

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

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF FACT FINDING :

BETWEEN :

CITY OF ENGLEWOOD :

-AND- :

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION :

REPORT OF THE FACT FINDER

SERB CASE NUMBER:

02-MED-10-1029

BARGAINING UNIT:

Full-time Employees in the classification of
Police Officers.

FACT FINDING PROCEEDING:

January 21, 2003; Englewood, Ohio

FACT FINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Dwight A. Washington, Attorney
Mark Brownfield, Chief of Police
Janine Cooper, Director, Human Resources

FOR THE EMPLOYEE ASSOCIATION

Joseph M. Hegedus, Attorney
Eric Totel, Union Director
Kathy Harrington, Union 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 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 issue that remained at impasse between these Parties. The impasse resulted after attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful. Through the course of the Administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties the "atmosphere" relative to the prior negotiation efforts by and between the Parties and learned that overall, these Parties currently enjoy, and have enjoyed, what can be characterized as an amicable Collective Bargaining relationship.

On January 21, 2003, a Fact Finding proceeding was conducted where, prior to the commencement of the presentation of evidence and supporting arguments, the Parties were offered mediation with the Fact Finder concerning the wage issue that remained at impasse. Through the informal discussions that followed, the Parties were able to agree that the utilization of mediation would not be beneficial. At the conclusion of those informal efforts, the Parties indicated their desire to commence forthright with the Fact Finding proceeding which was recognized and complied with by the undersigned. During the course of the Fact Finding proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced.

The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding proceeding and the wage issue that remains at impasse is the subject matter for the issuance of this report hereunder.

I. STATUTORY CRITERIA

The following findings and recommendation is hereby offered for consideration by the Parties; was 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 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

The Collective Bargaining Agreement between the City of Englewood, hereinafter referred to as the "Employer" and the Ohio Patrolmen's Benevolent Association, hereinafter referred to as the "Union" expired on December 31, 2002; thus triggering application of the statutory process relative to negotiating a successor thereto. As contained therein, Article V, titled, "Recognition of Union," states as follows:

Section 1 - Bargaining Rights

Management hereby recognizes the Union as the sole and exclusive Bargaining agent for all Employees in the Classification of Police Officers.

Section 2 - Bargaining Unit Exclusions

All Employees whose classification is not listed in Section 1 above shall be excluded from the Bargaining Unit.

In addition, the following groups of Employees are excluded from the Bargaining Unit:

- A. Those classes which, on the effective date of this Agreement, are represented by other recognized Bargaining Agents.

- B. Employees within their twelve(12) months probationary period;
- C. Temporary, Seasonal, and Part-time Employees (including Auxiliary Police Officers); and
- D. Confidential, Management, and Supervisory Employees.

As the evidentiary record demonstrates, there are approximately 12 employees within the Bargaining Unit certified by the State Employment Relations Board. As is typical with respect to law enforcement agencies, its duties and responsibilities to this community are to “protect and serve” the members thereof with respect to law enforcement and other policing activities generally recognized for any law enforcement agency within this or any other State. According to the record, the Parties met on October 22 and November 11, 2002 in an effort to negotiate a successor Collective Bargaining Agreement. The evidentiary record demonstrates a unique set of circumstances exist relative to the manner in which the Parties proceeded to address the termination of the Collective Bargaining Agreement that occurred on December 31, 2002; thus triggering the statutory process. As is referenced by the Parties, there are legal issues that apparently exist concerning the manner in which “notice” was provided concerning the Union’s intent to negotiate and the requirements set forth in the statutory process relative thereto. Each Party made reference to the “Agreement” reached by and between them to engage in full negotiations at the expiration of essentially a one-year extension to the current Agreement. The only issue for consideration, and the Parties agree that the Fact Finder’s jurisdiction has been limited in this regard, is that of a wage increase. No other Articles of the Parties’ Collective Bargaining Agreement were addressed in the Fact Finding proceeding other than Article XIV, titled, “Wages.” The Parties made it abundantly clear during the course of the presentations that the only issue for consideration herein addresses a monetary increase to base wages for the Police Officers classification in this Bargaining Unit.

As set forth in the documentary evidence relied upon by the Parties and presented to the Fact Finder, the City of Englewood is located in Montgomery County and has a population of approximately 12,000 people. Its boundaries comprise six(6) square miles. According to the

evidentiary record, Tab 2 of the Employer's presentation documentation, the average year of service for the members of the Bargaining Unit ranges from a low of 2.6 years to a high of 14.5 years thus averaging 6.47 years of service with the City of Englewood. Under Article XIV, titled Wages, there are currently seven steps in which Employees are paid:

- Step A - Hire Rate;
- Step B - 6 month rate;
- Step C - 18 month rate;
- Step D - 30 month rate;
- Step E - 42 month rate;
- Step F - 54 month rate; and
- Step G - 72 month rate.

Moreover, as contained in the Wage Article, "Step" increases are referenced to a "maximum" shown in Step G of Addendum I contained in the Agreement. Section three(3) thereof indicates a Pension "pick-up" effective January 1, 2000, wherein the City pays 5% of the Employee's share of the contribution toward the Employee's State Retirement System. And Section four(4) is a Longevity payment effective January 1, 2000 of \$1,000 one-time lump sum longevity bonus paid to each Bargaining Unit Employee on their 20th anniversary date of employment. Addendum I as referenced in Article XIV sets forth the step system previously identified in the following way effective January 2002:

Step	A	B	C	D	E	F	G
Hourly Rates	\$16.91	\$17.73	\$18.62	\$19.56	\$20.52	\$21.56	\$22.64

As set forth Union Exhibit - 2, this Bargaining Unit has received a 4% increase per year since 1997. Moreover, in year 2000 a 5% step increase at the top step, was realized. Also, in 1994, pension pick-up at 1%, was initiated and was increased to 3% in 1995 and eventually increased to 5% in 1996, continuing at that percentage through 2002. As such, from a historical standpoint, the Employees within this Bargaining Unit are on the heels of the predecessor Collective Bargaining Agreement recognizing a 4% increase in 2001 and 2002. The Parties indicated to the Fact Finder that during the course of the previous negotiations culminating in the predecessor Agreement, emphasis was placed on addressing issues for more senior officers. The Employer notes that the theme now, albeit, addressing only one issue affecting economic increases

for base wages, must focus on the less senior employees who were not addressed in the prior negotiations.

As previously addressed, the past Collective Bargaining Agreement set forth yearly 4% increases to the base wage with a 5% pension pick up also set forth therein. There is no mention of any economic hardship with the City with no “inability to pay” arguments being raised. The Fact Finder is 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 Fact Finding proceeding, have relied upon comparable jurisdictions and/or municipalities concerning what they deem “comparable work” provided by this Bargaining Unit. As is typically apparent, there is no “on-point comparison” relative to this Bargaining Unit concerning the statutory criteria as will be addressed further by the Fact Finder based thereon. It is, and has been, the position of this Fact Finder, that the Party proposing any addition, deletion or modification of either current contractual language; or, a *status quo* practice, in cases of an initial Collective Bargaining Agreement, bears the burden of proof and persuasion to compel the addition, deviation or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo*, whether that be the previous Collective Bargaining language or a practice previously engaged in between the Parties.

As previously addressed, it is important to note that based on the statutory criteria, the public Employer herein has not raised any “inability to pay or finance” arguments relative to its overall economic status. Nonetheless, the Fact Finder is mindful of the apparent need of this or any other City to engage in prudent financial endeavors including the funding for this base wage increase to be set forth in this one-year extension to the predecessor Collective Bargaining Agreement. As is the case with any public employer, its accountability to the community concerning fiscal prudence and ability to finance economic enhancements that may be recommended herein under this Collective Bargaining Agreement, is indeed tantamount to the extent that they do not jeopardize the level of services currently provided to the members of this Community.

As is typical, the Union is seeking, what is commonly deemed, “necessary” contractual enhancements relative to the base wage proposal at issue between these Parties, to assist with its ability to provide a fair and equitable Collective Bargaining Agreement for this Bargaining Unit.

As previously addressed, the circumstances involving this particular Fact Finding are indeed unique wherein the Parties have extended the predecessor Collective Bargaining Agreement in whole except for consideration of the wage issue. The Fact Finder’s jurisdiction has been limited by mutual agreement for consideration of the Wages Article as the only open Article in this aspect of the statutory process.

III. ARTICLE XIV - WAGES

FOP POSITION

The FOP contends that three(3) factors must be considered by the Fact Finder: wage comparables of geographical appropriate jurisdictions providing like and similar services; the fact that the City has not raised any inability to pay contentions concerning this economic enhancement; and, the overall history of the Parties concerning the relationship as it existed prior to the initiation of this process. Summarily stated, the Union proposes a base wage increase effective January 1, 2003 for the seven steps indicated in Addendum 1 with the hourly rate as follows:

- Step A \$17.59;
- Step B \$18.44;
- Step C \$19.36;
- Step D \$20.34
- Step E \$21.34
- Step F \$22.42
- Step G \$23.55

As indicated by the Union, such represents a 4% increase which it contends is entirely justified and reasonable based upon the comparable data provided; the history of the Parties; and, the overall economic stability of the City of Englewood. From a historical standpoint, the Union emphasizes that since 1997, this Bargaining Unit has received a 4% increase for each year through 2002 and that pension pickup at 5% began in 1996. It goes on to indicate the ten-year annual wage settlement data provided by the State Employment Relation Board for police units, for calendar year 2001 was 3.9% on average. It is has received a base wage increase since 1992 and

a base wage increase at the level it proposes herein is consistent with what has been realized throughout the state and what has been realized historically since at least 1992. The comparable jurisdictions relied upon by the Union are Brookville, Clayton, Dayton, Huber Heights, Kettering, Moraine, Oakwood, Riverside, Trotwood, Union, Vandalia, and West Carrollton. It emphasizes of the entry level wages, Englewood is approximately 7.7% below the average of the jurisdictions relied upon and at the top level is approximately 1% below the average of the comparable jurisdictions. So its wage increase is indeed reasonable in light of these considerations.

It emphasizes that wage increases for calendar year 2003 average 3.64% for the jurisdictions of Brookville, Huber Heights, Moraine, Trotwood, Vandalia and West Carrollton - a range from 3% to 4%, respectively. It also emphasizes that some jurisdictions relied upon in its comparables recognize shift differential, longevity, pension pickup and other miscellaneous factors that must be recognized in the calculation of economic packages that are certainly not consistent throughout, but nonetheless indicate the differences in the manner in which certain economic packages are analyzed and reviewed.

The Union emphasizes that the police department is an "accredited" police department by The Commission on Accreditation for Law Enforcement Agencies, "CALEA," that is performance based and rare relative to police departments. It emphasizes this excerpt from that report indicating that the police officers are, "... among the lowest in the region" and that it is difficult to compete with other agencies that may have better pay and benefit packages.

The Union also emphasizes that the type of crime, particularly traffic work, has increased by over 300% with a steady increase of other crimes as set forth in its Exhibit - 13 demonstrating that the workload has indeed increased for these employees as well as the other requirements mandated for police departments overall requiring yet additional training and consideration by these officers.

Based on the totality of the evidence it has presented, the Union requests that Fact Finder recommend a base wage increase of 4% without eliminating any of the steps proposed by the City. It urges that such is indeed justified and reasonable based on the historical data of this Bargaining Unit, the comparable jurisdictions relied upon and the overall economic status of the City of Englewood.

CITY POSITION

The City agrees with the Union that the Fact Finder must focus on the comparable data provided as well as the history of this Bargaining Unit and in doing so, the Fact Finder will conclude that the proposal made by the City for a 3% base wage increase and removal of the first step in the step process as set forth in its Exhibit tab 3 thereby compacting the step system to include six(6) steps rather than seven(7) enabling the Employees to receive the highest pay rate after 54 months as compared to 72 months in the current Agreement. The City emphasizes that the predecessor Agreement address the more senior Employees and given the average number of years of service of 6.47, it is time to address the less senior Employees to attract them to the City of Englewood and to retain them for years to come. It emphasizes that its proposal of a 3% base wage increase coupled with the elimination of the step A in the step system equates to an overall increase of approximately 5% across the board for each Employee. It proposes that Step A become Step B and the seven step wage scale process be reduced to six steps, thereby eliminating the seventh step and allowing Employees to reach the top step at a quicker pace. The 5% increase between steps is a real number and significant in looking at the overall proposal made by the City. It emphasizes that its proposal eliminating that initial step plus a 3% increase to the base, results in the Step A rate, effective January 1, 2003 of \$18.26, Step B after 6 months, \$19.18, Step C after 18 months, \$20.15, Step D after 30 months \$21.14, Step E after 42 months, \$22.21, Step F after 54 months, as opposed to 72 months, of \$23.32. Based on the modified scale as it proposes and if adopted by the Fact Finder equates to 5% to 5.33% which is even greater than the 4% increase sought by the Union. By eliminating Step A, Employees are automatically receiving a 5% increase in conjunction with the base wage increase of 3% equating to 5.3% average increase overall (See, Tab 5)

The City emphasizes that the comparables it has relied upon are north of State Route 35 and included Brookville, Clayton, Huber Heights, Montgomery County Sheriff's Department, Riverside, Trotwood, Union and Vandalia; wherein, Vandalia has the highest top pay with the City of Englewood ranking third followed by Huber Heights. Montgomery County Sheriff's Department ranked second. The City emphasizes that the amounts per week increases over the City of Englewood for Vandalia and the Montgomery County Sheriff's Department equate to

approximately \$31.97 per week for the City of Vandalia and \$25.71 per week for the Montgomery County Sheriff's Department. Based on a 52 week calculation, the amounts in question are indeed minuscule in comparison to that realized by the City of Englewood which, as it emphasizes, equates to 4.825% average for the entire Bargaining Unit which is above the 4% being sought by the Union. Officers who attain Step G on the pay scale would receive an additional 5% increase over the life of the Contract, which if equated over the years of the predecessor Agreement that 5% Step G increase added to a 4% increase effective January 1, 2000 plus a 4% effective January 1, 2001, and a 4% increase for January 1, 2002, and with the 3% increase it seeks, effective January 1, 2003, equates to a 20% increase, or an average of 5% annual increase over a four year period of time.

The City also emphasizes that the compensation figures it has relied upon for the total compensation for the departments north of State Route 35, include fringe benefit, pension pickup, longevity to five years, educational incentives, etc. The City emphasizes that the Bargaining Unit has effectively raised its pay scale the equivalent of one grade on the classified pay scale or 5% acknowledging the City's most experienced officers. The City is comfortable with where they rank and inasmuch as this is a one-year economic enhancement, it is seeking to bring the newer members of the Bargaining Unit up to the higher pay grade by eliminating the initial step of the step increase. The Bargaining Unit will actually average 5% increases for 2000, 2001, 2002 and 2003, respectively based on the City's proposal herein. Its proposal extends that benefit to the remainder of the Unit by dropping the bottom of the pay scale and bumping everyone up one step.

For these reasons, the City requests that the Fact Finder recommend its proposal of a 3% base wage increase with the elimination of the initial step of the seven-step wage system.

RECOMMENDATION AND RATIONALE

From the outset, it must be stated that indeed the circumstances giving rise to this Fact Finding proceeding are unique. Given the unresolved legal question of notice of intent to negotiate, that led to the Parties agreeing to only address the sole issue of Wages, the Fact Finder must recognize that indeed it is difficult to address a single issue when there is nothing to, as characterized by the Parties, "trade-off" in relation thereto. It is indeed difficult to recommend enhancements in one area when other areas may not be addressed, but this is the path the Parties

have chosen to follow and the limitations on the Fact Finder's jurisdiction is noted and will obviously be followed.

At first glance, it would seem that indeed the numbers bear out a recommendation following the City's logic concerning the 3% base wage increase and elimination of the initial step of the step system; however, simple mathematics seem to suggest that a seven-year step system at five percent per step equates to 35% for the seven-year period. By eliminating the initial step and reducing that to six, such equates to six steps at 5% or 30%, adding the 5% increase of that step, notwithstanding. So even though it may be "fashionable" at the front end, the elimination of one(1) step at 5% would impact one's pension, at the back end of the City's proposal. Moreover, the fact that the Parties are only addressing one issue, wages, seems to compel the recommendation that the Parties do so without addressing any modification to the step system process. There are two(2) components to the City's proposal. There is simply no "leveraging" ability concerning modification of the step process that would be seemingly beneficial to the Union at this juncture. Had it also sought to modify the step system then indeed there could be some consideration relative to the overall wage enhancement being sought; however, inasmuch as it is not seeking to modify that system, it is in my opinion the more logical and prudent approach would be to only address a base wage increase and leave any consideration that may exist concerning compressing the step system, as it currently exists, to a time when the Parties can more fully address the remaining Articles of the Collective Bargaining Agreement in conjunction therewith. Based thereon, it seems as though a base wage increase is the appropriate avenue.

The comparables relied upon seemingly suggest that indeed the City of Englewood's Police Department is in a favorable position concerning those relied upon by both Parties. Becoming an accredited Police Department undeniably requires a great deal of effort even prior to receiving such an acknowledgment and the City has apparently recognized those efforts given the prior overall wages received by these employees. It is important to note that the 2001 overall wage increase statewide was in the neighborhood of 3.9% for police units which is slightly higher than most of the comparables. Of the comparables relied upon, each Party has selected Brookville, Clayton, Huber Heights, Riverside Trotwood, Union and Vandalia, as comparable jurisdictions. The City of Englewood relative to the entry level wage ranks 5th out of 7th relative

to the Union's 2002 wage comparables as they exist. With respect to Brookville, its 2003 wage increase is 4%, Huber Heights - 3.5%, Trotwood - 3% and Vandalia - 3.5%, so the Parties based on their proposals of 3% and 4%, respectively, for a base wage increase, would fall within that average of 3.5% as it exists.

With respect to the top level wage based on the City's comparables Vandalia is at top followed by Montgomery County Sheriff with Englewood ranking third (assuming the 3% increase for 2003) and Huber Heights ranking 4th. If the Sheriff's Department is eliminated, and generally the type of work a Sheriff's Department performs is, in some ways, different from that of a Police Department, but there are similarities, then Englewood would rank second relative to the top wage which would certainly give credence to the City's consideration that the more senior Employees were addressed in the predecessor Agreement with the need to recognize the less senior employees in this proceeding. For reasons more fully addressed below, the base wage structure for this one-year extension will be addressed. Employee retention must be analyzed and addressed based on long range goals and plans and a one-year adjustment, although it would help the cause, could be more fully considered when all economic issues can be negotiated.

Based on the Union's comparables, the City of Englewood ranks 4th, for the top level wage. Vandalia ranks first in both Parties' comparables. Huber Heights ranks second according to the Union's with Trotwood ranking third. Of the jurisdictions both Parties have relied upon regarding the top level wage comparisons, Englewood ranks 4th according to the Union and either 2nd or 3rd, if Montgomery County Sheriff is counted, under the City's analysis. So indeed there is some plausibility to the contention that the pay rates of the higher ranking officers have been addressed based on both sets of comparables.

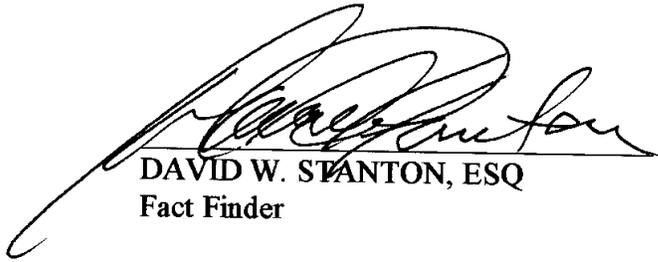
Given the overall picture relative to what is at stake here, i.e., one issue concerning an economic enhancement to a base wage, it would certainly seem logical to address the base wage as it impacts *all* employees without jeopardizing this Unit's overall ranking with the like jurisdictions chosen by the Parties based on both entry and top wage levels. Moreover, the information provided by the Parties indicates that other factors seemingly exist relative to the overall packages of the comparables concerning economic considerations and it is important to note, there is no indication relative to the "trade offs" that may have occurred based on the

economic packages of the other jurisdictions.

Based on the totality of this information, the Fact Finder is of the opinion that only a base wage increase should be addressed at this juncture which would allow the Parties to fully develop its arguments and positions relative to the numerous other Articles that will presumably be addressed at the time when the extension to this Agreement expires. As such, it is respectfully recommended that the Parties adopt, based on the comparable data, the overall economic status of this City and more importantly the historical increases received by this Bargaining Unit of 4% for each year since 1997 and the unique circumstances involving only one(1) issue, that an increase of 3.75% be implemented for the one-year extension to the Collective Bargaining Agreement. The 4% increase in each of the last six(6) years “pushes” this recommendation above the “complete compromise” recommendation of 3.5% by 1/4%.

CONCLUSION

Hopefully, this recommendation contained herein can be deemed as reasonable in light of the data presented, the representations made by the Parties and based on the common interests of both entities recognizing that painstaking efforts at the bargaining table proved unsuccessful. It is hopeful that these Parties can adopt these recommendations so that the successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without further interruption. Moreover, this recommendation is offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process and based on any stipulations of the Parties; based on the positions indicated to the Fact Finder during the course of the informal mediation and during the course of the Fact Finding proceeding; and, is based on the mutual interests and concerns of each Party to this successor Agreement.

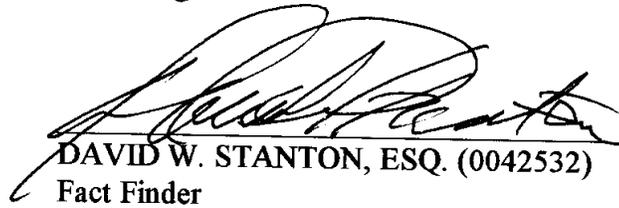


DAVID W. STANTON, ESQ
Fact Finder

Dated: February 4, 2003
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendation has been forwarded by overnight U.S. Mail Service to: Joseph M. Hegedus, Climaco, Climaco, Lefkowitz & Garofoli Company, LPA, 175 South 3rd Street, Ste. 820, Columbus, Ohio 43215-5134; Dwight A. Washington, Washington & Hollingsworth Company, LPA, 4 South Main Street, Wright Stop Plaza, Suite 1200, Dayton, Ohio 45402-2009; and Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 4th day of February, 2003.



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

February 4, 2003

Joseph M. Hegedus, Esq.
Climaco, Climaco, Lefkowitz & Garofoli Co., LLP.
175 South Third Street, Suite 820
Columbus, OH 43215-5134

Dwight A. Washington, Esq.
Washington & Hollingsworth Co., LPA
4 South Main Street
Wright Stop Plaza, Suite 1200
Dayton, OH 45402-2009

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

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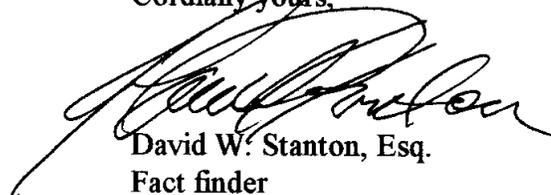
SERB CASE NO. 02-MED-10-1029
CITY OF ENGLEWOOD -AND- OHIO PATROLMEN'S BENEVOLENT ASSN.
FACT FINDING - POLICE OFFICERS

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.

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.