

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

STATE EMPLOYMENT
RELATIONS BOARD

2003 JUN -2 A 10: 11

IN THE MATTER OF FACT FINDING :

BETWEEN :

CITY OF WESTERVILLE :

-AND- :

FOP, CAPITAL CITY LODGE NO. 9 :

REPORT OF THE FACTFINDER

SERB CASE NUMBER(S):

02-MED-10-1167

02-MED-10-1168

BARGAINING UNIT(S):

I. The first Bargaining Unit consists of all sworn full-time, regular members of the Department in the rank of Police Officer. (Per Article II, Section 2.2, titled "Bargaining Unit")

II. The second unit consists of all sworn, full-time members of the Department in the ranks of Corporal, Sergeant and Lieutenant. (Per Article II, Section 2.2, titled, "Bargaining Unit")

FACTFINDING PROCEEDING:

April 24, 2003; Westerville, Ohio

FACTFINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Ronald G. Linville, Attorney
Lisa Knickerbocker, Attorney
Mike Wasylik, Assistant City Manager
John P. Winkel, Director of Finance
Ann Lund, H.R. Coordinator
Michael Clancey, Police Chief
Thomas A. Patterson, Administrative Asst.

FOR THE EMPLOYEE ASSOCIATION

Robert W. Sauter, Attorney
Robert Oppenheimer, Team Member
Pat Power, Consultant
Stephen Fridley, Team Member
Don Richardson, Team Member
Thomas J. Bobornyk, Team Member
John J. Petrozzi, Team Member
John A. Johnson, Team Member

ADMINISTRATION

By separate 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 those issues that remained at impasse between these Parties relative to the two(2) Bargaining Units previously identified. The impasse resulted after attempts to negotiate a successor Collective Bargaining Agreement, covering both Units, proved unsuccessful. Through the course of the Administrative aspects of scheduling this matter, the Factfinder discussed with the Parties the overall “atmosphere” relative to the prior negotiations efforts engaged in 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 April 24, 2003, a Factfinding proceeding was conducted where, prior to 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 any mediation would not be beneficial at this juncture. At the conclusion of those informal efforts, the Parties 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.

The evidentiary record of this proceeding was subsequently closed at the conclusion of the Factfinding proceeding and those issues that remain at impasse are the subject matter for the issuance of this Report hereunder.

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by the Parties and were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the 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 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. BACKGROUND

The Factfinding arises out of negotiations between the City of Westerville and the Fraternal Order of Police, Capital City Lodge 9, for the 2003-2005 successor Collective Bargaining Agreement addressing both Bargaining Units. As the record demonstrates, the FOP was initially certified as the exclusive representative for the Patrol Officers and later certified on June 22, 1995 as the exclusive representative for the Corporals, Sergeants and Lieutenants. Each Bargaining Unit is represented by the FOP and each is comprised of full-time, municipal Police Officers - from the rank of Police Officer, through and including, Lieutenant. Under case number, 02-MED-10-1167, the first Bargaining Unit is comprised of Police Officers totaling approximately 63 members. Under Case No. 02-MED-10-1168, that Bargaining Unit is comprised of Corporals, Sergeants and Lieutenants, totaling some 6 members. As the record demonstrates, the Police Officer Unit's Contract date to 1988 - 1990; 1991 - 1993; 1994 - 1996; 1997 - 1999; and, 2001 - 2002. The Corporal/Sergeant/Lieutenant's Collective Bargaining Agreements date to 1996; 1997 - 1999; and, 2000-2002. As the record demonstrates, these Parties have engaged in multi-unit

collective bargaining negotiations for the successor Agreement and, as indicated, the Parties have met and bargained on the following dates: October 25, 2002, November 5, 2002, November 12, 2002, and November 25, 2002. During the course of that bargaining, the Parties reached tentative agreement on a number of Articles which are not in dispute and are recommended herein for inclusion in the successor Collective Bargaining Agreement as set forth as follows:

Article I	Contract	11/25/02
Article II	Recognition	10/25/02
Article III	Lodge Security	10/25/02
Article IV	Non-discrimination	10/25/02
Article V	Grievance Procedures	11/25/02
Article VI	Arbitration	10/25/02
Article VII	Lodge Representation	10/25/02
Article VIII	Management Rights	11/25/02
Article IX	No Strike/No Lock-out	10/25/02
Article X	Internal Review Process	11/25/02
Article XI	Corrective Action and Records	10/25/02
Article XII	Work Rules and Directives	10/25/02
Article XIII	Labor Relations Meetings	11/25/02
Article XIV	Layoffs/Job Abolishment	10/25/02
Article XV	Miscellaneous/Non-Economic	11/25/02
Article XVIII	Regular Work Periods and Overtime	11/25/02
Article XIX	Equipment and Allowance	11/25/02
Article XXI	Holidays	10/25/02
Article XXIV	Injury Leave	10/25/02
Article XXV	Special Leaves	11/25/02
Article XXVII	Tuition Reimbursement	10/25/02
Article XXVIII	Family and Medical Leave Act Leave	10/25/02
Article XXIX	Waiver In Case of Emergency	10/25/02
Article XXX	Signatures	10/25/02

As set forth and agreed to by 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 identified. Those unresolved issues/Articles are set forth as follows:

Article XVI	Substance Abuse and Testing
Article XVII	Rates of Pay/Wages
Article XX	Vacation and Personal Time
Article XXII	Insurance
Article XXIII	Sick Leave

Article XXVI Miscellaneous Economic -
 1) Shift Differential
 2) Longevity Pay

**III. THE BARGAINING UNIT(S) DEFINED;
ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY;
AND, GENERAL BACKGROUND CONSIDERATIONS**

The Collective Bargaining Agreement between the City of Westerville, hereinafter referred to as the "Employer" and the Fraternal Order of Police, Capital City Lodge No. 9, hereinafter referred to as the "Union" expired on December 31, 2002, thus triggering application of the statutory process relative to negotiating a successor thereto recognized under Chapter 4117 of the Ohio Revised Code, otherwise known as the "Ohio Collective Bargaining Law." As set forth in Article II, of the Parties' Agreement, titled "Recognition," the Bargaining Unit(s) defined therein, subject to the issuance of this Factfinding Report, are defined as follows:

ARTICLE II - RECOGNITION

Section 2.1 - Recognition

The City recognizes the Lodge is the sole and exclusive representative of all Employees included in the Bargaining Unit described in Section 2 of this Article in any and all matters relating to wages, hours, terms and other conditions of employment and the continuation, modification, and/or deletion of an existing provision of the Contract and for the administration of the current Contract between the Parties.

Section 2.2 - Bargaining Unit

The first Bargaining Unit covered by this Contract consists of all sworn, full-time, regular members of the Department in the rank of Police Officer. The second Bargaining Unit covered by this Contract consists of all sworn, full-time members of the Department in the ranks of Corporal, Sergeant and Lieutenant. Excluded from either Bargaining Unit and thereby from coverage within this Contract are all positions in the Department outside of the ranks of Police Officer, Corporal, Sergeant, and Lieutenant, including the Chief of Police, Captain and civilian employees,(including Dispatchers.) Referenced throughout this Contract to bargaining members means Employees within both Bargaining Unit unless specified otherwise.

All provisions of this Contract shall apply to Members in their initial probationary period, except that neither the Lodge nor a Member in his or her initial probationary period shall have the right or the ability to proceed to Arbitration challenging the decision of the City to terminate the Member's employment (within his or her initial probationary period).

As the evidentiary record demonstrates, there are approximately 63 members within the Police Officer Bargaining Unit and approximately 6 members in Corporal, Sergeants and Lieutenant's Bargaining Unit each certified by the State Employment Relations Board. As is typical with law enforcement agencies, its duties and responsibilities to the City of Westerville, 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.

As the record demonstrates, these Parties have met on October 25, November 5, November 12, November 25, 2002, in an effort to negotiate a successor Collective Bargaining Agreement. As is evident with the existence of this aspect of the statutory dispute resolution process, those efforts proved unsuccessful. The City of Westerville Police Department is a municipal Police Department in central Ohio located within Franklin County, Ohio. As the evidentiary record demonstrates, the Parties are "on the heels" of three(3) years where the Employees received 4% increases to the base wage which has been consistent in that range for these Employees dating back to the late 90's as referenced in the City's documentation concerning the increases received by members of the Bargaining Unit. In 1994, the Officers received a 3.5% increase, a 4.5% increase in 1995, and 4% increases in 1996 and 1997, respectively, a 5% increase in 1998 and 4% increases through 2002 - exceeding inflation rates for those periods. (See, Employer Exhibit - 1) In this regard it is clear, based on this single factor, the overall financial status of the City based on its population growth and location in central Ohio, has remained financially viable and sound. In fact, the evidentiary record does not demonstrate any indication of any economic hardship and there was no "inability to pay and/or finance" arguments raised.

The Factfinder is required to consider comparable employee units with regard to their overall make-up and services provided to the Members of the respective communities. As is typical and 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 concerning what they deem "comparable work" provided by these Bargaining Units. As is typically apparent, there are no "on-point" comparisons relative to the

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 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.

It is important to note that based on the statutory criteria, the public Employer has not raised any inability to pay or finance arguments relative to its overall economic status. Simply that it continues to strive for fiscal prudence. The Factfinder is indeed mindful of the apparent need of this, or any other City, to engage in prudent financial endeavors including the funding for these economic enhancements for the successor 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 is indeed tantamount to the extent that they do not jeopardize the level of services currently provided to the Members of this community.

Alternatively, the Union is seeking what is commonly characterized as “necessary” contractual enhancements to assist with its ability to provide a fair and equitable Collective Bargaining status for this Bargaining Unit in comparison to those jurisdictions and municipalities relied upon in presentation of comparable data. The Union recognizes that there are no inability to pay and/or finance raised relative to those enhancements; however, it also is mindful of its ability to negotiate a Collective Bargaining Agreement that will enable these Bargaining Unit Employees to remain competitive within the market in which it exists.

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

IV. THE UNRESOLVED ISSUES

1) ARTICLE XIV - SUBSTANCE ABUSE AND TESTING

CITY POSITION

The City contends that it is indeed tantamount that its sworn officers remain unimpaired and drug free while on duty and, as such, proposes changes to the existing Drug Testing Article. The significant change, as it characterizes, reflects the City's desire to implement a Random Drug Testing Program similar to what has been negotiated with the City's Fire Division and which has also been implemented with respect to all others "safety-sensitive" Employees in the City. The City emphasizes that during negotiations, the FOP did not object to the concept of Random Drug Testing, but objected to the process used and the percentage of Bargaining Unit members that would be tested annually.

FOP POSITION

The FOP opposes the new provisions and seeks the *status quo* relative to this Article. It contends that the current language of this Article dates to the 1998-2000 Agreement and has served the Parties well. As such, there is no need to add drug testing, on a random basis, to the current language. It also contends that no other Franklin County suburban municipal Police Department has Random Drug Testing and, as such, there is no need to stigmatize the Westerville Police Officers by instituting Random Drug Testing when such a program is not in place in comparable jurisdictions.

Moreover, the Union insists there is no reason to institute Random Drug Testing because of any concern arising out of the membership of the Bargaining Unit. The City seems to insist upon its proposal primarily because the City's Firefighters are now subject to Random Drug Testing. This simply is no reason to institute the same or similar policy for a Police Department where no need exists. The Union also emphasizes significant constitutional, legal and financial issues which attach to Random Drug Testing programs - none of which need to burden these Bargaining Units.

RECOMMENDATION AND RATIONALE

As will be discussed in greater detail, it is recommended that the Parties adopt the City's proposal instituting and implementing a Random Drug Testing Program effective January 1, 2004; however, the "percentage" component of members to be tested shall be at 10% and shall not increase or decrease based on positive test results. This is certainly consistent with that

recognized by the City of Columbus and its Police Department and the “trend” for implementing such is apparent throughout the jurisdictions within the State of Ohio. This does not, in any way, suggest that problems exist within this Department warranting Random Drug Testing; simply, based on the economic enhancements that will be discussed herein, those improvements realized by the Bargaining Units relative to base wages and other enhancements compel this recommendation.

Additionally, with respect to “internal comparability,” the Fire Department and all other “safety- sensitive” employees within the City do have Random Drug Testing similar to that which is being proposed by the City herein. Such represents a change from the “Reasonable Suspicion Testing” currently in existence in the Parties’ predecessor Collective Bargaining Agreement. Such Reasonable Suspicion Testing Policies are recognized generally as potentially being subject to “subjective” application since the term “reasonable” can be subject to varying interpretations. Random Testing eliminates the interpretation/application issues that can exist.

However, the percentage component shall be at a 10% level throughout the duration of the Agreement and, such, would obviously be effective January 1, 2004 given the fact that matters relative to language issues, in most instances, cannot be retroactive. This would become effective January 1, 2004, or the second year of the three year agreement.

It must be stated for the record that the City recognizes, and the Union emphasizes, that there is not an existing problem with the use of illegal drugs or paraphernalia evident within the realms of the City’s Police Division. Simply that the City wants consistency with regard to all City employees. As such, it is recommended that the Parties adopt the City’s proposal relative to the implementation of Random Drug Testing with an effective date of January 1, 2004; however, the “percentage of Members testing issue” remain at the 10% level for the duration of the successor Agreement.

2) ARTICLE XVII - RATES OF PAY/WAGES

FOP POSITION

The FOP seeks to increase the base wage for each Bargaining Unit by 5% for years 2003, 2004, and 4% for year 2005 and by agreement between the Parties, such increases would be retroactive to January 1, 2003. The Lodge insists that its proposal is supported by the

comparable data for jurisdictions within the Franklin County suburban municipalities. Moreover, public safety is indeed of paramount importance to the interest and welfare of the public and the members of these Bargaining Units deserve the compensation reflected in the FOP's proposal for the work which they accomplish, often at great peril for themselves and their families. The City's ability to finance such a wage package is indeed consistent with the proposed level of wage increases it seeks.

CITY POSITION

As the City indicates, the Parties disagree as to the straight-time annual wage rates as set forth in Section 17.1 of Article XVII. based on the current economy and compensation levels of other similarly-situated municipalities throughout the State of Ohio. The City's position, as amended, is 3% for each year of the successor Collective Bargaining Agreement.

RECOMMENDATION AND RATIONALE

Based on other Articles contained in this Report, particularly the recommendation for the implementation of Random Drug Testing, based on the comparable data provided and the historical collective bargaining between these Parties, which came on the heels of 4% increases for each of the last four(4) years while recognizing the overall wage enhancement trends within this County, it is hereby recommended that the Parties adopt a wage increase to the base wages for each bargaining unit reflecting a 4.5% increase in year 1, a 4% increase in years 2 and 3, respectively, totaling a 12.5 % wage enhancement for the three-year successor Collective Bargaining Agreement. The 4.5% increase would be retroactive to January 1, 2003 by agreement between the Parties. Such a wage increase takes into consideration the overall economic climate, the cost-of-living in this particular area, compared to that recognized throughout the State and nationally and, more importantly, takes into consideration the City's ability to finance such an economic enhancement based on its financial soundness without exhausting its General Fund.

The need for exercising fiscal prudence is indeed evident with the uncertainty of the economy, nationally, which is beginning to have a "trickling-down effect" to those areas that have otherwise enjoyed a strong, sound economic base for the past several years. Given the overall "soft" economy, it is indeed necessary to exercise fiscal prudence with respect to binding any providers of services to an economic enhancement that cannot otherwise be afforded or financed.

Based on the financial documentation provided, such is indeed consistent with this recommendation that the City of Westerville can afford, and thus finance, the recommendations contained herein.

Based thereon, it is hereby recommended that the Parties adopt, for the successor Agreement, language implementing a 4.5% increase for year 1, a 4% increase for year 2 and 4% increase for year 3 for the three-year successor Collective Bargaining Agreement and recognizing that the Parties, by agreement, have agreed to retroactivity effective January 1, 2003.

3) ARTICLE XX - VACATION AND PERSONAL TIME

FOP POSITION

The FOP proposes to modify the current Vacation accrual rates by making 200 hours of vacation per year available after 15 years rather than after the current 16 years. In support of this position, the FOP recognizes that significant reward would be provided to those members to gain 200 hours of vacation after 15 years rather than the current 16 years.

CITY POSITION

The City contends that the existing Vacation schedule is at the top end of the comparable jurisdictions and proposes that the current language remain in effect.

RECOMMENDATION AND RATIONALE

Based on the comparable data provided, it is indeed evident that the Employees receive generous benefits relative to Vacation accrual and to move the effective date of when an Employee can take those 200 hours of vacation to 15 years rather than 16 years is certainly not supported by them. Based thereon, it is recommended that the Parties maintain the *status quo* relative to the Vacation accrual issue as set forth in Section 20.1 of Article XX titled, "Vacation and Personal Time."

4) ARTICLE XXII - INSURANCE

CITY POSITION

The City, among other things, proposes that the Member's contribution made relative to the premium costs which is currently at 10% be increased to 11% in 2004 and 12% in 2005, each becoming effective January 1 of their respective year. It cites escalating insurance costs, quality

of existing benefit plans, etc., as its reason to ask the Members to contribute more for the insurance they receive. The City amended its position relative co-payments of \$15.00 for office visits, \$75.00 for emergency room visits, \$25.00 for urgent care visits and a \$7, \$15, \$30 prescription drug plan as being tentatively agreed to prior to the Factfinding, but was amended when it became apparent that the Parties were not in agreement as to those elements of the Insurance Article.

FOP POSITION

The FOP proposes retention of the current language set forth in Article XXII, Section 22.1, relative to premium payments, and copayments for other services. It insists that the *status quo* reflects that the Westerville Members pay the highest health insurance premium of any Franklin County suburban municipal Police jurisdiction and, as such, there is no justification for the increased health insurance costs proposed by the City. The City has the ability to continue to pay the costs associated with the continuation of the current health insurance plan and, as such, the FOP proposes to maintain the *status quo* at every level.

RECOMMENDATION AND RATIONALE

Indeed the industry of insurance has, and will continue to, change as we have known and experienced it over the past ten(10) years. Economic trends are pushing premium levels to an all-time high thus requiring employers, and employees alike, to address the escalating costs associated therewith. It indeed the more common consideration to seek premium cost-sharing to be implemented even where those circumstances have not existed for the life of the collective bargaining relationship. The comparables provided by the Union reflect a few of the so-called “exceptions” where no premium sharing exists. However, it is evident based on recent trends, that the need exists for employees to share the cost of the increased and escalating costs associated with providing health and other types of benefits relative to insurances, whether it be by increasing current premium-sharing percentages or increasing co-pays for other services to help keep the “total” premium cost near that level enjoyed the previous contract year. Both approaches are being proposed herein.

Based on these considerations, including other recommendations subject to this Report, and more importantly the City’s overall financial status, it is recommended that the current

premium level remain at the 10% premium sharing rate. Based on the existence of a “percentage rate” premium sharing scheme, as opposed to a “flat dollar cap” rate, each time the premiums increase for the City, the 10% co-pay of the premium required from the Employee, also increases. In this regard, given that percentage is currently at 10%, the Factfinder sees no justification to further add to whatever increased costs that may arise.

With respect to the “co-pays,” - Office visits, Emergency Room, Urgent Care and Drug Plan - it is recommended that these co-pay changes be incorporated into the successor Collective Bargaining Agreement with an effective date of January 1, 2004 based on the fact that those cannot be implemented retroactively given the nature of the impact and the inability to effectively track their occurrence and payment. Those changes would reflect the following co-pay levels for those services as follows:

- \$15.00 - Office Visits;
 - \$75.00 - Emergency Room Visits;
 - \$25.00 - Urgent Care; and,
 - \$7.00-\$15.00-\$30.00 - Prescription Drug Plan
-

With respect to the rest of the Article, the *status quo* is hereby recommended. The increased co-pay changes indicated are sufficient to address the concerns of the City while also maintaining some consistency to the Bargaining Units relative to their Health Insurance coverage in light of the current Insurance market.

With respect to Section 22.2 concerning the “Decrease in Benefits,” as proposed by the FOP, it is recommended that the Parties maintain the *status quo* language relative to this particular provision and paragraph of Article XXII concerning Insurance. Such is based on the fact that stability in the benefit coverage being sought by the FOP, in the opinion of the Factfinder, has been realized based on the recommendation concerning the premium-sharing percentage remaining at 10%.

5) ARTICLE XXIII - SICK LEAVE

FOP POSITION

The FOP seeks a conversion formula, after a minimum of 10 years of City service and termination, be increased from: “up to 280 days of unused sick leave on the basis of one(1) hour cash payment for every two(2) hours of sick leave accumulated provided this payment does not exceed \$17,500,” to: “up to 750 hours of unused sick leave to be paid out on the basis of one(1) hour cash payment for every two(2) hours of sick leave accumulated.” The FOP insists that no other Franklin County suburban municipal Police Department has a dollar cap on sick leave conversion. The effect of the current cap which dates to the 1994-1996 Collective Bargaining Agreement is to lower the “real dollar” value of the payout as a Member’s wages increase. The FOP proposal in this regard would remove the current \$17,500 cap and allow the value of this benefit to grow in line with wage increases. Moreover, there is no indication that the City has any inability to finance this proposed enhancement.

CITY POSITION

The City proposes that the current contract language remain in effect as being a generous benefit allowing every two(2) hours of accumulated sick leave to be converted into one(1) hour of pay up to a cap of \$17,500 total payment.

RECOMMENDATION AND RATIONALE

Based on the comparable jurisdictions relied upon, it is clear that these Employees currently enjoy a very generous benefit relative to Sick Leave and its converted hours. The current level of sick days per year is at 12 which is very comparable to the jurisdictions relied upon and there exists no justification to modify that to incorporate the proposal by the FOP relative to the conversion rate it seeks. As provided, the City’s comparables are compelling, thus resulting in a finding that the Union failed to meet its burden to warrant the proposed enhancement it seeks. This recommendation takes into consideration the overall wage package recommended, the Insurance premiums remaining at 10% with modest increases to certain other services co-pays, as well as, remaining Articles of this report.

6) ARTICLE XXVI - MISCELLANEOUS ECONOMIC,

SECTION 26.3 SHIFT DIFFERENTIAL

FOP POSITION

The FOP and the City both indicate a \$.10 per hour increase for Shift Differential is agreeable; however, the FOP would place this increase effective beginning in the second year of the Contract effective January 1, 2004, while the City would make this effective the third year, effective January 1, 2005. The FOP characterizes this as a modest increase in the second year of the Contract and, as such, would maximize its economic benefit to the Bargaining Unit Members.

CITY POSITION

The City also acknowledges its willingness to agree to a \$.10 per hour increase in Shift Differential pay beginning January 1, 2005. It notes that this would take Shift Differential to \$1.00 per hour, 20 to 30% above the average for comparable jurisdictions.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the \$.10 per hour Shift Differential as agreed to by and between the Parties noting that the difference between the two sides is the effective date upon which this would be implemented. The Factfinder recognizes that indeed the jurisdictions do not necessarily compel any increase with respect to the current benefit received by the Bargaining Unit members; however a \$.10 per hour increase is, as best characterized, a “modest” enhancement. The \$.10 per hour Shift Differential increase it is hereby recommended to take effect January 1, 2004.

7) ARTICLE XXVI - MISCELLANEOUS ECONOMIC,

26.6 LONGEVITY PAY

FOP POSITION

The FOP proposes to increase Longevity Pay as follows:

Years	Current	FOP proposal	Increase
5-9	\$650.00	\$700.00	\$50.00
10-14	\$875.00	\$950.00	\$75.00
15-19	\$1,100.00	\$1,200.00	\$100.00
20+	\$1,275.00	\$1,400.00	\$125.00

In support of this contention, the FOP asserts that its Longevity increase are more reasonable than those proposed by the City and should be implemented in 2004 for maximum

economic benefit to its Members.

CITY POSITION

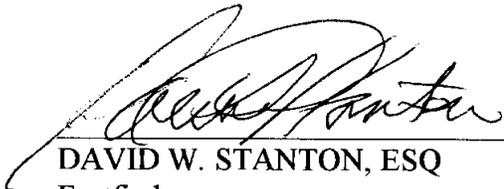
The City proposes a one-time increase in Longevity Pay to take effect in 2004 which would in effect increase current levels by \$50.00 each.

RECOMMENDATION AND RATIONALE

The Longevity Pay or "service bonus" or other types of characterizations of a service award provided for continued years of service with an Employer, are economic enhancements and "bonuses," so to speak, to recognize years of service with any particular department within the City. It is indeed an avenue by which Employees can receive additional pay and the enhancement sought by the Union herein of a \$50.00 increase for the first category, \$75.00 increase for the second category, a \$100.00 increase for the third category and a \$125.00 increase for the fourth category are certainly reasonable in light of the financial data presented and addressed herein. The effective date of these increases shall be January 1, 2004 or the second year of the three-year Collective Bargaining Agreement. Such represents an increase equal to that sought by the FOP, and acknowledged by the City, in the first category, \$25.00 increase over that proposed by the City, for the second category, a \$50.00 increase and a \$75.00 increase, respectively, for the remaining two(2) categories, above that proposed by the City.

V. 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 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 during the course of the Factfinding proceeding; and, based on the mutual interests and concerns of each Party to this successor Agreement.

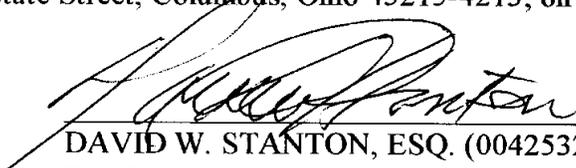


DAVID W. STANTON, ESQ
Factfinder

Dated: May 8, 2003
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Factfinding Report and Recommendations has been forwarded by facsimile and overnight U.S. Mail Service to: Ronald G. Linville, Esq., Baker & Hostetler, LLP, 65 East State Street, Ste. 2100, Columbus, Ohio 43215-4260; Robert W. Sauter, Esq. Cloppert, Latanick, Sauter, & Washburn, 225 East Broad Street, Columbus, Ohio, 43215; and, Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this 3rd day of May, 2003.



DAVID W. STANTON, ESQ. (0042532)
Factfinder

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May 29, 2003

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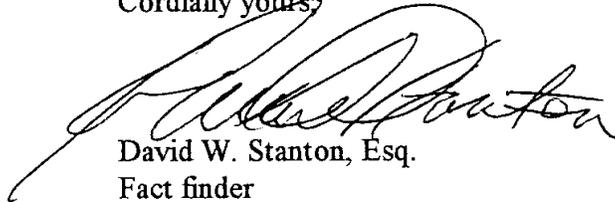
SERB CASE NOS. 02-MED-10-1167 & 02-MED-10-1168
CITY OF WESTERVILLE -AND- FOP, CAPITAL CITY LODGE 9
FACTFINDING

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.

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STATE EMPLOYMENT
RELATIONS BOARD

