in its initial Collective Bargaining Agreement for the Police Officer’s Unit, 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. The United States Supreme Court has philosophically sanctioned and the State of Ohio has permitted the inclusion Fair Share Fee provisions in Collective Bargaining Agreements. 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 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.

Moreover, the City and the Firefighter's Bargaining Unit have agreed to the inclusion of a Fair Share Fee provision which gives further support for its inclusion in this initial Collective Bargaining Agreement. Based on this Fact Finder's experiences with other Contracts throughout the State involving Safety Forces, most, in fact 85% of Police Contracts, have similar language which is statutorily permitted under 4117. Based on this consideration, that which was agreed to in the tentative Agreement, the internal comparable and the sanctioning of this practice by the U.S. and Ohio State Supreme Courts, the inclusion of the Union's proposal relative to this Article is recommended.

V. ARTICLE XIV - WAGES

FOP POSITION

The FOP proposes a wage package that represents, in year one, for Patrol Officer, an increase from \$31,200 to \$43,680. It contends a Police Officer's salary in a small City within this area of the State ranges from \$36,790 to \$45,262. Its proposal includes a five-step scale providing a new officer coming into the Department, taking five years to top out on the wage scale. It contends that such time frame is also average since most are 3 to 6 years based on comparable jurisdictions. It notes that the Fire Department has a five-step wage scale ranging from \$27,800 to \$40,748 depending on years of service. It also urges that current employees be placed on the scale depending on their years of service within the City. It also proposes an educational incentive that Employees with Associate's degree receive a salary increase of 2% above the wage scale and Employees with a Bachelor or Master's Degree receive 4% above that scale. The Fire Department has been provided an incentive of \$1,000 per year for having paramedic certification. The law enforcement profession is becoming more complex and employees must be given some incentive to obtain those skills necessary for the job.

CITY POSITION

The City emphasizes that the City of Monroe is a relatively new City obtaining that status

in 1995 and has a conservative 1% earnings tax. It is an emerging City with a number of growth problems to contend with and choices to make between competing interests for available revenue dollars. Its proposals places these Police Officers near the average wage of officers in cities of similar size as set forth in Exhibit - 18. Exhibit - 7 demonstrates that before negotiations, the starting salary of Officers was the 27th lowest of the 29 cities included in the Exhibit. The City's proposal increases starting pay by approximately 18% from \$25,544 to \$30,160. That increase will move the City Police Officers to 19th on the starting salary Exhibit and within just hundreds of dollars of Fairlawn at \$30,329, Wauseon at \$30, 409, Pickerington at \$30,513 and Bellbrook which represents the middle of the starting salary wage comparison. The top salary for officers will be increased by approximately 13% to \$41,032 and move the top officer pay to 18th on the wage scale comparison chart. Such is less than \$300 behind Eaton at \$41,371 and Huron at \$41,398 as set forth in Exhibit - 8. Its Exhibit - 17 demonstrates that the actual wage increase per officer and the percentage increase over their current hourly rate range from a low of 7% or \$2,288 to a high of \$8,132 or 22% with an average overall increase of 13% or \$4,207. Moreover, the Employer has reduced the number of steps in the Police Officer's step schedule from 10 to 5 and only 2 steps for the Sergeants.

The Union's wage proposal is both unaffordable and its Pay Plan Administration Article, that would slot in all Employees at their current step and ignores the City's compression of the schedule, is also unaffordable and provides a windfall for the Employees.

Comparison to the Firefighters relative thereto is simply inappropriate since many were paid an average of \$9 to \$10 per hour which needed quick and dramatic addressing. Nor does the Union's proposal relative to an educational incentive have merit. Paramedic certification is a condition of employment for the Firefighter and the job requirements are different in that regard.

RECOMMENDATION AND RATIONALE

Of all the Articles that were addressed during the course of the mediation that occurred on April 29, 2002, the one that stood out as most significant to the Fact Finder, relative to the cost implications to this City, was that of Wages. It is clear to the Fact Finder that the City's proposal would satisfy the Union's request and desire to be paid near the wages of the Trenton Police Department which it referenced. Additionally, that agreed to by these Parties regarding Insurance

keeps approximately \$250 to \$700 in the Officer's pocket since they are not required to contribute toward premiums. It is rare in this State when employees are not required to share premium costs. The comparables would certainly support a recommendation to begin such a practice especially in light of the state of insurance overall.

The City's Wage proposal will increase each officer by 13-18% placing it very close in the wages earned to that of Trenton. It would place at the top end of the salary scale, Monroe's wages at 6.5% lower than Trenton's and only 3.1% lower than Trenton's at the starting rate.

Moreover, the projected total revenue for 2002 of 3.6 million dollars for the General Fund is down approximately 10% from 4 million dollars as previously recognized. The carry over balance therefore decreased from 1.6 million for 2001 to a projected budget balance carry over of 1.4 million for 2002. This reduced reserve of almost \$200,000 matches the reduction in the reserve of \$250,000 from year 2000. Such suggests to the Fact Finder that the City is spending money faster than it is being generated.

The Wage scale, as attached to the tentative Agreement, is indeed compelling given the amount of increase that each Officer will realize over the course of the duration of this initial Collective Bargaining Agreement - an average of 13-18% initially, plus 4% for years two(2) and three(3), respectively. The Employee's step increases will occur on June 1, 2003 and June 1, 2004 subject to the conditions of the new Agreement and attachment C of the tentative Agreement. The comparables provided simply would not support such an initial increase. Such could not be recommended but for its existence in the Tentative Agreement.

Moreover, it is recommended that the Parties include in the Wages Article, that part of the Union's proposal titled Pay Plan Administration that is set forth in Attachment D in the tentative Agreement.

The issue of Special Duty will be referred to in the Parties' Labor Management Committee for resolution as agreed to during the course of the mediation session.

The issue regarding Shift Differential, pertains to Sergeants who are not on rotating shifts, but are assigned to second or third shift, recognizing they will be entitled to an hourly shift bonus of .40 cents per hour in addition to their regular hourly rate. Such is inapplicable to the Police Officers as agreed to by and between the Parties and therefore is not recommended for inclusion

herein.

Based thereon, the aforementioned recommendation is set forth based on, of particular importance, the significant and overwhelming Wage increase proposed by the Employer ranging from 13-18% overall and going as high as 21% for some employees and the retention of 100% Employer-paid Insurance premiums. It is based on that consideration that other matters sought by the Union relative to other economic enhancements are not recommended for inclusion in the initial Collective Bargaining Agreement. In addition thereto, the significance of the tentative Agreement reached during the course of the April 29, 2002 mediation session carries significant weight based on consideration of those aspects of a Collective Bargaining relationship referenced in the statutory criteria, namely that which is “normally or traditionally taken into consideration in the determination of issues submitted to ...”such a process. It is clear that in a Collective Bargaining relationship, Parties bargain. They negotiate unresolved issues. They exchange promises. They articulate their intent to be bound as set forth in those promises that they exchange and often times they reach agreement relative to those unresolved issues. Such, under the statutory criteria, must be given compelling weight given this cornerstone of a Collective Bargaining relationship, i.e., the ability of the Parties to set across the table and exchange ideas, propose language, and reach agreement on unresolved issues, to manifest intent to be bound for the duration of a Collective Bargaining Agreement. Based thereon, those items that had been addressed in this particular portion of this Report are recommended highly for consideration by and between these Parties.

VI. ARTICLE XV - PAY PLAN ADMINISTRATION

As previously addressed in the Wages Article of this Report and Recommendations, the City agreed to include in the Wage Article that part of the Union’s proposal titled, “Pay Plan Administration,” as indicated in “Attachment D” to the tentative Agreement. As such, it is recommended for inclusion herein.

VII. ARTICLE XVI - HOURS OF WORK AND OVERTIME

FOP POSITION

The FOP emphasizes that Employees are currently paid overtime for any hours worked in excess of 40 in a work week, that an Employee is in “paid” status. The City seeks to change that

practice to only pay overtime after an Employee has worked more than 171 hours in a 28 day period consistent with the Fair Labor Standards Act. The City does not wish to count holidays, vacation, or sick time as hours worked. The Union emphasizes that it agreed to the City to language in the Sick Leave Article to address concerns over sick leave abuse. It indicated that it is willing to have overtime apply to all hours worked in excess of 80 hours in a 14 day work period and to exclude sick leave hours from counting as hours worked towards for Employees receiving overtime compensation.

The Union also addresses the concept of an Employee being “frozen over” on a shift for which the Employee should receive time and one-half for the hours he is frozen over.

It also seeks to include Section 7 which would require that extra duty, special duty assignments be offered to Bargaining Unit members first.

CITY POSITION

The City emphasizes the Parties discussed both Wages and Overtime as a “pair.” Wages were increased by 13-18% and to provide a lucrative overtime package would indeed be unaffordable. It must use Overtime savings to finance the substantial Wage increase it has offered. In this regard, it proposes in the Overtime Article that which is consistent with the Fair Labor Standards Act as set forth in Exhibit - 16. Such an Overtime payment method would prevent the City from incurring Overtime expenses when the officers are not working. Vacation time will not be counted as time worked and such will also prevent the City from incurring Overtime expenses when an officer is occasionally required to work beyond the hours of his regularly scheduled shift. It notes that the Department of Labor recognized that Police Officer’s duties were unique and required special treatment and therefore allowed public employers to pay Police Officers Overtime after they work for 171 hours in a 28 day work period rather than after 40 hours in a five-day work week. This City cannot fund an Overtime package that is more generous than the package that the Department of Labor has already determined to be fair.

The Union’s proposal relative to special duty or extra duty assignments is unnecessary because there are no part-time or auxiliary units. Even if there were, the Employer shall maintain the right to determine the best person or group for a particular assignment.

With respect to the special status for Employees being frozen over, which it contends,

rarely occurs when an Officer is sick and a replacement cannot be found. Such a problem arises only once or twice per month. Therefore, it does not merit special consideration herein. Based thereon, the City requests that the Fact Finder recommend its Hours of Work and Overtime proposal.

RECOMMENDATION AND RATIONALE

Based on the data provided, particularly that agreed to by and between the Parties, the Employer's proposal shall be recommended as set forth in "Attachment E" in the tentative Agreement with the addition of paragraph 15.7. As set forth therein, the definition of overtime exists, the distribution of overtime is addressed, no pyramiding language exists, call-in pay is recognized and the basis for computing overtime for all hours worked in excess of 85.5 hours per a 14 day work period, which is half of that recognized under the FLSA, is present and reasonable in light of the evidence presented. Paragraph B of Section 15.5 states, "effective June 1, 2004, the 85.5 hours worked, FLSA threshold will be reduced to 84 hours for purposes of calculating overtime." With the addition of that reduction, Employees become eligible for overtime status sooner. The "freeze over" issue raised by the Union, is also addressed. Such provides that Employees would receive overtime for consecutive hours worked beyond 12 hours. The "exception" contained therein indicates that the provision not apply to regularly scheduled double shifts, but recognizes the concerns of the Union.

It is clear that the Parties, during the course of the mediation that occurred, engaged in painstaking "give-and-take" relative to this Article and the concerns raised were indeed addressed. The 171 hour threshold for overtime calculation was reduced to 85.5 or half of that under the FLSA 28 day window and that was reduced to 14 days. Effective June 1, 2004, the hours would be reduced to 84 hours for purposes of calculating overtime to further address the ability of Employees to obtain overtime in fewer hours in a 14 day period. It is clear, based thereon, that indeed this language is fair and reasonable and provides a working basis for the Parties to make incremental changes when negotiation for the successor Agreement arises.

Based thereon, it is that Hours of Work and Overtime language as set forth in Paragraph (B) of the tentative Agreement reached on April 29, 2002, and "Attachment E" in relation thereto that is recommended herein for consideration and inclusion in the initial Collective Bargaining

Agreement.

VIII. ARTICLE XXI - VACATION

FOP POSITION

The FOP proposes a scale that the City has approved for the Fire Department for the 40 hour per week fire employees. All Police Officers work an eight hour day, 40 hour work week, and as such, the appropriate Vacation schedule should be based thereon. It also proposes language to carry over accrued Vacation up to four(4) years as accrued yearly. It believes that such is a benefit to the City since employees who are off on Vacation are covered by Employees working Overtime. Such would give Employees an option to carry over Vacation and as the City grows, and more Officers are hired, there might not be such a need to fill Vacation vacancies with Overtime.

CITY POSITION

The City proposes the same Vacation for Police Officers that it provides for all other City Employees. With respect to the Union's request that its Vacation Article be similar to that of the Fire Department for the 40-hour Firefighters, it emphasizes there are no 40-hour firefighters and therefore no Firefighters enjoy that benefit. The City did not focus its attention on that Vacation allowance when negotiating that Contract since there are no 40-hour Firefighters. Police Officers will benefit from the Vacation clause and they should not receive a Vacation benefit that is better than that provided to other City Employees just because they are members of the Union. Its proposal relative to four(4) weeks of Vacation carry over would only exacerbate the problem of freeze overs, if Vacation was allowed to accrue and to be used in large blocks. It proposes to continue to offer all Employees equal Vacation benefits and therefore the Police Department should not receive more than other City Employees.

RECOMMENDATION AND RATIONALE

Again, reference to the attachments to the tentative Agreement of April 29, 2002 are compelling, wherein as identified as Article XVIII as opposed to Article XXI, the amount of Vacation is set forth and seems to be consistent with other jurisdictions providing similar services. The scheduling of Vacation involves the managerial right to determine such by the Chief or the Captain based on the needs of the department and while considering seniority.

These Employees enjoy the ability to take vacation in four-hour increments with the Chief's approval and they receive pay for accumulated Vacation upon separation. Prior service considerations are set forth therein as well and as an additional benefit, Section 18.6 would represent new language providing two(2) personal days per year in addition to one's Vacation, which can be used with the approval of the Chief of Police with 24 hours notice. This, in addition to the significant Wage increases previously recommended, the inclusion of the Fair Share Fee language as proposed by the Union and retention of the 100% Employer-paid Insurance premiums, certainly render this benefit as recommended herein, adequate and consistent with comparable jurisdictions.

As such, it is recommended that the Parties adopt that contained in the City's proposal relative to Vacation schedule with the addition of paragraph 18.6 relating to personal days.

IX. ARTICLE XXVII - INSURANCE

FOP POSITION

The FOP proposes that the City continue 100% of the cost of the premiums for Insurance for Employees, as it agreed to in the Firefighter's Contract.

CITY POSITION

The City concedes that it has paid 100% of the Police Department's Insurance premiums for many years and can no longer afford to do so. It expects to have increases in double digits for years to come and average Employees in Southwest, Ohio, paid 10-12% of the Health Insurance premiums per month. Based on these statistics, this group's share would be \$22.35 to \$59.67 per month or \$250-\$700 per year. Based on the fact that this is three-year Agreement, the City believes that it must begin to pass this cost on to the Employees beginning with a small contribution. The City proposes a 10% Health Insurance premium share based on the current and future difficulty in funding 100% premium payments. The City of Trenton's Officers pay 10% and this is the Unit that is often compared to the City of Monroe.

With respect to the various coverage aspects of the insurance plan, its language provides the same coverages for all Employees and the only change would be the Employee's premium share amount. Based thereon, it requests that its proposal be recommended.

RECOMMENDATION AND RATIONALE

It is clear that the City has historically paid for health insurance premiums at 100% with no Employee contribution. The internal comparable of the Fire Department also recognizes that the City picks up 100% of the premium cost. While indeed the City is correct that most jurisdictions have some Employee cost sharing for premiums for health insurance benefits, the City of Monroe is indeed unique in that regard. However, the historical practice of this City to pick up 100% of that cost is compelling with reliance on the internal comparable of the Fire Department which also enjoys 100% Employer paid health insurance. In this regard, it is recommended that the Parties maintain the *status quo* relative to the Employer paying 100% contribution for health insurance premiums and that would be the only recommendation relative to this Article. All other language would remain *status quo* relative to the various aspects being sought by the Union for guarantees of coverage, etc.

X. OFFICER IN CHARGE PAY

NEW HIRES/HIRE-INS

As set forth and discussed by the Parties during the course of its meetings with the Fact Finder during the course of mediation, the Officer in Charge pay, as seemingly agreed to by and between the Parties, would be \$1.00 per hour to Patrol Officers for each hour they are required to perform Sergeant duties, if the Officer performs such duties for at least eight(8) hours. Such language is set forth in the Exhibit - 12 of the Employer, Section E, an increase above Trenton which recognizes a .45 cents per hour Officer in Charge increase. The logic afforded the City's proposal is consistent with other Police Contracts that pay an hourly stipend for temporary assumption of those types of duties, but not to pay the starting Sergeant's rate, as urged by the Union, for the rare and/or sporadic times this may occur.

With respect to the issue of "hire-ins," or new hires, it is recommended that the Parties enter into a side letter to address the concerns and the placement of those Employees on the Step schedule under the Collective Bargaining Agreement.

XI. DURATION

Consistent with the Parties' agreement, not only as gleaned from the tentative Agreement of April 29, 2002, but in their discussions at the table and in their supporting documentation, the

Collective Bargaining Agreement would become effective on June 1, 2002, and run for three (3) successive years and expire on May 31, 2005. The Wage schedules attached as "A" and "B" to the tentative Agreement would become effective June 1, 2002, and the Wage rates as shown in Schedule "B" thereof, are increased to reflect the 4% increase each year beginning on June 1, 2003 and June 1, 2004, respectively. The Employee Step increases would become effective June 1, 2003 and June 1, 2004, respectively, as set forth in Attachment "C." Therefore, these time frames are therefore recommended.

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

Consistent with the Paragraph (E) of the tentative Agreement executed by both Parties on April 29, 2002 which states, "all remaining proposals that are inconsistent with the above are dropped." The Fact Finder is in total agreement that those issues that are not addressed herein or were not the subject of discussion during the course of the mediation that occurred on April 29, 2002 and that contained in the Parties' Pre-hearing submissions and supporting documentation, are to be considered, and are recommended to be, withdrawn. If the *status quo* exists then the *status quo* is hereby recommended. If not, then such will not be recommended for inclusion herein.

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 tentatively agreed to following painstaking efforts at the Bargaining table. It is hopeful that the Parties can adopt these recommendations so that the initial 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 data provided; the manifested intent of each Party as reflected in the tentative Agreement reached between them; the stipulations of the Parties; the positions indicated to the Fact Finder during the course of the mediation that occurred on April 29, 2002, and informally during the administrative aspects of

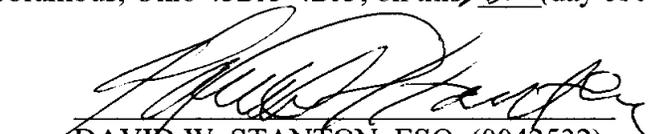
scheduling and conducting this proceeding; and, were based on the mutual interests and concerns of each Party to this initial Agreement.


DAVID W. STANTON, ESQ
Fact Finder

Dated: July, 25, 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: Donald L. Crain, Esq. Frost, Brown, Todd, LLC, 300 North Main Street, Suite 200, Middletown, Ohio 45042; Frank Arnold, Staff Representative, FOP/OLC, Inc., 222 East Town Street, Columbus, Ohio 43215; and, to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 15th day of July, 2002.


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

David W. Stanton
ATTORNEY & COUNSELOR AT LAW
Arbitrator - Mediator

Cincinnati Office
4820 Glenway Avenue
2nd Floor
Cincinnati, Ohio 45238
513-941-9016
Fax 502-292-0616

E-MAIL DWSTANTONESQ@CS.COM

Louisville Office
7321 New LaGrange Road
Suite 106
Louisville, Kentucky 40222
502-425-8148
Fax 502-292-0616

July 25, 2002

Donald L. Crain, Esq.
Frost Brown Todd LLC
300 North Main Street, Suite 200
Middletown, OH 45042-1919

Frank L. Arnold, Staff Rep.
FOP/Ohio Labor Council
222 East Town Street
Columbus, OH 43215

2002 JUL 26 A 11:32

STATE EMPLOYMENT
RELATIONS BOARD

Dale A. Zimmer, Administrator
Bureau Of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-4213

SERB CASE NOS. 01-MED-12-1119 & 1120
CITY OF MONROE -AND- FOP/OHIO LABOR COUNCIL
FACT FINDING - POLICE OFFICERS & SERGEANTS

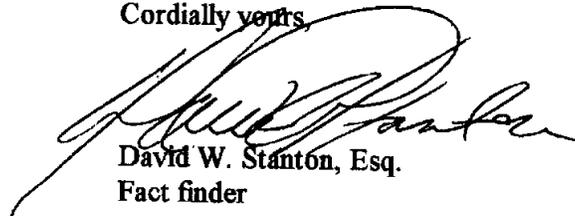
Gentlemen,

Enclosed herewith please find the Fact finder's Report with supporting Rationale; and, the Statement for Professional Services. Please forward this Statement to your respective Client/Member/State Agency to ensure payment thereof within the time frame noted thereon.

Please note that the issuance of this Report was necessitated by the Police Officers rejection of the Tentative Agreement reached during mediation with the undersigned on April 29, 2002.

Thanking you in advance for your courtesy, cooperation and for my selection as Fact finder, I remain.....

Cordially yours,



David W. Stanton, Esq.
Fact finder

DWS:sjw.

Encs.

cc: Catherine Brockman (w/encs.)