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

STATE EMPLOYMENT  
RELATIONS BOARD

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**IN THE MATTER OF FACT FINDING :**

**BETWEEN :**

**BROWN COUNTY SHERIFF,  
EMPLOYER :**

**-AND- :**

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

**REPORT OF THE FACT FINDER**

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**SERB CASE NUMBER:**

02-MED-01-0031

**BARGAINING UNIT:**

Road Deputies, Corrections Officers,  
Dispatchers, Cooks, Court Security and  
Corporals for the various above  
positions/classifications.

**FACT FINDING PROCEEDING:**

May 23, 2002; Georgetown, Ohio

**FACT FINDER:**

David W. Stanton, Esq.

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**APPEARANCES**

**FOR THE EMPLOYER**

**FOR THE EMPLOYEE ASSOCIATION**

**LEGAL REPRESENTATIVE**

**LEGAL REPRESENTATIVE**

Robert W. Cross, Consultant

John Looman, Operation Coordinator

John T. Dunn, Chief Deputy

Dan McDonald, Staff Representative  
Sheri Griffith, Deputy Sheriff  
Rick Eagan, Deputy Sheriff

## ADMINISTRATION

By correspondence dated April 2, 2002, 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 the Wage Re-opener issue that remained at impasse between these Parties. The impasse resulted after attempts to negotiate the Wage Re-opener by and between the Parties, proved unsuccessful. Prior to the commencement of the Fact Finder proceeding on May 23, 2002, the undersigned offered his services to engage in mediation in an effort to hopefully reach resolution of the Wage Re-opener that remained at impasse. The Parties declined to engage in mediation and the Fact Finding proceeding commenced forthright. The contractual provision regarding this Wage Re-opener is set forth in Article XXX, titled "Termination," in paragraph (D) thereof which states as follows:

D. The Parties will re-open negotiations on April 1, 2002 on Article XXIV - Wages only.

Following the explanation of certain procedural considerations relative to the Fact Finding process and 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 the sole issue for consideration herein, relative to the Wage Re-opener that remained at impasse, is the subject matter for the issuance of this Report hereunder.

### I. STATUTORY CRITERIA

The following findings and recommendation(s) are hereby offered for consideration by these Parties; were arrived at based on their mutual interests and concerns; and, is 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 effect of the adjustment on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and
6. Such other factors not confined to those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in 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 Brown County Sheriff's Office, hereinafter referred to as the "Employer" has, in Article XXX, titled "Termination," the "re-opener provision" which references the Union's contractual right to serve notice upon the employer to re-open the Wages Article for contract year 2002 which states as follows:

**ARTICLE XXX - TERMINATION**

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D. The Parties will re-open negotiations on April 1, 2002 on Article XXIV - Wages only.

Both Parties agree, as set forth in the evidentiary record, that this Bargaining Unit consists of 46 members as broken down per the "Classification Seniority List," relative to the number of Employees within those classifications as follows:

1. Road Corporal;

2. Road Deputy;
3. Corporal, Corrections;
4. Corrections Officer;
5. Corporal, Court Services,
6. Court Services;
7. C. O. Dispatcher; and,
8. Cooks

As is obvious, based on the type of Unit represented herein, the Employees provide emergency and safety services for the Brown County Sheriff's Office and the Employees therein are considered under the statutory consideration as "strike-prohibited Employees" under 4117.14(d). The various duties associated with the classifications herein are those typical and peculiar to the types of services provided within a Sheriff's office that also addresses Corrections facilities, etc.

According to the data provided, Brown County is located along the banks of Ohio River between the City of Cincinnati and the bedroom County of Clermont and that of Adams. It is clear based on the evidence as presented, Adams County which has been referenced herein as a comparable jurisdiction, is and has been subject to characterization relative to the type of economy it has had and is currently experiencing, that can best be characterized as "stagnant." The economic profile of Brown County indicates that between the census years of 1990 and that of 2000 Adams County grew by 7.7%, Clermont by 18.6%, Brown County by 20.9% and the State of Ohio as a whole grew by 4.7%. As stated by the Union, Brown County is growing at the highest rate along the Ohio River indicating that the urban sprawl, east out of Cincinnati is reaching into that County bringing additional consumers and consequently tax payers. According to the Union, the sales tax revenue increased by 9.1% and while Adams County raised its optional take from 1% to 1.5%, increased its sales tax revenue by 46.7%. Clermont County increased its revenues by 4.27% and the sales tax revenues in this County, as with others, generally comprise approximately 50% of the General Revenue fund resources.

The evidence also establishes that the 2000 population was approximately 42,000 people in a land area comprising 492 square miles. The population represents an approximate 7,000 increase over that realized in census year, 1990. It is interesting to note that the median age is 35.4 years within this County which suggests to the Fact Finder that a younger population is moving into the area for purposes of seeking employment and raising families.

Employer Exhibit - 3 represents the “Annual Appropriation Resolution” for Brown County, Ohio, for year ending December 31, 2002. As set forth therein, is the appropriation of the total County General Fund of 5.4 million dollars of which 1.9 million dollars is delegated for the Sheriff’s Department. Moreover, it is clear from this evidentiary record that the number of Employees necessary to operate this Sheriff’s office has increased steadily since 1997. It is undisputed that the County is recognizing steady growth and that the number of Employees relative to those necessary to operate the Sheriff’s Department has increased from 40 in 1999 to 56 in 2002, with 46 members currently within the Bargaining Unit. The Employer pays 85% of the Hospitalization Insurance and the Employees receive 15 Sick Leave days, 11 Holidays, and at least two(2) weeks of Vacation. Employees whose Job duties require the use of vehicles are furnished automobiles for transportation. Uniforms are also provided and replaced by the Sheriff’s Office.

For a County that was in kept in poverty for some time based on its “affiliation” with the Appalachian Region of the State, such could possibly now be characterized as a County in transition, one overcoming that characterization based on the increased growth in relation to surrounding Counties and its overall appeal to younger families wishing to call Brown County home.

Under the Statute, the Fact Finder is required to considered comparable Employee units with regard to their overall makeup and services provided to the members of their respective community. Both Parties have relied upon comparables of other municipalities and jurisdictions regarding “comparable work” provided by these Bargaining Unit members. And, as is typically apparent, there is no so-called “on-point comparison” relative to the types of services this Bargaining Unit provides. Nor, in that regard, are there “on-point comparisons” relative to the Wage issue that is before the Fact Finder. What 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 an enhancement of the current language, 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, or current language, or in the case of enhancements relative to economic Contractual entitlements,

something similar to that suggested by the other Party not seeking that enhancement, or that to a lesser degree.

According to this evidentiary record, it is clear that the financial picture is one that has seen incremental and escalating improvement for the past several years which is consistent with the increase in the number of Employees hired by the County. It is clear that if the Employer is not in the financial position to hire more Employees without being able to pay for them then that phenomena will likely not exist. Clearly, if the Employer does not have the funding for the Sheriff's Department operation from the General Fund relative to the hiring of additional Employees then likely that situation will not occur. It is clear, based on this record, that the number of Employees has increased incrementally since 1997 and currently is apparently budgeted for 56 such Employees for this Bargaining Unit.

As is typical, a large percentage of the General Fund Budget is earmarked for operation of the Sheriff's Department. Moreover, the Union would have the Fact Finder recommend an increase that, as it contends, would place these Employees at a more favorable standing relative to the comparable jurisdictions contiguous to and near Brown County while the Employer emphasizes fiscal prudence relative to any cost for administering the Wage enhancement so recommended. Based on these considerations, the Wage Re-opener issue for consideration by the Fact Finder is the subject matter for consideration hereunder.

### **ARTICLE XXX - TERMINATION**

#### **(D) Wage Re-opener**

#### **UNION POSITION**

Summarily stated, the Union proposes to increase Wages across-the-board of \$2.50 per hour effective January 1, 2003 while foregoing any increase for 2002. In doing so, it asks that the Fact Finder recognize and not associate Brown County with the much maligned rural poverty of Adams County. It would have the Fact Finder consider the more prosperous Clermont County for comparison since apparently the extension from the greater Cincinnati area is making its way into the Brown County and contiguous Counties. It is clear that these Employees within the Sheriff's Office are woefully underpaid and an adjustment is necessary to bring these Employees into line with other law enforcement personnel. The Union has relied upon comparable

jurisdictions with what it considers comparable population within the U.S. Government defined "Appalachian Region of Ohio." Based thereon, Brown County trails all but one of those Counties in Deputies wages, i.e., Jackson County that continues to pay 100% of the Employees' Insurance which, if applied to Brown County Employees, would be a \$2,543.28 per year increase in pay. If the Brown County Employees receive 100% payment, Jackson County would place ahead of the Employees in Brown County by \$1,500 a year. Moreover, if the Wage adjustment was recommended as proposed, Brown County by January 2004 assuming moderate increases in comparable Counties of 3.5% each contract year during this time frame, its "starting" Wages would exceed Adams County by less than \$400 annually and would still be behind Highland County, its neighbor to the North, by \$1,300 annually.

It emphasizes that this County is growing at the fastest rate along the Ohio River bringing consumers and taxpayers within its geographical boundaries. Its Sales Tax Revenue increased by 9.1% in what was characterized as a recession year of 2001. Adams County raised its "optional take" from 1% to 1.5% and increased its Sales Tax Revenue by 46.7%, though still lower than the revenue generated in Brown County. Clermont County increased revenues by 4.27%. Sales Tax Revenues in Brown County compromised approximately 50% of the General Revenue Fund sources.

As a 15% contributor to Health Insurance premiums and with premiums increasing an average 18%, the Employees gain a \$624 a year for starting wages based on the Employer's proposal is off-set. Employees with family coverage pay more than \$2,500 a year as their cost of Health Insurance. For most of these Employees, that amounts to more than 10% of their wages. With the rising cost of health insurance premiums, Employees expect to pay a portion of that increased cost, but Wages have to be adjusted to meet those increases as well. This County is no longer part of the Appalachian Region that kept Wages suppressed. It is now part of the greater Cincinnati area which requires rethinking of its place in the market place for attracting and employing law enforcement personnel. The Union insists that its proposal merely allows the County to keep pace with their Appalachian counterparts.

Based thereon, it seeks a wage increase of \$2.50 an hour effective January 1, 2003, whereas it insists that this merely represents \$1.25 hour increase for year 2002 and for year 2003

and allows the Parties to discontinue the practice of a Wage Re-opener each year of the Contract's life.

### COUNTY POSITION

The County proposes what it considers to be a fair and equitable 2.7% across-the-board, cost-of-living Wage increase to all Classifications and Steps to the Wage rate listed in Article XXIV, Paragraph A, with no increase to longevity in Article XXIV, Paragraph B. The Employer would also continue the practice of the "re-opener" for the third year of the Agreement to become effective April 1, 2003 with this Wage proposal effective April 1, 2002.

The Employer has provided much documentation relative to the overall financial picture within this area of the State. It emphasizes that while the population has grown, it must exercise fiscal prudence relative to the types of increases it agrees to relative to the overall percentage of the General Fund Budget that is allocated to the Sheriff Department's operation. Indeed, the County continues to grow and so to is the size of the Sheriff's Department which has an attendant cost consideration associated therewith. More funds were spent than the appropriation allotted for by some \$45,000 which indicates more of an increase in salaries than any other part of the budget. It emphasizes that these Employees' overall contractual benefit package is indeed equitable based on the comparable jurisdictions it has relied upon. The 2.7% increase is both fair and equitable since these Employees receive 85% of the hospital premiums being paid which are increasing on a steady basis. They receive 15 Sick Leave days, 11 Holidays, and 2 plus weeks of Vacation. They have their Uniforms provided, as well as, an automobile for transportation.

As its comparables, ranging in population from 27,330 to 177,977 are the Counties of Adams, Clinton, Clermont, Gallia, Highland, Jackson, Pike, and Scioto. The percent of the General Fund allocated to the operation of the Sheriff's Departments of those jurisdictions ranges from 11.5% in Jackson County to 34.8% in Brown County. There was no information provided for Clermont County in this regard. With respect to percentage or monetary increases, such range from the proposed 2.7% COLA for Contract year 2002 as being proposed for Brown County, to 5% realized in Madison County effective January 1, 2002. With respect to monetary increases, the lowest, Crawford County, received \$.40 per hour to the highest of \$.60 per hour for Highland County, both effective January 1, 2002.

Moreover, it appears that these Road Deputies received a \$.70 per hour increase from year 2000 to 2001, Road Corporals received \$1.10 increase, Correction Officers received \$1.05 increase, Corporal Corrections received \$1.44, C.O. Dispatchers received \$2.05, Cooks received \$.50 and Court Services received \$.70 per hour increases.

Given the data provided by the Employer, it insists that indeed the 2.7% cost-of-living adjustment based on Consumer Price Index considerations, and other financial data driving the overall financial picture on a larger scale basis, its proposal is indeed equitable and fair based on the historical practice and increases these Employees have received.

Moreover, it insists that the historical practice between the Parties relative to its Collective Bargaining Agreement mandates the continuation of the re-opener and so proposes the re-opener effective April 1, 2003 relative to Article XXIV - Wages. Based thereon, it seeks the 2.7 increase as proposed with the re-opener effective April 1, 2003.

#### **RECOMMENDATION AND RATIONALE**

It is clear, based on this evidentiary record, that the characterization of this particular County within the so-called "Appalachian Region" within the State of Ohio, is one that is attempting to shed that characterization based on its overall financial standing within the contiguous counties to that of Brown. Of significant importance herein is the amount of growth the Sheriff's Department has realized over the past five(5) years relative to the overall size of the workforce. Such is commensurate with the overall growth experienced within this County. Obviously, fiscal prudence would not dictate the increase in employees if the population increase did not warrant such. As such, these Employees are expected to perform additional duties, which were best summed up by Chief Deputy, John T. Dunn, who indicated that, "he was asked to attend the Fact Finding proceeding by the Sheriff himself to represent his Employees," as he stated. He indicated that for calendar year 2001, the Employees' work increased and has for the last three(3) years; employees realized a 28% increase in calls involving firearms; felony calls were up 68% since the 1<sup>st</sup> of the year and that the County needed to convene another Grand Jury based on the 300 serious felony cases that existed; the Department added three(3) Investigators in 2001 plus one(1) Captain and that these Employees are required to perform a great deal more than before. They are responsible for approximately 100 reports per month increase this year

than over last. He indicated that Employees are provided extensive training, become more marketable and ultimately leave to receive higher pay in contiguous Counties. He characterized the Employees as being "grossly underpaid" and therefore he, too, emphasizes the importance of these Employees receiving a fair Wage.

The question of fairness and equity is one that is subject to differing positions as is obvious from the Parties' participation in this aspect of the statutory process. What must be considered by the Fact Finder is the impact of any enhancement based on the Employer's ability to finance and administer such a recommendation. To put such into perspective, the recommendations as proposed by the Parties are tantamount to the recommendation offered for consideration herein. Based on the current Wage rates as set forth in the Collective Bargaining Agreement in Article XXIV, the Wage rate as proposed by the Employer effective April 1, would equate to the following for each classification set forth and recognized under the Agreement as follows: Road Deputy - for the initial starting rate, 2.7% would be 29.56 cents per hour increase and for five(5) years or more, 34 cents an hour increase. For Corporal Corrections at each of the two steps, the following would be realized based on the 2.7% increase: Step I would realize a 29.7 cents per hour increase and Step II would receive 30.64 cents per hour increase. A Corporal, Court Services at the two steps respectively, would receive at Step I, 30.91 cents per hour increase and at Step II 31.72 cents per hour increase. For a Road Corporal at \$13.50 per hour, a 2.7% increase would be 36.45 cents per hour increase. For Corrections Officer and C.O. Dispatchers beginning at a minimum rate based on \$9.15 per hour to a maximum rate of \$10.73 per hour, the following 2.7% increase is applicable, 24.7 cents per hour increase to 28.97 cents per hour. For the Cook Classification, beginning at \$9.05 an hour, a 2.7% increase results in 24.43 cents per hour increase and at \$9.75 at the highest step, 26.32 cents per hour increase. For Court Services, the minimum starting rate at \$9.94, a 2.7% increase is 26.83 per hour and at the highest step at 4 plus years a 2.7% increase would be 30.34 cents per hour increase. As such, the 2.7% increase, if recommended, would equate to an increase ranging from 24.43 cents per hour to 36.45 cents per hour over that contained in the current Collective Bargaining Agreement with an effective date of April 1, 2002.

The Union takes a unique position and one different from what the historical data

seemingly suggests, in that it would have the Fact Finder forego any recommendation concerning a Wage increase for calendar year 2002, but effective January 1, 2003, it proposes a \$2.50 per hour increase across-the-board for each of the Classifications noted, or 27.6% at the lowest, hourly Wage Rate of \$9.05; and, 18.5% for the highest at \$13.50 .

First, it must be recognized that the historical practice between these Parties has compelling support to recommend that the Parties again recognize the Wage Re-opener language, as proposed by the Employer, as *status quo* and as supported by the historical practice of the Parties concerning prior Collective Bargaining Agreements. That, based on the criteria recognized under statute, compels that the practice of the Wage Re-opener be consistent with that of year one of this Contract, as well as, what was apparently indicated as the practice prior to then. Such a significant change is best left to resolve at the Bargaining table when the entire Agreement can be addressed and the impact of such a change can be considered based on entire Agreement. As such, it is recommended that the Parties maintain the current practice of recognizing the Wage Re-opener. Based on the wage enhancement under Article XXIV, titled "Wages," effective April 1, 2002 and then the second re-opener would become effective April 1, 2003. While discontinuing the re-opener would provide the Parties with predictability, as suggested by the Union, relative to a one-time increase for the remaining years of the Contract, the historical data and more importantly the past Collectively Bargained Agreements based on the Wage Re-opener on "wages only," is compelling.

As the evidentiary record indicates, inasmuch as the Department has grown so too, has the population commensurate therewith. As a result thereof, the revenue generated by the increased population and increase in the number of taxpayers relative to not only real estate and sales taxes, etc., but also indirect revenue building sources that go to other revenue generating activities which may not be directly related to the operation of this Department. With the rising cost of Health Insurance premiums, it is clear that these Employees need to have the ability to maintain some level of predictability relative to what can be expected from them concerning their overall financial obligations concerning Employee contributions to Health Insurance premiums. It is important to note that these Employees must relieve themselves from the stigma that they, "must not make too much so they don't qualify for food stamps." This is simply unconscionable

based on an area realizing sustained growth. New home construction increased based on the permits being sought. And based on the data provided, it is clear to the Fact Finder that indeed this area of the south-central to eastern portions of the State of Ohio is one that is realizing some recognizable growth based on the median age of individuals moving into the area suggesting that indeed families are seeking to establish roots within this County based on the improved quality of life that obviously is present.

The Union's proposal of \$2.50 per hour increase hourly, across-the-board, broken down over a two-year period, which would equate to \$1.25 per hour, is at the other extreme of the spectrum with regard to what parameter should be utilized when recommending a Wage increase for this re-opener, ranging from 18.5 to 27.6%. While its proposal to eliminate the re-opener has some appeal, the Fact Finder is mindful that given the overall historical, financial picture of this area of the State, it was inconceivable for Parties to engage in a contractual obligation that lasted more than one(1) year relative to the economic hardship that a wage obligation may have imposed if the area remained stagnant or lost population or other sources of revenue. This is precisely why numerous Contracts within this part of the State have, or have had, re-openers to address the uncertainty with the overall economic picture within this portion of the State. For this County though, it appears that it is on the rebound and has sustained some constant growth which is evident with the number of Employees now utilized within the Sheriff's Department. With that growth is an increased revenue that must be taken into consideration with regard to the increase in the size of the Department and how much Employees are paid.

Based thereon, it is recommended that the Parties adopt an increase that takes into consideration that growth realized and the additional tax base that such affords the County to realize based on its continual growth. That growth is a far cry from the *status quo* being recommended or that Wages be frozen or that the Employer has some "inability to pay" based on its overall financial picture. Such is not uncommon in this part of the State to recognize those types of circumstances, however, it is clear that this particular County is rebounding from those long and stagnant years of zero growth or minimal growth relative to revenue increases. In order to sustain that continual growth, it is important to be an attractive "player" within the job market when it comes to staffing such Departments and the various classifications it provides in order to

continue that trend of upward mobility that this County has realized for at least the past five(5) years.

The data certainly supports a recommendation of an increase across-the- board, per hour, per classification, of .85 cents, applicable to the range of hourly rates -the lowest hourly rate to the highest, or 9.39% at \$9.05 per hour; and 6.29% at \$13.50 per hour. Such takes into consideration the lowest recommended increase based on a 2.7% increase proposed by the Employer of .24 cents per hour to the maximum of .36 cents per hour verses the \$1.25 per hour as proposed by the Union. It is clear that the financial picture is one escalating and constant for this County based on its revenue base and there seems to be sufficient evidence that would suggest that indeed this Employer can administer and afford such a recommendation without jeopardizing the nature of the services provided to this Community. As best summed up by Chief Deputy, John T. Dunn, these Employees are “grossly underpaid.”

#### **CONCLUSION**

Hopefully, this recommendation contained herein can be deemed reasonable in light of the data presented, the representations made by the Parties; and, based on the common interests of both entities and this recommendation can be adopted so that the Wage Re-opener issue can be ratified and this Collective Bargaining relationship relative thereto can continue without interruption. This recommendation is made based on the comparable date provided; the manifested intent of each Party as reflected in the presentation of materials provided to the Fact Finder; the stipulations of these Parties; the positions indicated; and, more importantly, that based on the mutual interests and concerns of each Party to this Agreement.

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DAVID W. STANTON, ESQ  
Fact Finder

Dated: July \_\_\_\_, 2002  
Cincinnati, Ohio

**CERTIFICATE OF SERVICE**

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been forwarded by overnight U.S. Mail Service to: John Looman, Staff Representative, FOP, Ohio Labor Council, Inc., 222 E. Town Street, Columbus, Ohio 43215; Robert W. Cross, Cross Management Consulting Services, Inc., 631 7<sup>th</sup> Street, Portsmouth, Ohio 45662; and Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this \_\_\_\_ day of July, 2002.

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