

**FACTFINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

STATE EMPLOYMENT
RELATIONS BOARD

2003 SEP -8 A 10: 11

IN THE MATTER OF FACTFINDING :
:
BETWEEN :
:
CITY OF DEER PARK; :
(PUBLIC EMPLOYER) :
-AND- : **REPORT OF THE FACTFINDER**
:
FRATERNAL ORDER OF POLICE, :
OHIO LABOR COUNCIL, INC.; :
(EMPLOYEE ASSOCIATION) :

SERB CASE NUMBER(S): 02-MED-09-0853
02-MED-09-0854
02-MED-09-0855

BARGAINING UNIT(S): Full-time Employees who have completed their initial probationary period in the classification of Lieutenant, Sergeant, Patrolman and Dispatcher as certified by the Ohio State Employment Relations Board in Case No.'s 99-MED-09-0790, 99-MED-09-0791, and 99-MED-09-0792.

FACTFINDING PROCEEDING: July 28, 2003; Deer Park, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE PUBLIC EMPLOYER

Paul R. Berninger, Attorney
David A. O'Leary, Safety- Service Director
Pat McGoron, Council Member
Pat Bowes, Council Member

FOR THE EMPLOYEE ASSOCIATION

Barry L. Gray, Staff Representative
Tim Bradford, Patrol Representative
William Jefferies, Supervisor Representative
Jeanne Jefferies, Dispatcher Representative

ADMINISTRATION

By correspondence dated November 29, 2002, from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Factfinder 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 remain at impasse between these Parties. The impasse resulted after various attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Factfinder discussed with the Parties the overall collective bargaining atmosphere relative to negotiation efforts engaged in by and between them and learned that these Parties currently enjoy and have enjoyed what can be characterized as an amicable collective bargaining relationship with respect to day-to-day relationships experienced through those efforts.

On July 28, 2003, a Factfinding proceeding was conducted where prior to the commencement of the presentation of evidence and supporting arguments, the Parties were offered mediation with the Factfinder concerning those issues that remained at impasse. Through the informal discussions that followed, the Parties were able to agree that the utilization of mediation with the assistance of the Factfinder would not be beneficial. At the conclusion of those efforts engaged in by the Parties, as suggested by the Factfinder, the Parties ultimately indicated their desire to commence forthright with the Factfinding proceeding which was recognized and complied with by the undersigned.

During the course of the Factfinding proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced as articulated by the principal representatives and supported by corroborating testimony, from those who appeared and testified at the Factfinding proceeding.

The evidentiary record of this proceeding was subsequently closed at the conclusion of the evidentiary proceeding on July 28, 2003. Based on the Parties' request, the issuance of this Report would coincide with the September scheduled City Council meeting and as such it was agreed to extend the statutory time frames to facilitate that time frame. Consequently, those issues that remain at impasse are the subject matter for the issuance of this Factfinding Report .

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by these Parties; were arrived at based upon their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines as set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Factfinding 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 interest 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 dispute settlement procedures in Public Service and private employment.

II. BACKGROUND

The Factfinding arises out of negotiations between the City of Deer Park, Ohio, hereinafter referred to as the "Public Employer" and/or "Employer" and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the "Employee Association" and/or the "Union" concerning the successor Collective Bargaining Agreement addressing those Bargaining Units as identified in the case caption. As indicated, the Parties have engaged in multi-unit collective bargaining and the issuance of this Report is consistent with those efforts. As set forth in the Collective Bargaining Agreement, the Bargaining Units recognized are composed of, as set forth in Article II titled "FOP Recognition", which defines Bargaining Units

as:

Wherever used in this Agreement, the term "Bargaining Unit(s)" shall be deemed to include those full-time Employees employed by the Employer who have completed their initial probationary period in the classification of Lieutenant, Sergeant, Patrolman and Dispatcher, as certified by the Ohio State Employment Relations Board and Case No.'s 99-MED-09-0790, 99-MED-09-0791, and 99-MED-09-0792.

As set forth in Section 2.2 of Article II, the Parties have agreed to the following:

The Parties recognize and agree that this Agreement constitutes a multi-unit Agreement and unless delineated specifically by class, all provisions of this Agreement apply equally to all Units.

As set forth in the evidentiary record, the Parties have engaged in negotiation efforts to resolve the outstanding issues subject for consideration herein without success. However, the Parties were able to reach resolution, and it is recommended that the Parties incorporate as tentative Agreements, the following Articles as set forth in the Collective Bargaining Agreement identified by the respective Article number and title. The unresolved issues include Wages, Shift Differential, Longevity, Health Insurance, Holidays and Duration - each of which having an economic impact upon the City's ability to finance the proposed enhancement as sought by the Union while recognizing that in certain areas indeed enhancements are necessary. As recognized, except for Duration which ultimately has an economic impact with respect to retroactivity of these economic benefits, the Duration of the Agreement is the only Article that essentially pertains to language that does not, except for the retroactivity aspect, have an economic impact on this City.

With respect to the Articles that have been either unopened or have been tentatively agreed to by and between the Parties, it is recommended that they be made a part of the successor Collective Bargaining Agreement as follows:

Article 1	Preamble
Article 2	FOP Recognition
Article 3	Dues Deduction
Article 4	FOP Representation

Article 5	Labor Management Meetings
Article 6	Non-Discrimination
Article 7	Management Rights
Article 8	Grievance Procedure
Article 9	Discipline
Article 10	Personnel Files
Article 11	Probationary Periods
Article 12	Seniority
Article 13	Layoff and Recall
Article 14	Hours of Work and Overtime
Article 15	Court Time/Call-out Time (Tentatively agreed to as addressed by and between the Parties at the Factfinding proceeding, to maintain the <i>status quo</i> language as set forth in the predecessor Collective Bargaining Agreement)

Article 19	Vacation
Article 20	Sick Leave
Article 21	Injury Leave
Article 22	Equipment and Clothing
Article 23	Travel Reimbursement
Article 24	Severance Pay
Article 25	Union Leave
Article 26	No Strike/No Lock Out
Article 27	Severability
Article 28	Waiver in Case of Emergency
Article 29	Scope of Bargaining
Article 30	Bulletin Boards
Article 31	Leaves of Absence
Article 32	Death of a Police Officer or a Bargaining Unit Member
Article 33	Retirement

According to the evidentiary record, as submitted by the respective principal representatives for both entities, the City of Deer Park, is located in the northeast fringe of the Cincinnati, Ohio area and enjoys low crime rate and would be characterized as a blue collar community with a population of approximately 6,000 citizens. The community is primarily comprised of small, single-family homes with the market value in the \$110,000 range. According to the information provided relative to the annual budget, the City's budget totals

approximately 2.5 million dollars including its Restricted Funds. The Police Department accounts for approximately 40% of the City's budget. The City participates in a joint fire district and does not have its own fire department. Approximately 90% of the funds budgeted for the Police Department are utilized for the wages and benefits for the Employees. There are currently seven(7) Patrolman, three(3) Supervisors, and four(4) Dispatchers which represent the collective bargaining units, as previously described.

According to the 2000 census, 63% of the Deer Park households had an annual income of less than \$50,000 and less than 6% of the household had incomes of \$100,000 or more. Base wages, at the "37 + months" Step for current Police Officers are \$46,051; Dispatchers at \$29,640; Sergeants at \$48,339; and, Lieutenants at \$50,356, respectively (Sergeants and Lieutenants classifications do not recognize the same "Step Wage scale" as do the Police Officers and Dispatchers). Those earnings for Police Officers, including overtime and other benefits, averaged approximately \$53,850 for calendar year 2002; and, \$56,600 for the three(3) Supervisors.

Both Parties recognize that the Wage rates for Dispatchers are in need of an increase in excess of a cost-of-living adjustment. The City has proposed, in its modified position relative to the effective date of an increase, an increase of 7% effective at the time of the Factfinding proceeding, a 4% increase effective January 1, 2004, and a 3% increase effective January 1, 2005. The FOP also recognizes that Dispatchers are in need of "catch up" with respect to the wages they currently receive and it seeks retroactivity to January 1, 2003, but at a rate of 9% for year one(1), a 8% for year two(2) and an increase of 6% for year three(3). The predecessor Collective Bargaining Agreement rates suggest to the Factfinder that the Dispatchers are in need of a catch-up wherein they received a 4% increase for years 2001, 2002 and 2003, equaling a 12% increase under that Agreement. All other sworn personnel for the same years in question received a 3% increase per respective year. It is clear based on the Parties' prior Collective Bargaining Agreement that indeed both recognize the need for adjustment of a Dispatcher's base wages as it relates to comparable jurisdictions and that a much needed catch-up was/is necessary.

The Union seeks to increase the Patrol Officers at a much higher rate than that being proposed by the City by maintaining a 7.5% differential between the Sergeants and the Patrol

Officer's top base wage and 7.5% above the Sergeant's base wage for Lieutenants. The current differential between the Sergeant and Patrolman is approximately 5% and approximately 4% between Lieutenant and Sergeant - both rank differentials not being memorialized in the predecessor Agreement.

As set forth in Tab 6 of the Employer's Hearing documentation, the total General Fund, for fiscal year ending December 31, 2003, was \$2,423,828 of which group Health Insurance was \$136,000. The pension for the Police Department was \$121,000 and "Regular Police" salaries totaled \$755,000. Of the amounts indicated in the General Fund Budget, \$991,800 of the \$2.4 million dollars was paid to the City's Police Department. The "proposed" 2004 Budget indicates projected "Total 2004 Revenues" of \$1.855 million dollars and "Total Expenditures" of \$1,094,900, with the Police Department "reserving" a large portion of the projected expenditures for calendar year 2004. On the final page of that documentation, the "Total 2004 City of Deer Park Budget" reveals a beginning balance on January 1, 2003 of \$1,168,675 with "Total 2004 Revenues" of \$2,364,200 and "Total 2004 Expenditures" of \$3,493.450 leaves an "Ending Balance as of December 31, 2004" projected to be \$39,425. According to the information provided by the Employer, the budget does in fact incorporate a 3% increase across the board for the Patrol Officers, Lieutenants and Sergeants, with a 7% increase, for year 1 for the Dispatchers.

Bolstering the Employer's assertions mandating prudent fiscal spending are the rising costs for Health Insurance. The City contends that all other enhancements sought by the FOP adversely impact the overall financial picture of its ability to address the wage concerns not only for the Dispatcher Unit, but also for the remaining Employees within the Police Department. It is against this back drop that the remaining issues at impasse between these Parties are addressed herein.

As set forth and agreed to by and between the respective Parties, the following unresolved issues remain at impasse following the Parties' efforts to reach resolution during the course of the negotiation sessions previously engaged in by them. Those unresolved issues/Articles are set forth as follows:

Article 16 Section, 16.1 Wages - Year one(1)

Article 16	Section, 16.2 Wages - Year two(2)
Article 16	Section, 16.3 Wages - Year three(3)
Article 16	Section, 16.4 Longevity
Article 16	Section, 16.5 Shift Differential
Article 17	Insurance
Article 18	Holidays
Article 34	Duration

As indicated in the evidentiary record, the Collective Bargaining Agreement between the City of Deer Park and the Fraternal Order of Police, Ohio Labor Council, Inc., expired on December 31, 2002 thus triggering application of the statutory process relative to the negotiating a successor thereto recognized under Chapter 4117 of the Ohio Revised Code, otherwise known as the "Ohio Collective Bargaining Law."

The Employer would have the Factfinder conclude that these Bargaining Unit members, in each of their respective units, are fairly compensated in relation to other Police Departments in neighboring jurisdictions and that they are provided Health Insurance benefits at a level comparable to, or better than, other comparable jurisdictions. The Employer indicates that those enhancements sought by the FOP would only further burden the City's overall ability to finance these enhancements since these Employees currently receive a generous amount of Longevity, Shift Differential, Holidays and are provided more than abundant Health Insurance policy.

The collective bargaining history between these Parties indicates a fairly stable financial status, one that has avoided mass layoffs while remaining economically stable. Based on the Employer's overall position, it has been able to enjoy such a stable financial picture by adopting sound economic policies even though the economic future is difficult to predict and uncertainty exists regarding tax revenues impacting its overall General Fund bottom line.

The Union, on the other hand, indicates that the comparables provided demonstrate that indeed the City of Deer Park is, in fact, financially viable and the overall economic enhancements it seeks would not unduly jeopardize the City's ability to financially support and finance them. The evidentiary record does not indicate any indication of economic hardship and there were no "inability to pay and/or finance" arguments raised by this Employer. Simply, the Employer wishes to continue to exercise fiscal prudence while not placing it in economic hardship given the uncertainty that local, state and national economies are indicating. It seeks enhancements that

are indeed in line with that recognized by other jurisdictions without resulting in the discontinuation of services and/or layoffs. The Articles at issue herein involve economic enhancements, the Union views as necessary, while also emphasizing that the economy and the impact of such enhancements would have on these Bargaining Units would allow it to maintain its “middle ground” status as it asserts was articulated to its representatives during the course of bargaining in prior negotiations.

The Factfinder is statutorily required to consider comparable Employee units with regard to their overall makeup and services provided to the members of their respective communities. As is typical and as is required by statute, both Parties, in their respective Pre-hearing Statements filed in accordance with the procedural guidelines of the statutory process; and, the supporting documentation provided at the Factfinding proceeding, have relied upon comparable jurisdictions and/or municipalities representing what they deem “comparable work” provided by these Bargaining Units. As is typically apparent, there are no “on-point” comparisons relative to those Bargaining Units concerning the statutory criteria as will be addressed further by the Factfinder based thereon.

It is, and has been, the position of this Factfinder that the Party proposing any addition, deletion or modification of either current contractual language; or, a *status quo* practice in cases of initial Collective Bargaining Agreements, bears the burden of proof and persuasion to compel the deletion, deviation or modification, as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that be the previous collective bargaining language or a practice previously engaged in by the Parties.

It is important to note that based on the statutory criteria, this Public Employer has not raised any “inability to pay or finance” arguments relative to its overall economic status. Simply, it continues to strive for fiscal prudence. The Factfinder is indeed mindful of the apparent need of this or any other City, County or Township, to engage in prudent financial endeavors including the funding for any economic enhancements arising under a Collective Bargaining Agreement. As is the case with any Public Employer, its accountability to the community concerning fiscal prudence and the ability to finance economic enhancements that may be recommended herein under this Collective Bargaining Agreement are indeed tantamount to the extent that they do not

jeopardize the levels of services currently provided to the member's of the community.

The Union is seeking what is commonly characterized as "necessary" economic contractual enhancements to assist with its ability to provide a fair and equitable collective bargaining status for the Bargaining Units in comparison to those jurisdictions and municipalities relied upon in the presentation of comparable data. The Union emphasizes that there are no inability to pay or finance arguments raised relative to those enhancements; however, it recognizes that its ability to negotiate a Collective Bargaining Agreement that will enable these Bargaining Unit Employees to remain competitive within the market place in which it exists, is indeed the ultimate endeavor.

It is against this backdrop that this Report with supporting rationale is offered for consideration by the Parties.

III. UNRESOLVED ISSUES

1. ARTICLE 16, SECTIONS 16.1; 16.2; and, 16.3

WAGES

UNION POSITION

The Union seeks increases of 9%, 8%, and 6%, respectively, effective January 1, 2003, 2004 and 2005 for the Dispatchers Bargaining Unit; 8%, 6% and 4%, respectively for years 2003, 2004 and 2005 for the Patrol Officers with a 7.5% differential greater than the top Patrol Officer's Wages for the Sergeants and a 7.5% rank differential greater than the Sergeant's Wages for the Lieutenants.

DISPATCHERS

In support thereof, the Union recognizes that the Dispatchers Bargaining Unit Wage scale currently ranges from the probationary rate of \$25,792 or \$12.40 per hour to the top rate of \$29,640 or \$14.25 per hour at Step 5 in that pay scale. It emphasizes that the City has historically promised to maintain the Employees in the mid-range of the other Hamilton County municipalities with similar positions. It emphasizes that most municipalities within Hamilton County utilize the Hamilton County Communication Center for their dispatch needs and have eliminated those classifications from their workforce. As comparables, it has relied upon Forest

Park, Reading, Silverton and Wyoming, which do not utilize the Hamilton County Communications System Center and still dispatch "in house." While it did not rely upon the 2002 salaries for the Hamilton County Communications Center Employees, those range from \$30,295 to \$41,500. It emphasizes that the Deer Park top-out rate is less than Hamilton County's starting wage for year 2002. Forest Park, Wyoming and Reading pick up the entire 8.5% Employee contribution to the Public Employee Retirement System resulting in additional take-home pay of \$3,355.29 for the Reading Dispatchers, \$2,990.90 for Wyoming and \$2,847.94 for Forest Park prior to tax deductions. Silverton picks up 2% of the Employee's 8.5% contribution resulting in an additional \$682.00 for the Silverton Dispatchers prior to tax deductions.

The Union emphasizes that this City currently pays its Dispatchers almost \$10,000 less than the top paid Dispatchers based on this comparison and \$5,000 less than Silverton which is currently at the mid-range of the five(5) communities relied upon by the Union. It notes that the City of Reading received a 5.65% increase for 2003, Wyoming 3.4%, Silverton 4%, Forest Park, 5% and even factoring the City's proposal of 7% for year one, it still remains at the bottom of the comparables relied upon. Despite the 7% proposed increase for 2003, these Employees would still remain approximately \$10,000 under the wages paid to the top Dispatchers and over \$4,200 less than Silverton who currently ranks in the middle of the comparables relied upon by the Union.

The 4% and 3% increases, respectively, proposed by the City for years 2004 and 2005 will continue to place this Unit's pay as the lowest among the municipalities in Hamilton County. It insists that its proposal moves it closer to the mid-range of the comparisons relied upon and is more likely to close the gap and reduce the disparity indicated in this comparison.

PATROL OFFICERS

The Union seeks wage increases for the Patrol Unit of 8% for year one(1), 6% for year two(2) and 4% for year three(3) all with an effective date of January 1. It emphasizes that the Wage scale currently ranges from the probationary rate of \$38,771 or \$18.64 per hour to the top rate of \$46,051 or \$22.14 per hour with 5 respective steps in the pay scale. Again, it emphasizes that the City has historically promised to maintain these Employees in the mid-range of other Hamilton County Municipalities. As its comparisons, the Union has relied upon the City's of

Blue Ash, Cheviot, Forest Park, Harrison, Loveland, Madeira, Montgomery, Norwood, Reading, Silverton, Springdale and Wyoming. Based on these comparisons, the City of Springdale 2002 salary comparison was \$56,784 with Deer Park at \$46,051 emphasizing also that Forest Park and Wyoming pick up the entire 10% Employee contribution to the Police and Fire Pension Fund providing an additional \$4,809 for Forest Park Officers and \$4,610 for Wyoming Patrol Officers in their take home pay prior to deductions. The City of Reading picks up 9 of the 10% contribution resulting in an additional \$4,372, with Silverton picking up 2% resulting in \$961 additional take home pay prior to tax deductions.

The Patrol Officers in the City of Deer Park are paid over \$10,000 less than top paid Patrol Officers in its comparison and \$2,000 less than Loveland which is currently at the mid-range of the 13 jurisdictions within Hamilton County relied upon by the Union. The City of Deer Park with the 3% recommended by the Employer, results in its maintaining the range of 10th out of the 11th utilized with Springdale recognizing a 4% increase, Blue Ash 4.25, Montgomery 3.75, Madeira, 5.5, Reading 5.33, Loveland 4, Forest Park 4, Silverton 4, Wyoming 3.5 and Harrison 4.15%. The 3% offered by the City would result in these Patrol Officers placing near the bottom of the comparable pay scales, almost \$12,000 under the wages of the top patrol officers at Springdale and \$2,700 less than Loveland which is placed in the mid-range of the comparable jurisdictions.

The 2004 salary comparisons show Springdale receiving 4% increase, Madeira 4.5%, Forest Park 3.5%, Deer Park 3%, as proposed by the City and Harrison 4% increase continuing to place these Patrol Officers near the bottom of the comparable pay scale, \$13,000 under the wages paid to the top Patrol Officers and a \$1,000 less than Silverton which is at the mid-range level.

The Union emphasizes that its proposal will place these Police Officers closer to the mid-range of the comparable Wage scales as has been historically promised to be maintained by the City and would close the gap and reduce the disparity indicated in the comparisons.

SERGEANTS

The current Collective Bargaining Agreement has one(1) rate which is \$48,339 or \$23.24 per hour for the Sergeant classification. The Union has relied upon the jurisdictions of Norwood, Montgomery, Loveland, Wyoming, Harrison and Cheviot as comparables, recognizing that the

City of Deer Park currently pays Sergeants over \$11,000 less than the top paid Sergeants and \$3,600 less than the mid-range of the jurisdictions relied upon. The 2003 salary comparisons indicate Montgomery received a 3.75% increase, Loveland 4%, Wyoming 3.6%, Harrison 4.15% and Deer Park, as proposed by the Employer, a 3.5% increase. That increase, as proposed by the City, will continue to place the Sergeants at the bottom of the comparable pay scale, approximately \$10,000 under the wages paid to the top Sergeants and \$3,800 less than Loveland which currently is placed in mid-range of the five(5) communities listed.

The data available for the 2004 salary comparison shows Harrison receiving a 4% increase for the Sergeants and the 3% proposed by the City. The average wage increase, excluding Deer Park's for 2003 was 3.875%, greater than the 3.5% offered by the City.

Based on this data, the Union proposes to maintain a fixed percentage between the Sergeants and the Patrol Officers at 7.5% which is in line, as it contends, with the communities of Hamilton County, Harrison at 13%, Forest Park at 11%, Cheviot at 10% and Loveland at 5% above Patrol Officers. The current Collective Bargaining Agreement does not require a fixed percentage, however, it is approximately 5%. Inasmuch as the Sergeant's pay scale is based upon that approximate 5% differential though not set forth in the Collective Bargaining Agreement, its proposal for the Patrol Officers of 8%, 6%, and 4%, respectively, for years 2003, 2004, and 2005 is more likely to close the gap and reduce the disparity indicated in the comparable data.

LIEUTENANTS

As was the case with the Sergeants, the Lieutenants received one rate of \$50,356.80 or \$24.21 per hour. Again, the FOP emphasizes that the City has promised to maintain these Employees in the mid-range of other Hamilton County municipalities with similar positions relative to Wages. The Union has relied upon the jurisdictions of Norwood, Harrison, Loveland, Madeira and Silverton again recognizing the pension contributions as they impact the overall take home pay of these jurisdictions. The City of Deer Park's Lieutenants are paid \$12,500 less than the top paid Lieutenant of Norwood and \$5,400 less than mid-range relied upon of Reading. The Wage increases for 2003 for some of those jurisdictions are as follows: Harrison 4.15%, Reading, 5.35%, Loveland, 4%, Madeira 5.5%, Silverton 4% and the proposal of 3.5% by the City continues to leave these Employees at the bottom of those jurisdictions.

The 2004 salary comparison has Harrison receiving a 4% increase and Madeira 4.5% increase resulting in Deer Park remaining at the bottom of those jurisdictions. It emphasizes that the average wage increase excluding Deer Park's offer is 4.6% for 2003 greater than the 3.5% offered by the City. For 2004, the average wage increase of 4.25% is greater than the 3% offered by the City.

The Union again emphasizes that a fixed percentage between the Lieutenants and the Sergeants of 7.5% is in line with other communities within Hamilton County - Harrison 13% above Sergeants, Forest Park 12% above Sergeants, Madeira a minimum of 12% above Patrol Officers, Reading 15% above Police Officers and Loveland 17% above Patrol Officers. While the current Collective Bargaining Agreement does not require a fixed percentage between Lieutenants and Sergeants, the current differential rank in pay is 4.17%. Again, the Union proposes 8%, 6% and 4% for the Patrol Officers which in turn would impact the Sergeants and ultimately impact the Lieutenant's Unit based on what it seeks for the Patrol Officers as it contends would close the gap and reduce the disparity indicated in the comparisons.

EMPLOYER POSITION

The overall position of the Employer relative to the Wages being sought by the Union recognizes that indeed the Dispatcher Unit is in need of catch up, but takes into consideration that the Dispatchers received a 4% increase for each year of the predecessor while the other Bargaining Unit members received 3%, respectively. With respect to the Dispatchers, its proposed 14% increase over three(3) years will likely be twice of that of the cost-of-living increase during the same period. The differential between the Sergeant and Patrolman is approximately 5% and that between the Lieutenant and Sergeant is approximately 4%. The three(3) Supervisors had an average income, including overtime, of more than \$56,600 in 2002 as set forth in the W-2's relied upon and provided by the Employer.

It emphasizes that the City of Deer Park Police Department is a small department and supervision is a minimal responsibility therein. Three(3) Bargaining Unit Supervisors exist for seven(7) Patrolman and the differences in duties between the Sergeant and Lieutenant classification are virtually minuscule. The primary duty of the sworn personnel, other than the Chief of Police, is basic policing of this community. The modest differential between the ranks

more than compensates for the minimal difference in duties.

The City emphasizes that the position taken by the Union relative to maintaining the “mid-range” with respect to other comparable Hamilton County jurisdictions is simply one that has not been articulated by the City. It must only spend what it has available to meet the collective bargaining obligations and cannot engage in any deficit spending. If the increases as sought by the FOP are indeed recommended, then other services must be cut or layoffs of Employees must be considered. As a public entity, the City cannot pay the FOP proposals without making cuts in other types of services. It emphasizes that indeed its offer in Factfinding is less than that at the bargaining table because it placed its best offer at the table in order to reach a settlement that was unsuccessful.

The City refutes some of the comparable data relied upon by the Union as not being geographically comparable with respect to Harrison which has experienced a great deal of growth and Cheviot which has not.

It emphasizes that it vehemently opposes a rank differential because the Collective Bargaining Agreement currently does not provide for such even though the rank differentials exist at approximately 4 and approximately 5%, respectively. The Supervisor classifications lead the officers and serve in the same capacity as Police Officers with some supervisory responsibilities. To maintain a set differential would negate the collective bargaining process which is best left for the Parties at the bargaining table.

To refute the argument raised by the Dispatcher representative, when comparing the Clerks and the amount time they are paid for and the fact that they receive holidays off and breaks, etc., it is indeed the nature of the classification and a Clerk position certainly does not compare with that of a Dispatcher. It emphasizes through the testimony of safety director, David O’Leary, that the budget has taken a sizeable hit with respect to the Inheritance tax and the carry over from approximately \$300,000 to \$400,000 in years past is not going to be available in the coming years. He emphasized that the City has lost its funding for the DARE program while it has continued to maintain that program out of its budget as opposed to being subsidized. The City urges the Factfinder to follow its logic and maintain a practice of prudent fiscal spending.

For these reasons, the City requests its proposal relative to the Dispatcher, Sergeants,

Lieutenants and Patrol Officers as set forth in its Pre-hearing Statement.

RECOMMENDATION AND RATIONALE

DISPATCHERS

Consistent with the evidentiary record before the Factfinder and relying on the comparables provided, it is clear that with respect to the Dispatcher's Unit, they are indeed in need of a certain adjustment in comparison to other jurisdictions. The Union would have the Factfinder recommend increases of 9%, 8%, 6%, respectively, effective January 1 of each year of the successor Collective Bargaining Agreement. The Employer also has recognized that a certain degree of catch-up is necessary and proposes, as it did apparently in the predecessor Collective Bargaining Agreement when the Dispatchers received a 1% increase above that received by the other members of the Bargaining Units, a 7%, 4%, and 3% increase. Its modified position was rather than it become effective upon ratification, that it become effective the date of the Factfinding hearing as opposed to January 1 as sought by the Union.

It is clear that the data provided indicates that an increase in the neighborhood of 8% for year one(1), 5% for year two(2), and 5% for year three(3) certainly addresses the catch-up considerations recognized by both Parties at a level which is obviously higher than that which will be addressed with respect to the Patrol Officers, Sergeants and Lieutenants. Such also recognizes the nature of the job, the fact that these Employees job classification is unlike that of the Clerk. The job responsibilities are far more demanding, intense, and in many instances lives are at risk, as well as, the fact Police Officers rely upon their expertise and attention to detail.

The comparable data relied upon in each comparison, as provided by the FOP, indicates that the Dispatchers are well below that level that even gets close to the so-called mid-range as was argued between the Parties. Such must also recognize the impact other cities have realized with respect to cost savings by going to the Hamilton County Communication Center verses in-house Dispatching services. Of the 15 Employees in the Police Department, four(4) of those are Dispatchers. So the overall financial impact of an increase as recommended of 8%, 5%, and 5% for the three(3) year successor Collective Bargaining Agreement will not result in an overly burdensome impact on the City's projected budget based on revenues and expenditures as articulated by David O'Leary.

Utilizing the pay scales as set forth in Section 16.3 for January 2002, an 8% increase for the probationary step for the Dispatcher would result in a \$.99 increase or approximately \$1 per hour and assuming a 40 hour Employee over 52 weeks or 2080 hours, that Employee would receive approximately \$2,080 over the probationary rate of \$25,792. At the other end of the spectrum, applying that 8% increase to the 14.25 time the 8% increase results in \$1.14 per hour increase times 2,080 hours per year or \$2,371 increase on a yearly base for the top rate. Those numbers certainly provide a much needed correction with respect to the proposed salary placement for these Employees also recognizing that the increases for years two(2) and three(3) also will address the disparity in the other jurisdictions when looking at the raises that those Employees will receive. Those are recommended based on the comparable data provided while taking into consideration the proposals of each respective Parties.

PATROL OFFICERS

As indicated, the Union is seeking an 8%,6%, and 4% increase effective January 1, for each year of the successor Collective Bargaining Agreement and the Employer recommended an across the board increase of 3% which is consistent with what they realized for years 2000, 2001 and 2002. Applying those numbers to those set forth in Section 16.3 it is clear these patrol officers will not make any ground with respect the other jurisdictions. While taking into consideration the fact the jurisdictions are what they are and each respective municipality may have advantages and disadvantages with respect to a comparison with this jurisdiction, they nonetheless are guidelines with respect to what the market bears not only with this part of the State, but that recognized overall. It is clear that many of those jurisdictions have received pay raises as high as 5.5% and as low as 3% as recommended by the City. The average for 2003 in relying upon the Union's calculations is 4.25% compared to the 3.0% as offered by the City. It is therefore recommended that the Patrol Officers receive for year one(1) a 4.5% increase, year two(2) a 4% increase, and year 3 a 4% increase recognizing that their placement within the comparables relied upon is not last as was dispatchers, but recognizing that is not that far below the City of Silverton and for 2004 would place it closer to the mid-range point as indicated by the Union. A 4.5% increase based on the probationary step equates to a \$.84 per hour increase or \$1,747.00 increase annually for the probationary step and for the top step an \$1.00 per hour

increase or \$2,080.00 increase annually to the base rate for the top Patrol Officer step.

These increases recognize the consistency that needs to be apparent with respect to the enhancements received and represent a 3.5% increase over the three-year package that was previously realized by the Patrol Officers.

SERGEANTS & LIEUTENANTS

With respect to these two(2) Bargaining Unit classifications, there is one(1) respective rate that each receive based on Section 16.3 of the Agreement, it is recommended that each of those classifications receive a 4.5% increase for year one(1); 4% for year two(2); and, 4% for year three(3), of the successor Collective Bargaining Agreement. Such equates to an hourly increase for Sergeants of \$1.05 per hour and a yearly increase of \$2,184.00. With respect to the Lieutenants with an hourly rate of \$24.21 at the 4.5% increase equates to \$1.09 per hour increase times 2,080 hours or \$2,267.00 increase to its yearly base rate. These recommendations are consistent with the comparable data provided particularly by the Union concerning the 2003/2004 salary comparisons with Harrison receiving a 4.15% increase for the Sergeants in 2003 and 4% in 2004 and the same being true for Harrison for the Lieutenants for years 2003 and 2004. It is clear that these increases are consistent with the comparable jurisdictions based on an average on the wages realized as well as that being realized throughout the State of Ohio. While this recommendation does not entirely address the disparity that the Union is seeking to correct, it nonetheless proves to be an improvement over the previous Collective Bargaining Agreement which provided for 3% increase for each year of the three(3) year Agreement. This is a 12.5% package over the course of three(3) years which is certainly above that of the cost of living and it also provides some "correcting measures" with respect to the placement of these Bargaining Units in comparison to other jurisdictions similarly situated. This process is indeed an incremental one and certain "catch ups" and/or corrective measures cannot be accomplished overnight without fear of losing much need services and ultimately Employees when an Employer of any type must overextend itself to finance enhancements in a Collective Bargaining Agreement.

With respect to the proposal to memorialize the 7.5% rank differential between the Patrol Officers and Sergeants and that of the Lieutenants and Sergeants, it currently is approximately

5% and 4.17%, respectively. The Union's proposal to increase that to 7.5% difference is simply unwarranted at this time given the uncertainty of this City's overall financial picture, the decrease in certain tax bases with respect to Inheritance taxes, and its declining carry-over balance to its General Fund. Moreover, it certainly addresses the Union's concern and assertion that it approach the mid-range of the surrounding jurisdictions while avoiding deficit spending by the City.

2. ARTICLE 16, SECTION 16.5

SHIFT DIFFERENTIAL

UNION POSITION

The Union seeks to increase the shift differential .05 per hour on each covered shift currently representing \$.25 per hour on the afternoon shift and \$.30 per hour on the midnight shift. It seeks to improve those by .05 or to \$.30 per hour for the afternoon shift and \$.35 per hour for the midnight shift. It contends that such would certainly lend assistance in maintaining these Employees or placing these Employees in the mid-range of similar Employees of other municipalities within Hamilton County.

CITY POSITION

The City opposes any increases to this provision since it emphasizes that these officers select the shift they choose to work and if it is perceived as a burden, the Department can certainly change its practice of permanent shifts to that of rotating shifts and eliminate the claim for a shift differential. While the City is willing to continue the payment of a Shift Differential through this successor Agreement, it has no interest in improving a wage supplement which no longer has any connection to the reason for which it was originally intended. An involuntary assignment to an undesirable shift is indeed worthy of compensation since the business of police is a 24/7 endeavor. One cannot elect to be a Police Officer and expect additional compensation for working non-standard hours as evident in a Police Department. Based thereon, it seeks no improvement or it proposes to maintain the *status quo* relative to this Article.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the modest increase to Shift Differential as proposed by the Union for both the afternoon and the midnight shifts of .05 per hour,

respectively. Indeed, this is a common element of compensation that regardless of the manner in which the shifts are assigned, there are certain shifts that are more desirable than others. Night shifts are less desirable and therefore generally receive the highest level of compensation with respect to differential. And based on the comparable data relied upon, particularly recognizing that despite the overtime levels relied upon by the Employer, they are at the bottom level of the comparables relied upon and this \$.05 per hour increase to the shifts would certainly improve upon the overall earning capabilities. Moreover, the more attractive the Shift Differential becomes, the more likely it will have more experienced officers wishing to select those shifts. If indeed it is a huge economic advantage then more experienced officers, who generally select the more desirable shift, or first shift, would be more inclined to seek those less desirable shifts if the economic enhancement is to their liking.

Based thereon, it is recommended that the Parties adopt the proposal as made by the Union in this regard.

3. ARTICLE 16, SECTION 16.4

LONGEVITY

UNION POSITION

The FOP seeks to improve Longevity by increasing it by \$10 per year, or from \$50 to \$60, based on what it contends the internal comparables support. The Teamsters Unit, Local 100 Unit Longevity benefit was increased to \$60 per year which does not become effective until after five(5) years of service. It asserts that given its current status among the rankings of the comparables relied upon, this increase in the Longevity pay would certainly provide an incentive to keep experienced Employees.

CITY POSITION

The City contends that the \$50 per year to Unit members is adequate to reward the length of service which it contends has no proven relationship to performance. It emphasizes that Longevity is left over from the time before collective bargaining and before the application of the Fair Labor Standards Act to public entities. The City concedes that it is willing to continue Longevity payments in the next Contract, but does not have an interest in increasing a wage component that has no relationship to performance and distorts the real earnings of the

Employees.

RECOMMENDATION AND RATIONALE

Based on the internal comparable relied upon - the Teamster's Unit - an increase to \$60 from \$50 is recommended. In light of the overall Wage component and in consideration of other issues that have not been addressed herein, it is recommended that the Parties adopt this modest increase to this contractual entitlement.

4. ARTICLE 17, SECTION 17.1

HEALTH INSURANCE

UNION POSITION

The Union proposes to incorporate language continuing to recognize the City and Employee's cost sharing with respect to monthly insurance premiums and Co-payments on prescription drugs. The language it proposes will place the burden of any increases on the City and the Employee while maintaining known maximum limits for the Employee's contribution. The Union also seeks new language providing for prescription drugs and the Employee co-pay will be \$10 on each generic prescription drug and \$15 on each formulary or non-formulary prescription drug. This, it asserts, is necessary recognizing that the prescription drug issue relative to health insurance benefits arising under health insurance plans is one that is on the rise as well as the cost for health care coverage.

CITY POSITION

The City proposes to eliminate the cap on the amount of any increases of the 50/50 sharing provision currently in the Parties' Agreement not limiting the cap at \$10 as current language provides, but whatever that increase is to be shared 50/50. As testified to by David O'Leary, the impact of rising insurance costs is indeed one which has placed an increased burden on the City, as well as, the Employees with respect to the cost of this rising benefit.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt modified versions of the proposals, as submitted, to the extent that the Union recognizes and agrees to pay the co-pay for a single policy family plan or Employee Plus 1 plan to \$50 per month. Inasmuch as this represents a tentative Agreement, as proposed by the Employer in its proposed language modification, that aspect of

this Article is hereby recommended. It is also recommended that the Parties adopt the *status quo* as set forth in paragraph 2 of Section 17.1, titled "Insurance," continuing to recognize the cap; however, increasing that cap to \$15 per month in that the Employee's contribution for premium increases will not increase more than \$15 per month. Moreover, with respect to the first paragraph of 17.1, the Union also agrees to provide for a yearly increase of \$10 per year effective each calendar year. For example, the Employee's co-pay for insurance coverage regardless of the plan would be \$50 per month for year one(1), for 2004 calendar year, that would increase to \$60 per month and \$70 per month for year 2005. Such is also recommended.

With respect to the addition of the language sought by the Union concerning prescription drugs, it is recommended that the Parties maintain the *status quo* as set forth in the current benefit form provided for health insurance as made part of this record as agreed to by and between these Parties, and faxed to the undersigned following the evidentiary proceeding. With respect to prescription drugs, it is \$10 generic, \$25 formulary, \$45 non-formulary and for mail order \$25 generic, \$62.50 formulary, and \$112.50 non-formulary brands under the current plan.

With respect to the language at issue herein, it is recommended that the Parties adopt the language of the Employer concerning its paragraph one as set forth in its Pre-hearing Statement, recognizing that it is at often times difficult, if not impossible, to provide an exact plan to that previously in place. There are improvements and there are areas that are less beneficial when insurance plans, and carriers at times, change. This provides the Employer flexibility, with Union input, to address the ability to seek comparable or more beneficial plan coverage. In this regard, it is recommended that the language, as proposed in the Employer's paragraph one of Section 17.1, be incorporated and the second paragraph thereof as previously addressed.

It is important to note that given the small number of Employees that are provided this benefit, the benefit and the cost thereof would be less expensive with larger groups as opposed to one of this size. Therefore, it is necessary, in the opinion of the Factfinder, to continually ascertain the best possible plan coverage available in the market. Moreover, it is indeed hard to draw comparisons with respect to the insurance plans when the entire plan documentation is not provided and therefore reliance thereon is simply unworkable. Therefore it is recommended based on that set forth hereinabove, that the Parties adopt that previously identified.

5. ARTICLE 18, SECTION 18.1

HOLIDAYS

UNION POSITION

The Union seeks language increasing the number of days off, i.e., as identified as two(2) personal days credited on January 1st of each year, to be taken off by the Employee thereafter with prior approval from their immediate supervisor.

CITY POSITION

The City opposes any additional time off as it, in all likelihood, would increase the opportunity for premium overtime hours since the current Collective Bargaining Agreement provides for 10 paid holidays and the Employee's birthday as a paid holiday.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties do not adopt any increase to this contractual entitlement since the 10 paid holidays are those recognized in the vast majority of Collective Bargaining Agreements, not only in the public sector but private sector as well. These Employees enjoy receiving their birthday as a paid holiday. Current selection process through bidding allows the Employees to choose to work or be off on said holidays. And they have the ability to enhance holiday earnings by electing to work on a particular holiday. All other City Employees that obviously do not provide 24/7 coverage are off on the holiday and receive no additional pay for that day as the Police Department recognizes.

Moreover, these officers can convert sick leave on a two for one basis, up to five additional vacation days per year if they have a sick leave balance of 30 days. Given the ability of the Employees to have paid time off, there is certainly no justification in recommending any increase to this contractual entitlement. Given the 10 noted holidays under the predecessor Agreement plus the addition of one's birthday totals 11 holidays which is indeed equal to many of the comparables relied upon.

6. ARTICLE 15

COURT TIME

As stipulated to by and between the Parties, the issue relative to Court Time was

tentatively agreed to prior to the Factfinding proceeding wherein the Parties agreed to maintain the *status quo* language. In this regard, it is therefore recommended that the Parties maintain the *status quo* relative to Article 15 titled "Court Time/Call-out Time."

7. TERM OF THE AGREEMENT

ARTICLE 34 - DURATION

CITY POSITION

The City proposes a three(3) year Collective Bargaining Agreement with a revised position regarding retroactivity since the Parties did not reach Agreement prior to Factfinding, but would apply retroactivity to the date of the Factfinding proceeding.

UNION POSITION

The Union seeks a three(3) year agreement, as does the Employer, however with retroactivity to January 1, 2003 following the December 31, 2002 expiration of the predecessor Agreement.

RECOMMENDATION AND RATIONALE

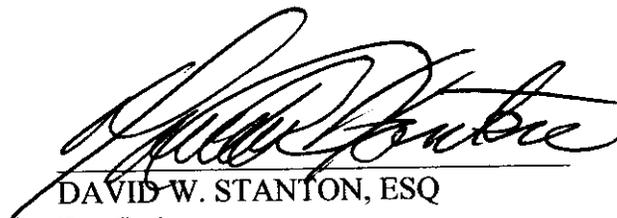
During the course of the evidentiary proceeding, the record reflects that neither Party was deemed to have been dilatory in the manner in which this matter proceeded to the Factfinding aspect of the statutory process. There were certain dates that were canceled and given the appointment date of November and the hearing commencing in late July, Factfinding obviously occurred beyond the statutory period as it applies, but given the fact that no Party is deemed to have been directly responsible for delaying this process, there is no suggestion to the Factfinder that retroactivity should not be awarded. It is indeed commonplace for these types of matters to take time based on schedules and there is certainly no evidence that would suggest that either Party have maliciously delayed this process. In this regard, it is recommended that the Parties' Collective Bargaining Agreement have an effective date of January 1, 2003, thus recognizing retroactivity of the economic enhancements being sought herein.

It is hereby recommended that those Articles tentatively agreed to during the course of negotiations that occurred by and between the Parties be incorporated into the successor Collective Bargaining Agreement.

IV. CONCLUSION

Hopefully, these recommendations 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 recognizing that painstaking efforts at the bargaining table proved unsuccessful. It is hopeful that these Parties can adopt these recommendations so that the successor Collective Bargaining Agreement can be ratified and approved and the collective bargaining relationship can continue without further interruption. Moreover, these recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory dispute resolution process; based on any stipulations of the Parties; based on the positions indicated to the Factfinder via Pre-hearing Statements and during the course of the Factfinding Hearing, as well as, the informal mediation that was offered, but refused; and, based on the mutual interests and concerns of each Party to this successor Agreement.

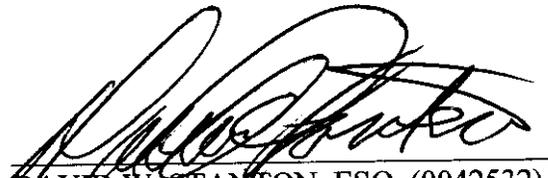
Moreover, any Article not so referenced herein or those not referenced by the Parties during the course of the evidentiary proceeding will receive a recommendation that the *status quo* be maintained relative thereto.


DAVID W. STANTON, ESQ
Factfinder

Dated: September 5th, 2003
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true and accurate copy of the foregoing Factfinding Report and Recommendations has been forwarded by facsimile and overnight U.S. Mail Service to: Paul R. Berninger, Wood & Lamping, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202-2491; Barry L. Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247-7008; and, Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 5th day of September, 2003.



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STATE EMPLOYMENT
RELATIONS BOARD

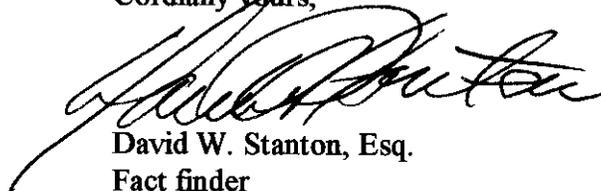
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CITY OF DEER PARK -AND- FOP/OLC INC.
FACTFINDING
DISPATCHERS; PATROLMEN; SERGEANTS & LIEUTENANTS

Gentlemen,

Enclosed herewith please find the Factfinder'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.

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

Cordially yours,



David W. Stanton, Esq.
Fact finder

DWS:sjw.

Encs.

cc: Catherine A. Brockman (w/encs.)
David A. O'Leary (w/encs.)

