

APPOINTMENT

This Fact-finder was appointed by letter dated August 6, 2004, from the Ohio State Employment Relations Board. Pursuant to the appointment, this Fact-finder was bound to conduct a Fact-finding Hearing and to serve on the Parties and SERB his written Report and recommendations on the unresolved issues. Subsequent to the appointment, the Parties agreed to an extension such that the Fact-finder was to serve the Parties with a written Fact-finding Report no later than October 19, 2004. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearing as above noted. The Parties waived the provisions of 4117.14(G)(11) in regard to all matters of compensation or with cost implications which may be awarded by a Conciliator in accordance with Chapter 4117 O.R.C. and agreed that the Conciliator may award wage increases or other matters with cost implications to be retroactive to January 1, 2004.

BACKGROUND

The City of Clayton ("City") is located in north central Montgomery County, Ohio. A portion of the City is south of Interstate 70, and a portion is north of Interstate 70. Its population, according to the 2000 U.S. census, is 13,347.

The City was formed January 1, 1998, as a result of a merger approved by the voters of Randolph Township and the Village of Clayton. The voters approved a charter in May 1999, under which the City continues to operate. The charter provides for a Council-Manager form of government. The Council consists of seven members: a Mayor, three at-large members and three ward representatives. The City Council appoints the City Manager who serves as chief executive officer. The City Manager is responsible for appointing and removing all other full- and part-time city employees.

The City's Police Department includes nine Patrol Officers and one current vacancy (10 positions) which is in the process of being filled.

The City and its Officers are Parties to a Collective Bargaining Agreement: "Collective Bargaining Agreement Between the City of Clayton and the Ohio Patrolmen's Benevolent Association (January 1, 2003 to December 31, 2005)" executed in August 2003.

This is the first Fact-finding between the Parties, and the sole issue is a reopener on wages for 2004 and 2005. Article 28 Wages, Section 1. Wages, of the current Agreement provides in-part:

7/1/04 Issues of wage Rates and Longevity Pay for 2004 and 2005 (with wage rates for 2004 retroactive to January 1, 2004) shall be subject to Reopener.

Neither Party made any proposal regarding Longevity. Neither Party presented any evidence

whatsoever regarding Longevity. Hence, it is not an issue in this Fact-finding.

PRIOR NEGOTIATION/MEDIATION

Prior Negotiation/Mediation: This Fact-finding is for a reopener on wages for years two (2004) and three (2005) of the current Collective Bargaining Agreement ("Agreement").

Issues Resolved by the Parties' Prior Agreement: No prior agreement was reached regarding the sole issue in this Fact-finding. The only issue brought to the table by either Party is wages for the second and third years of the Agreement.

Mediation During the Fact Finding: Mediation was offered prior to the start of the Fact-finding Hearing, however, both Parties believed that mediation would not be fruitful, and thus no mediation was conducted.

Issue Remaining at Impasse: The following issue was identified by the Parties in their Pre-hearing Position Statements as unresolved:

ISSUE

ISSUE 1: WAGES -- ARTICLE 28 -- WAGE SCHEDULE

UNION'S ECONOMIC PROPOSAL

ARTICLE 28 Wages

Section 1. Wages

	(Entry)							
	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	
Current	15.92	16.87	17.88	18.95	20.09	21.30	--	
1/1/04	16.24	17.21	18.24	19.33	20.49	21.73	--	
7/1/04	16.56	17.55	18.60	19.72	20.90	22.16	23.49	
1/1/05	17.22	18.25	19.34	20.51	21.74	23.05	24.43	

All step increases shall occur on January 1 except that increases from Step 6 to Step 7 for employees with one year or more in Step 6 shall occur on July 1, 2004. Employees employed

six months or longer shall advance from Step 1 to Step 2 on January 1 following their date of hire and yearly thereafter. Employees with less than six months must wait until the following January 1 to advance to Step 2.

Sections 2-3. No change

[Note: the Fact-finder computes the Union's proposal to be 2% effective 1/1/04; 2% effective 7/1/04; and, 4% effective 1/1/05.]

CITY'S ECONOMIC PROPOSAL

Year 2 -- The City's final offer (and position relative to wages) is 2% across the board, retroactive to January 1, 2004 and 3% across the board effective January 1, 2005. Contract language that would implement this proposal is as follows:

ARTICLE 28

Wages

Section 1. Wages

	(Entry)						
	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	
Current	15.30	16.22	17.19	18.22	19.31	N.A	
1/1/03	15.61	16.54	17.53	18.58	19.70	N.A	
7/1/03	15.92	16.87	17.88	18.95	20.09	21.30	
1/1/04	16.24	17.21	18.24	19.33	20.49	21.73	
1/1/05	16.73	17.73	18.79	19.91	21.11	22.38	

STIPULATIONS

1. That only the issue before this Fact-finder is in dispute.
2. That all contractual and SERB procedures/time frames preceding the Fact-finding Hearing have been met. Therefore, this matter is properly in Fact-finding.

CRITERIA

Pursuant to Rule 4117-9-05(J) State Employment Relations Board, the Findings of Fact and Recommendations presented in this Report are based on reliable information relevant to the issues before the Fact-finder. In making recommendations, Fact-finders shall take into consideration the following:

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 classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and,
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FORMAT EXPLANATION

Due to overlapping materials and arguments for and against the proposals, the most efficient and understandable format will be to weave the data and arguments presented by both sides into one summary. The following is a summary of significant data, information, and arguments presented during the Fact-finding Hearing.

SIGNIFICANT DATA AND INFORMATION

The City finds that it would be inappropriate for the Fact-finder to just look at the two years of 2004 and 2005. Instead, the City suggests that it is important to look at the entire three years of the current Agreement. For 2003, the Parties agreed to implement what is essentially a 4% increase, that was phased in with 2% effective January 1, 2003, and 2% effective July 1, 2003. At that time, a new Step 6 was added to the wage schedule, which added an additional 6% to the overall compensation. Every Officer, whether in the early Step or at the top Step, realized a 6% Step increase. Effectively, the first year of the Agreement increased wages by 10% (2% + 2% + 6%). Thus, with the 10%, plus the City's proposal for 2% and 3%, the total package for the three years of the Agreement would be a 15% increase. Officers in the top Step will realize a 15.9% increase, compared to what they were making when the Agreement went into

effect on January 1, 2003. The two Officers in the lower Steps will realize a 30% increase because they will continue to increase through the Steps, that is, as compared to the Officers at the top.

The City finds their proposal to be fair, when compared to other cities' police officers, and when compared to other employees of the City. The City included its comparables in its Hearing Memorandum ("CHM"). The City's presentation is summarized as follows:

City's Comparables

Comparable	Term	Yrs.	Total
Clayton	98-02	5	24.0% (+ adj. of Steps 3, 4, 5)
	03-05	3	15.0% (incl. new Step at 6%; City's prop. 2%, 3%)
Moraine	01-03	3	10.5%
	04-06	3	9.5%
Butler Twp.	02-04	3	15.5%
Brookville	02-04	3	14.0%
Miami Twp.	01-03	3	13.75%
Riverside	03-05	3	13.0%
West Carrollton	01-03	3	12.0%
Miamisburg	02-04	3	11.53%
Dayton	01-03	3	10.5%
Englewood	04-06	3	10.5%
Kettering	02-03	3	10.5%
Vandalia	02-04	3	10.5%
Huber Heights	03-05	3	10.0%
Trotwood	01-03	3	9.0% (+1,750)
Springboro	03-05	3	9.0%
Union	03-04	2	9.0%
Carlisle	03-04	2	8.0%

The City further included (CHM) summaries of dollar impacts of the two proposals as follows:

Dollar Impact -- 9 Police Officers -- of City's Proposal

Year	Base Wage Costs (excl. OT)	\$ Increase over 2002 (cumulative)	% Increase over 2002 (cumulative)
2002 (base)	355,212	N/A	N/A
2003	380,319	25,107	7.06%
2004	406,864	51,652	14.54%
2005	424,024	68,812	19.37%

Dollar Impact -- 9 Police Officers -- of Union's Proposal

Year	Base Wage Costs (excl. OT)	\$ Increase over 2002 (cumulative)	% Increase over 2002 (cumulative)
2002 (base)	355,212	N/A	N/A
2003	380,319	25,107	7.06%
2004	420,881	65,669	18.48%
2005	457,443	102,231	28.70%

The City (CHM) presented a comparison of the wage increases for the City's non union employees and for its Police Officers as follows:

Summary of Wage Increases -- Non Union Employees v. Police Officers

Year	Non Union	Police
2001	6% (eff. 6/1/01)	6% (eff. 1/1/01)
2002	3% (eff. 4/1/02)	6% (eff. 1/1/02)
2003	2% (eff. 1/1/03)	2% (eff. 1/1/03) 2% (eff. 7/1/03) 6% (new Step eff. 7/1/03)
2004	2% (eff. 4/1/04)	2% (prop. eff. 1/1/04)
2005	TBD -- likely 3%	3% (prop. eff. 1/1/05)

The City argues that fairness requires the Police increase match the increase provided to other City employees. Further, increases to the wages of Police Officers will also increase the Sergeant's wages. In 2001, all City employees received a 6% increase. For 2002, the Officers realized the 6% increase, while non union received a 3% increase. In 2003, the Officers received 10%, while all of the City's other employees received only a 2% increase. In 2004, the City's non union employees received 2% -- the same as the City is proposing for the Officers. For 2005, early budgeting is anticipating a 3% increase -- the same as what the City is proposing for the Officers in 2005.

In the prior Agreement there was an increase of 6% in 2000, 6% in 2001, 6% in 2002. Plus, since Steps 3, 4, and 5 were compressed, the Steps were increased (effective January 1, 2002) so that there was a similar 6% differential between each of the Steps. Step 6 went into effect with the current Agreement (January 1, 2003) and was effective on July 1, 2003.

The City acknowledged that the City's Officers are not paid as much as other police officers in the area, but the City has been attempting over the years to bring them closer to what other officers earn. The City suggests that it cannot achieve its goal "overnight." The City finds its proposal is appropriate.

The Union's position is that this wage issue is not about fairness and equity as it relates to what the other City employees have or have not received. Instead, this dispute is about "broken promises" within the collective bargaining relationship between the Union and the City. The

City has consistently sent a message to the Officers (since the creation of the City by the merger). That consistent message has been to "be patient . . . your time is coming and you're going to get what you deserve in the way of bringing you up to the standards of what exists with respect to other police departments doing similar work in the County." The Union noted that the instant Fact-finding is the first in the Parties' history.

The Union pointed out that the current Agreement is not the contract the Parties had tentatively agreed to. The Union explained that there was a Tentative Agreement between the Parties that was rejected by the City's Council, and that the Tentative Agreement was the same as the Union is now proposing for 2004 and 2005. The Union argued that the Fact-finder should recommend what was tentatively agreed to for the current Agreement. In support, and by analogy, the Union presented UE1, a copy of an October 13, 2001 Fact-finding Report for the City of Miamisburg and its FOP union. The Fact-finder in that dispute considered a similar issue (p. 6) -- the impact of a tentative agreement. The Fact-finder in that Report found that the tentative agreement (rejected by the Miamisburg union) indicated that the:

Parties have demonstrated their manifested intent to be bound by Agreement when they reached this tentative agreement. * * * It is incumbent upon each Party to any dispute to place at the Bargaining table those individuals that will seek the best available "deal" and to be assured that its constituents will support what it brings back for final approval. These individuals are charged with the responsibility, based on the authority bestowed upon them by their selection, to "close the deal" and then most importantly support that which they have represented to the undersigned as being worthy of labeling it as a tentative agreement. The stability and trust that is tantamount to any Collective Bargaining relationship will diminish and erode when "good faith" is factored out of the equation when tentative agreements are not honored or supported.

The Union notes that the tentative agreement was the determinative factor in that Fact-finder's Report, *i.e.*, he supported the parties' tentative agreement.

The Union said that the Parties in this dispute had entered into a Tentative Agreement on June 24, 2003 (UE2 & 3). UE2 is a copy of the City's Attorney's notes reflecting the Tentative Agreement. UE3 is a copy of an agreement prepared by the City Attorney as the formal document including the Tentative Agreement (but which was rejected by the City's Council). The Union pointed out that the Tentative Agreement provided for wage increases on 1-1-04, 7-1-04, and 1-1-05; and, that the Tentative Agreement provided for amounts, all as the Union is now proposing in this reopener for 2004 and 2005 wages. Thus, the Union suggests that, in light of the Tentative Agreement, the Union's proposal is not "aberrational" because the Parties had previously tentatively agreed to these dates and increases.

The City explained its view of the Tentative Agreement. The City introduced CEA, captioned "City Proposal" and dated June 24, 2003 -- the same day as UE2, the Tentative Agreement. The Exhibit includes in part, "Wages - Note this exceeds current economic authority so is proposed subject to Council OK." The City said that this "caveat went through that entire

discussion on that day, so the Tentative Agreement reached that day was subject to the Council's OK." The City finds that the quoted language from CEA was a clear disclosure of the authority of the City's Negotiating Committee. Further, the City argues that, hypothetically, even if the caveat had not been given, and the Parties reached the Tentative Agreement, the Union's argument should have been raised in 2003, *i.e.*, it is too late now. When City Council did not approve the Tentative Agreement, the Parties went back to the bargaining table. They reached their current Agreement, including the provision for the instant wage reopener for years two and three. Therefore, the Fact-finding Report cited by the Union (UE1) is irrelevant.

The Union responded that the Parties avoided fact-finding in 2003, by relying on the intention that the Tentative Agreement would be the basis for 2004 and 2005 wage increases, and that the City would, in the reopener, support the Tentative Agreement in light of the passage of the income tax. The Union noted that the provisions relative to 2003 in the Tentative Agreement were incorporated into the current Agreement. The Union believed that the reason for the reopener was that the income tax (commencing in 2004) would give the City the "cushion" to support the Tentative Agreement provisions for 2004 and 2005, thereby honoring the City's commitment made to the Police Officers to increase their pay to comparable levels.

The City disputes that there was any agreement, tacit or otherwise, that the Tentative Agreement was to control 2004-05 wages. The City acknowledged that the Union previously announced its intention to seek the Tentative Agreement provisions for 2004 and 2005. However, the City did not have the same understanding.

The Union further asserted that a major explanation for the increases reached in the Tentative Agreement, was that if the City's proposed income tax passed, then the Officers "would be taken care of." The Union noted that the Officers supported the passage. The income tax was passed by residents in May 2003, and the Tentative Agreement was reached in June 2003.

The City explained that between the two income tax campaigns (August 2002 and May 2003) the City decided to "hold the line" on property taxes. The City noted that the last increase to the Police Fund property tax levy was in 1998, when several levies were passed as part of the merger. The City only placed renewals (not replacements) of the levies on the ballot in November 2003 -- with no proposed increases, thus honoring the City's pledge. Since 1998, there have been no increases to Police funding through the Police Fund levy. The City acknowledged that the income tax helps fund the City's General Fund, and that General Fund transfers now supplement the Police Fund proceeds -- 2003, about \$200,000; and, 2004, approximately \$275,000.

The City further explained that the City committed to " earmark" a portion of the income tax proceeds for capital improvements. The City (by ordinance) dedicated one-third (.5%) to a capital improvement fund. This fund has helped the Police Department in as much as now Police related capital improvements, such as new vehicles, are paid from the capital improvement fund. Previously, such would have come from the Police Fund. The City anticipates that at least two new Police cruisers will be purchased before the end of 2004. The

City said that regarding the remaining two-thirds (1%) of the income tax revenues, it committed to improve infrastructure needs, such as water and sewer, to the portion of the City north of I-70, where 95% of developable land within the City is situated. The City affirmed its position that these monies are needed for such improvements, and are not for increasing Police wages beyond the amount proposed by the City. The Union noted that only about 20%-25% of the City's population lives in the area north of I-70. The City acknowledged that actual construction of infrastructure improvements has not commenced, but that they are in the engineering stages.

UE4 reflects the Union's comparables (in-part) as follows:

Union's Comparables

Jurisdiction	Top Pay	Additional*	Total
Centerville	57,179	6,709	63,888
Kettering	58,771	2,048	60,819
Moraine	52,021	6,996	59,017
Dayton	52,743	2,240	54,983
Vandalia	54,020	600. **	54,620
Huber Heights	53,624	536. **	54,160
West Carrollton	52,978	520. **	53,498
Englewood	50,565	2,528. **	53,093
Miamisburg	52,185	550	52,735
Trotwood	51,212	1,320	52,532
Riverside	49,462	416. **	49,878
Miami Township	41,496	4,641. **	46,137
Clayton	44,304	750	45,054
Brookville	41,725	1,116	42,841

Average 51,383 53,708

(without Clayton)

(* Additional may include: uniform allowance, shift differential, longevity, pension pick-up)

(** Uniform provided)

The Union argued that the City's proposed 2% for 2004 will not even come close to raising the Officers to the averages shown above. The City's Officers are 16.0% below the average top pay, and 19.2% below the total average. The Union introduced UE6, a list of the comparables used by the City in negotiations. That exhibit shows (in-part):

City's Comparables Used in Negotiations

Jurisdiction	Pop.	Police Top Step '04
Vandalia	14,603	25.97
Englewood	12,235	24.31
Trotwood	27,420	23.78
Eaton	8,133	21.41
Clayton	13,347	21.30
Brookville	5,289	20.06
West Milton	4,645	19.86
Union	5,374	19.58
Phillipsburg	628	16.70
Clay Twp.	not avail	14.35

Average (without Clayton) 22.67

The Union observes that even using these City comparables, the Police Officers are 6% below that average, and that 2% will not bring the Police Officers up to the average. This is so, even though the Union does not agree that all of the above communities are truly comparable.

The Union noted that not all City non union employees received only a 2% increase for 2004. UE7 (a City of Clayton Ordinance) gave the City Manager a 2% cost of living increase for 2004 plus a (one-time) bonus of \$3,500. Since the City Manager's salary was \$82,950, the total increase of \$5,159 equates to a total increase of 6.2% for 2004.

The Union finds the City has the ability to pay the Union's wage proposal -- the recent passage of a City income tax was effective in calendar year 2004. The Union finds that the tax receipts have exceeded expectations, as documented by the collection of \$807,892 through September 15, 2004 (UE9). It has Police and Fire levies, a general levy, and now an income tax. The Union argues that the City cannot create an inability to pay by merely preferring to use General Fund revenues to fund capital improvements to try to promote development north of I-70. The Union insists that the City live up to its agreement with the Police Officers, dating back about 10 years, that the City would take care of its Officers by increasing their pay to a comparable/competitive range, raising them into the mainstream of Montgomery County cities. The Union asserts that the same commitment was made by the City to the City's residents when the Police Fund renewal was placed on the ballot (and passed). The Union asserts that its Police Officers have been more than patient, and that now is the time for the City to fulfill its commitment to the Officers and its residents.

Additionally, the Union finds that the City has the ability to pay by virtue of the fact that the City has levies for both Police and Fire that nearly totally fund those services (UE8 Projected Statement of Cash Position As of 12/31/2002 & 2003). It reflects (in-part) the following regarding the Police levy:

Fund 201 - Police Levy Fund

Year	Beg. Bal.	YTD Rev.	YTD Exp.
2002	282,684	1,242,245	1,445,727
2003	79,203	1,207,544	1,483,075

The City clarified that UE8 is a budget document from 2002, and merely includes projections.

The Union noted that the Police and Fire levies were last voted and passed in November 2003. The millage rates remained the same. Increases were not sought in light of the passage of the income tax (UE10). 2004 funding appropriations (UE11) included the Police Fund (201) for \$1,574,753.

The Union referred to the City's quarterly newsletter of Spring 2002 (UE12). The newsletter reflects the Mayor and the Police supporting the passage of the then proposed income tax. The Mayor is quoted as saying, "Increasing and improving our level of emergency service to our residents is something council strives for, as well as you. Our fire department and police department are out top priorities." The Union asserts that this same message was relayed to the Police Officers in seeking their active support for the passage of the income tax. The Officers actively supported the effort, which was ultimately successful with the passage of the 1.5% tax. The Officers were assured that the City would "take care of us" [financially] with the passage. The Union acknowledges that the Tentative Agreement of June 24, 2003 (UE2) would have fulfilled that pledge of support. However, City Council turned down the Tentative Agreement. The City noted that originally the proposal for the income tax was 1.75%, which was defeated by the residents. Council subsequently, after Spring 2002, proposed the lesser income tax of 1.5%.

The Union pointed out that the same newsletter (UE12) says, "In addition to its safety forces, the City only employs 12 people." However, since 2002, the City has incurred the cost of added positions, including: City Manager, Assistant City Manager/Personnel Director, Assistant City Manager, Assistant to the City Manager, Director of Finance, Assistant to the Finance Director, and Director of Public Service/Economic Development. The Union argues that it was not proper for the City to create all these additional positions at a time when it had not yet fulfilled its pledge to the residents and Officers that the wages of the Officers would be substantially upgraded.

The City responded that there are really not new additions as the Union suggested. The City split a number of duties/job responsibilities. Thus, it did not create totally new positions. Examples include the position of City Manager, Director of Public Safety, Service Director/Economic Development, *etc.* After the income tax was passed, the only totally new position was that of the Finance Director. Every other position existed in one form or another prior to that. However, the City acknowledged that total personnel costs associated with the splitting/realigning of duties increased overall. As for the Police Officers, since 2001, two part-time Officers were upgraded to full-time. However, with vacancies, and promotions to Sergeant, Police patrol staffing has remained unchanged since 1998.

The Police Fund levy pays 25% of the City Manager's and the Assistant City Manager's salaries, and 50% of the Public Safety Director's salary. The City acknowledged that the two 25% could be paid from the General Fund. The Police Fund levy is currently generating approximately \$1.2 million. The levy will continue through 2008. The City estimates income tax receipts for 2004 will be \$1 million. In addition to the Public Safety levies, the City's only other levy is a permanent 1.3 mill levy, generating approximately \$300,000, and is available to the General Fund.

ANALYSIS AND RECOMMENDATIONS

Fortunately, there are a number of cities located very close to the City against which to compare the City's Police Officers. The following list of Fact-finder comparables includes four that are larger, and four that are smaller, than the City. The list includes five found on the City's list of nine comparables, and six from the Union's list of 13 comparables.

Fact-finder's Comparables

City	Pop.	County
Huber Heights+	38,212	Montgomery
Riverside+	23,545	Montgomery
Trotwood+	27,420	Montgomery
Vandalia+	14,603	Montgomery
Clayton	13,347	Montgomery
Englewood-	12,235	Montgomery
Tipp-	9,221	Miami
Union-	5,574	Montgomery
Brookville-	5,289	Montgomery
Average	17,012	

(excluding Clayton)

(Source: SERB Benchmark Report, 10/07/04)

Regarding wages, the Fact-finder's comparables reflect the following:

Fact-finder's Wage Comparables

City	Eff. Date	Entry Pay	Top Pay	End Date
Vandalia +	01/01/04	40,535	54,020	12/31/04
Huber Heights +	08/14/04	37,768	53,624	08/14/06
Englewood-	01/01/04	37,752	50,565	12/31/06
Tipp-	04/21/04	37,627	49,608	04/20/06
Riverside +	07/01/04	41,954	49,462	12/31/05
Trotwood +	08/01/03	37,586	49,462	07/31/06
Clayton	07/01/03	33,114	44,304	12/31/05
Brookville-	01/01/04	34,320	41,725	12/31/04
Union-	01/01/04	29,557	31,325	12/31/05
Averages		37,137	47,474	

(excluding Clayton)

(Source: SERB Benchmark Report, 10/07/04)

For entry level pay, the City's Officers are -10.8% below the average, at eighth out of nine cities. For top pay, the City's Officers are -6.7% below the average, at sixth out of nine cities.

For 2004, the City's proposal is 2% across the board, retroactive to 1/1/04. The Union's proposal is 2%, retroactive to 1/1/04; and, an additional 2% retroactive to 7/1/04, thus a total of 4%. In an effort to compare "apples to apples," the following wage schedules are prepared using 2% City and 4% Union -- both effective 1/1/04 -- for 2004; and, 3% City and 4% Union -- both effective 1/1/05 -- for 2005. Additionally, the wage schedule for the Fact-finder's recommendation is also shown.

City's Proposal (2% 2004; 3% 2005)

(Entry)

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Current	15.92	16.87	17.88	18.95	20.09	21.30
1/1/04	16.24	17.21	18.24	19.33	20.49	21.73
1/1/05	16.73	17.73	18.79	19.91	21.11	22.38

Each Officer works regular time of 2,145 hours per year. (CHM, total wage divided by hourly rate, e.g., \$45,688.50/\$21.30 = 2,145 hours.) As of 1/1/04, seven Officers are in top Step 6; one in Step 4; and, one in Step 3 (CHM). As of 1/1/05, seven Officers are in the top Step 6; one in Step 5; and, one in Step 4 (CHM). Thus, the base wages per the City's proposal for each of the two years are computed as follows:

2004
 Seven Officers in top Step 6: \$21.73 per hour x 2,145 hours x seven = \$326,276
 One Officer in Step 4: \$19.33 per hour x 2,145 hours = 41,463
 One Officer in Step 3: \$18.24 per hour x 2,145 hours = 39,125
 Total 2004 Base Wages \$406,864

2005
 Seven Officers in top Step 6: \$22.38 per hour x 2,145 hours x seven = \$336,036
 One Officer in Step 5: \$21.11 per hour x 2,145 hours = 45,281
 One Officer in Step 4: \$19.91 per hour x 2,145 hours = 42,707
 Total 2005 Base Wages \$424,024

Union's Proposal -- (4% 2004; 4% 2005 -- Without Additional Step; and, One Effective Date for 2004, Not Two)

	(Entry)					
	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Current	15.92	16.87	17.88	18.95	20.09	21.30
1/1/04	16.56	17.54	18.60	19.71	20.89	22.15
1/1/05	17.22	18.24	19.34	20.50	21.73	23.04

The base wages per the Union's proposal for each of the two years are computed as follows:

2004
 Seven Officers in top Step 6: \$22.15 per hour x 2,145 hours x seven = \$332,582
 One Officer in Step 4: \$19.71 per hour x 2,145 hours = 42,278
 One Officer in Step 3: \$18.60 per hour x 2,145 hours = 39,897
 Total 2004 Base Wages \$414,757

2005
 Seven Officers in top Step 6: \$23.04 per hour x 2,145 hours x seven = \$345,946
 One Officer in Step 5: \$21.73 per hour x 2,145 hours = 46,611
 One Officer in Step 4: \$20.50 per hour x 2,145 hours = 43,973
 Total 2005 Base Wages \$436,530

Fact-finder's Recommendation (4% 2004; 3% 2005)

	(Entry)					
	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Current	15.92	16.87	17.88	18.95	20.09	21.30
1/1/04	16.56	17.54	18.60	19.71	20.89	22.15
1/1/05	17.06	18.07	19.16	20.30	21.52	22.81

The base wages per the Fact-finder's recommendation for each of the two years are computed as follows:

2004

Seven Officers in top Step 6: \$22.15 per hour x 2,145 hours x seven =	\$332,582
One Officer in Step 4: \$19.71 per hour x 2,145 hours =	42,278
One Officer in Step 3: \$18.60 per hour x 2,145 hours =	<u>39,897</u>
Total 2004 Base Wages	\$414,757

2005

Seven Officers in top Step 6: \$22.81 per hour x 2,145 hours x seven =	\$342,492
One Officer in Step 5: \$21.52 per hour x 2,145 hours =	46,160
One Officer in Step 4: \$20.30 per hour x 2,145 hours =	<u>43,544</u>
Total 2005 Base Wages	\$432,196

There was disagreement on the number of hours that should be used when comparing the City's Officers' position within a list of comparables. The Union argued that the City's Officer's comparable wage should be computed using 2,080 hours (times their hourly rate) representing 8-hour days. The City argued that 2,145 hours (times their hourly rate) should be used because the Officers actually work 8.25 hours per day. The Fact-finder prefers to use the actual hours worked. Two cities in the Fact-finder's comparables (Riverside and Vandalia -- SERB Benchmark Report, 10/07/04) -- each work 8.5 hour-days.

The Fact-finder understands the Union's disappointment when the June 24, 2003 (UE2) Tentative Agreement was not approved. The City's Negotiating Committee also was likely disappointed. However, it appears (CEA) that it was open-ended as relates to City Council approval. At the same time, the Fact-finder finds that the City's Police Officers enjoy an excellent relationship with the residents of the City. As partial evidence, the City acknowledged that the Police Fund levy last passed with an approval rate of more than 70%. The Fact-finder further finds that the City made a commitment (at various times) to bring its Officers into the mainstream of comparables. The City did not contest the commitment. As evidence, the City granted substantial increases in 2000 through 2003. These increases attest to the City's good faith efforts. However, the City has a bit further to go to meet its commitment. With the recommended increases for 2004 (4%) and 2005 (3%) this Fact-finder believes (not finds) that the City will have substantially met its commitment. With these increases, the City's Officers will be at 98.5% for entry level (\$36,594) and 103.1% for top level (\$48,927) of the averages of the Fact-finder's comparables.

The Fact-finder's recommendation compares favorably to the Union's comparables (UE4). The Union's top pay average (see above) is \$51,383. However, this computation includes what appears to be two outliers -- Kettering (\$58,771) and Centerville (\$57,179). If these two are removed from the computation, the remaining 11 comparables average top pay of \$50,184. The Fact-finder's recommended top pay for the City (\$48,927) is very close at 97.5% of the average.

The Fact-finder's recommendation compares favorably to the City's comparables for 2004 used

by the City in negotiations (UE6). That schedule reflects an average top pay of \$22.67. The Fact-finder's recommendation for top pay in 2004 of \$22.15 is very close at 97.7% of the City's average.

The City's long standing commitment to the Officers distinguishes the Officers from other City employees who received a 2% wage increase for 2004. The Fact-finder's recommendation for 4% for 2004 for the Officers is consistent with the City's prior efforts to upgrade the Officers. For example (CHM), for 2002, the Police received 6%, while non union City employees received 3%. For 2003, the Police received the equivalent of 10%, while non union City employees received 2%. These differences make perfect sense in light of the City's commitment, and implementation of it, to its Officers. The Fact-finder's recommendations for 2004 and 2005 are consistent with that prior continuing effort.

Regarding the City's ability to pay the recommended increases, the Fact-finder offers the following analysis. Total base wages in 2003 were \$380,319 (CHM). Thus, the following is a summary of the additional costs (over 2003) that would be incurred under the two proposals (Union's with changes as noted above); and, under the Fact-finder's recommendation. The costs include the Step movements by two of the nine Officers.

Additional Base Wage Costs Over 2003 (\$380,319)

Year	City's Proposal	Union's Proposal	Fact-finder's Recommendation
2004	\$26,545	\$34,438	\$34,438
2005	<u>43,705</u>	<u>56,211</u>	<u>51,877</u>
Total	\$70,250	\$90,649	\$86,315

The issue of whether the City has the ability to pay the cost of the Fact-finder's recommendation actually is whether the City can pay an additional total cost for the two years of \$16,065 (\$86,315 - \$70,250). (The City has already determined that it can afford to pay its proposal, with a total cost of \$70,250.)

It is truly refreshing to find a local, Montgomery County city that is clearly in good financial health. The residents of the City, and their City Council, have demonstrated exceptional responsibility in financing their new City. Police funding is wisely spread among three sources (General Fund, income tax, and the Police Fund levy) and is evidence of good financial planning designed to minimize interruptions to funding its critical Police function.

Other than for stating its preference for investing more in infrastructure improvements, there was no evidence of an inability to pay more than the City's proposal. The Fact-finder's proposal will cost the City about \$16,065 more (based solely on base wages) than the City's own proposal (based solely on base wages). Although implied, the Fact-finder hereby states that the additional costs ("roll-ups") for benefits (such as increased pension, vacations, etc.) were considered in making the recommendations, and finds that the City has the ability to pay these increased costs as well. The Police Fund levy is the primary funding source for the Police, and will continue

through 2008, whereupon hopefully the residents will again express their strong support for their Police and vote to renew it. The General Fund should continue to be sound with the new income tax revenues. The first year's receipts (2004) are, according to the City, coming in as planned. The General Fund balances (pre-income tax) for 2002 and 2003 were not in any way in jeopardy (UE15 & 16). The General Fund will be in stronger financial health at the end of 2004, with the addition of the new income tax proceeds. In short, the City clearly has the ability to pay the recommended wage increases to its Police Officers.

Finally, as to the Union's proposal to add a seventh Step to the Officers' wage schedule, the City strongly contests the proposal. It noted that the Police are already the only City employees with six Steps -- others have five. The City found the proposal for a Step 7 to be unacceptable in June 2003, and continues to find it unacceptable. The Fact-finder's comparables show the following for the respective number of Steps:

Fact-finder's Comparables -- Number of Steps:

Englewood-	7
Clayton	6
Tipp-	6
Trotwood+	6
Vandalia+	6
Brookville-	5
Huber Heights+	5
Riverside+	5
Union-	3
 Average	 5.4
(without Clayton)	

The City's Officers compare well on the number of Steps, and are in the mainstream. The Fact-finder recommends that there be no change to the Officers' number of Steps. The Tentative Agreement, had it been approved, would have provided for Step 7. However, there is no compelling evidence that the City's Officers will be kept from the mainstream if Step 7 is not added. Only recently (7-1-03) was Step 6 added. The majority (6/9) of the Officers immediately benefitted because they were in the top position. Subsequently, (2004) a seventh Officer moved into the top position. The Fact-finder believes that, as of now, discussion of a Step 7 is best reserved for future negotiations between the Parties.

SUMMARY OF FACT-FINDER'S RECOMMENDATIONS

ISSUE 1: WAGES -- ARTICLE 28 -- WAGE SCHEDULE

Recommendation: 4.0% across-the-board increase effective retroactively to January 1, 2004; and 3% across-the-board increase effective January 1, 2005.

Recommendation: That the number of Steps remain at six (Step 1 through Step 6), *i.e.*, that Step 7 not be added.

Note: the Fact-finder, in preparing this Report and making his Recommendations, considered the oral presentations made at the Fact-finding Hearing and supporting documentation submitted by the Parties, even though not referenced in this Report.

THE FOREGOING RECOMMENDATIONS ARE RESPECTFULLY SUBMITTED to the Parties as a proposed settlement for their interest dispute concerning the terms and conditions of their collective bargaining agreement.

Fact-finder



William M. Slonaker, Sr., JD, MBA, SPHR