

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2005 JUN 16 P 4: 39

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.,
Employee Organization,**

and

**CITY OF ONTARIO,
Employer.**

REPORT OF FACT FINDER

CASE NUMBERS:

04-MED-09-0868

04-MED-09-0869

04-MED-09-0870

04-MED-09-0871

DATES OF HEARINGS: May 17, 2005

PLACE OF HEARING: Ontario, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Dennis Sterling, Staff Representative

FOR THE EMPLOYER:

Edward S. Kim, Attorney at Law

PROCEDURAL BACKGROUND

This matter involves the negotiation of collective bargaining agreements between the City of Ontario, Ohio ("City" or "Employer") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP").

On November 29, 2004, the undersigned was appointed as fact finder by the State Employment Relations Board ("SERB") in Cases 04-MED-09-0868 and 04-MED-09-0871. The appointment was made pursuant to Ohio Revised Code Section 4117.14 (C)(3). Both parties later selected the undersigned as fact finder in Cases 04-MED-09-0869 and 04-MED-09-0869. A fact-finding hearing was held on May 17, 2005. The parties agreed that the fact finding report would be issued on June 13, 2005.

This matter involves the negotiation of the second collective bargaining agreement for employees in the Ontario Police Department. The initial agreement expired on December 31, 2004. The initial agreement included four bargaining units in the Ontario Police Department. The bargaining units were dispatchers, parking enforcement officers, patrol officers, and supervisors.

During the current negotiations, the parties agreed to negotiate three separate collective bargaining agreements. The parties have agreed that one contract will apply to patrol officers, another contract will apply to supervisors, and a third contract will apply to both dispatchers and parking enforcement officers.

TENTATIVE AGREEMENTS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the 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;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

DISCUSSION OF OUTSTANDING ISSUES

Some of the unresolved issues involve only one of the bargaining units. Others are common to all three agreements. The recommendations herein apply to all three of the agreements, unless the context provides otherwise.

NEW - ARTICLE LEAVE OF ABSENCE

Currently, there is no leave of absence provision in the agreement. The FOP proposes language which would allow an employee to take a leave of absence under certain circumstances. The Employer opposes this proposal.

Position of the FOP

The FOP proposes that a new article be included in the agreements relating to leaves of absence. The proposal provides that, after two years of continuous service, an employee may request a leave of absence of up to six months. The FOP emphasizes that the Police Chief will have the discretion whether or not to grant leave.

The FOP asserts that there are occasions where bargaining unit members must attend to personal or family matters that are not covered by the FMLA. The FOP asserts that it is especially important for police officers to have this option because they must be directing their full attention to their job while they are on duty, and not be distracted by personal matters.

Position of the City

The City points out that employees already have 12 weeks of FMLA leave per year. In addition, employees have vacation, personal time and injury leave. The injury leave provision was tentatively approved for inclusion in these agreements. It provides for 90 days of injury leave, with the possibility of an additional 90 days.

The City is concerned that employees may request a leave of absence only because they do not want to use other accrued leave. The Employer is also concerned that, if a request for a leave of absence was denied, the City could find itself in arbitration over the decision.

The City maintains that it has an inherent management right to grant unpaid leave. Thus, if the Police Chief thought that an employee was too distracted to properly carry out his or her duties, the Chief could exercise this management right to allow the employee unpaid leave.

Recommendation

The FOP is correct in its assertion that police officers need to be physically and mentally able to attend to their duties. The proposed article specifically provides that the Chief of Police has the discretion whether or not to grant a leave. This language allows a Police Chief to consider all factors in deciding whether or not to grant leave.

The inclusion of a leave of absence provision would make employees aware that they had the option to request a leave of absence. It is doubtful that many employees are aware that the City currently has the management right to grant unpaid time off.

FMLA leave and injury leave are only available for very specific reasons. The proposal would provide a means of requesting time off for unusual situations.

The fact finder believes that it is a reasonable proposal which will address those few situations in which an employee needs to take an unpaid leave of absence. However, language should be included to address the City's concern that an employee may request a leave of absence in order to avoid using other types of leave. Thus, the fact finder recommends the adoption of the FOP proposal with the following language added at the end of the first paragraph:

"Bargaining unit members shall not be eligible for a leave of absence unless they have exhausted all other types of available leave."

ARTICLE 9 – GRIEVANCE PROCEDURE

Current language in all three contracts provides that the only types of disciplinary action which can be taken to arbitration are suspensions of more than five days and terminations. Currently, discipline less than a five-day suspension can only be appealed to the Civil Service Commission. However, the Civil Service Commission only has jurisdiction over terminations where the suspension is in excess of three days. Thus, employees now have no appeal rights for suspensions which are for three days or less.

The current grievance procedure provides that the losing party will pay for the cost of the arbitrator. The FOP proposes that the costs be equally shared by the parties.

Position of the FOP

The FOP proposes that there be no limitation on the type of discipline which can be appealed to arbitration. In essence, the FOP proposes that any discipline from a written warning to termination should be appealable to arbitration. The FOP states that it has not abused the

current arbitration procedure, and that the proposal will not necessarily lead to a flood of cases going to arbitration. It asserts that bargaining unit members should have the option of going to arbitration if they have received discipline which is unjust.

The FOP proposes that the cost of the arbitrator be split between the parties. The FOP argues that the sharing of costs will allow an arbitrator to look at the merits of the arbitration, and not be influenced by the payment of arbitration fees. The FOP also asserts that, if both parties have to share arbitration costs, they will be more amenable to negotiating a settlement instead of going to arbitration.

Position of the City

The City opposes the FOP's proposal to allow all discipline, from a written warning on up, to be subject to arbitration. The Employer proposes that an appeal to arbitration be provided for suspensions in excess of three days and for terminations. The City would specifically exclude verbal warnings, written warnings and shorter suspensions from arbitration.

The City opposes the FOP's proposal for the sharing of the cost of the arbitrator. It points out that the FOP agreed in the prior agreement to require the losing party to pay the arbitration fee. The FOP has not shown that this arrangement has caused any problems. The City states that, since the FOP is the only party that has the ability to file grievances, the City has no control over the number of cases going to arbitration. It objects to paying part of the arbitrator's fee for unwarranted grievances.

Recommendation

The fact finder believes that bargaining unit members should have the ability to appeal any discipline that results in a loss of pay. The fact finder notes that the parties tentatively agreed that all suspensions remain active, and may be considered in future discipline, for a period of 30 months following the disciplinary action. In contrast, written reprimands remain active for 18 months. More serious discipline can be imposed on employees who have active discipline in their file. The fact finder believes that, since disciplinary suspensions remain active for two and one-half years, employees should have the right to appeal all suspensions to arbitration.

The current language, which requires the losing party to pay the cost of the arbitration, was negotiated in the last round of negotiations. There is no evidence that the current language has caused any particular problems. Further, the fact finder does not believe that the method of paying arbitration costs would have any effect on an arbitrator's approach to the merits of the case.

The parties are in agreement that current language that allowing for appeal to the Civil Service Commission should be deleted. In addition, the parties have agreed to certain changes in the information which is required to be on the grievance form. The fact finder will adopt both of these agreements as recommendations.

In summary, the fact finder recommends that the grievance procedure provide for an appeal to arbitration for terminations and for a suspensions of one or more days. The fact finder recommends that the parties retain the current language requiring the losing party to pay the cost of arbitration.

ARTICLE 30 - VACATIONS

Currently, employees receive 80 hours of vacation annually after one year of service. When employees reach eight years of service, but have less than 16 years of service, they earn 120 hours of vacation. Employees with 16 or more years of service receive 120 hours of vacation, plus one additional day for each year over 16 years.

The current language requires that all vacations must be taken within one year of the date the vacation is earned. In the bargaining units herein, employees are credited with their annual vacation hours on their anniversary date. Currently, vacation time must be used in not less than four-hour increments. Current language provides that vacation requests may be taken at any time of the year, so long as the granting of the request does not create overtime. Further, current language provides that “day at a time” vacations may be requested up to one hour prior to the beginning of the shift.

Position of the FOP

The FOP proposes that the vacation schedule be changed so that all employees have the same vacation accrual as is set forth in the Ohio Administrative Code. An employee with 16 years of service would receive 160 hours of vacation time, and employees with 20 or more years of service would receive 200 hours of vacation per year. The FOP also proposes that employees who would lose vacation under the proposed schedule would have their vacation determined in accordance with the current language.

The FOP also proposes that employees be able to use vacation time up to two years of the date on which is accrued, instead of the current language that requires employees to use vacation

within one year. In addition, the FOP proposes a change that would allow employees to take vacation time in increments of one hour, instead of the current four hours. The FOP asserts that this would be consistent with personal leave time language already agreed to by the parties.

For the dispatchers unit only, the FOP proposes a change in Section 30.10. The proposal provides that dispatchers be allowed to take vacation time, even if the Employer has to pay a replacement at the overtime rate. The FOP would agree that only one dispatcher could be on vacation at any one time. The FOP asserts that, because there are only five dispatchers, it is difficult to schedule vacation that does not create overtime. The FOP states that there are 168 working hours in a week and, with five dispatchers working 40 hours a week, 200 hours of available employee time. This means that there are only 32 hours each week when an absence would not create overtime. This limits the ability of a dispatcher to schedule vacation.

The FOP also proposes a change which would allow employees in these bargaining units to request vacation time after the start of the shift, instead of the current language which requires that requests be made at least one hour before the start of the shift.

Position of the City

The City proposes that the current vacation accrual schedule be continued. Even though the change may not be significant, the Employer notes that all other City employees follow the same vacation schedule as in the current agreement. The Employer contends that it is desirable to keep the vacation schedule the same for all City employees.

The Employer opposes the proposal which would allow employees to use vacation time up to two years after it is earned. The Employer notes that, if an employee with four weeks of vacation could accumulate up to two years of vacation time, he or she could take eight

consecutive weeks of vacation. The Employer states that this would have a disruptive effect on the operation of the department.

The Employer proposes a change to the current language which would allow employees to take vacation in increments of two hours instead of the current four hours. The City maintains that allowing vacation to be used in one-hour increments would cause problems because it would be hard for the City to fill a position for only one hour. In addition, allowing one-hour increments to be used would cause problems with the payroll department.

Recommendations

1. Section 30.2

The current vacation schedule is the one used by all other City employees. This vacation schedule was negotiated during the last round of negotiations. The FOP has not presented any compelling evidence to show that the current accrual schedule needs to be adjusted. Therefore, the fact finder will not recommend that any change be made to the accrual schedule.

The parties have tentatively agreed to add language to Section 30.2 stating that “Employees who are in non-active pay status shall not accrue vacation during that time.” The fact finder will adopt this agreements as a recommendation.

2. Section 30.7

It is desirable to have employees use vacation within one year of the time that it is earned. One purpose of vacation time is to give employees time away from the job in order to reduce stress and promote relaxation. Allowing employees, especially police officers, to accumulate time for up to two years necessarily means that they would not be taking the full allotment of

vacation during certain years. Thus, the fact finder recommends that the current language remain in place which requires vacations to be taken within one year of the time that they are earned.

3. Section 30.7

The parties have agreed to delete Section 30.7. The fact finder will adopt this agreement as a recommendation.

4. Section 30.8

Currently, bargaining unit members must take vacation in not less than four-hour increments. The FOP proposes changing this to one-hour increments, while the Employer proposes that a change be made to allow employees to take vacation in increments of two hours. The Employer points out that, under the proposal of the FOP, it would have to pay an employee for two hours of overtime in order to fill a position which is vacated for only one hour.

The more reasonable proposal is the one offered by the Employer. Thus, the fact finder will recommend that the agreements be modified to allow bargaining unit members to take vacation in increments of two or more hours.

5. Section 30.10

The Employer has proposed that vacations requests of five days or more require seven days of advance notice. The FOP does not object to this proposal. Thus, the fact finder will recommend that the adoption of the City's proposal on this issue.

The fact finder believes that the current language, which requires that vacation can be requested up to one hour prior to the start of the shift, should be retained. To allow vacation requests during the shift, as proposed by the FOP, would have an adverse effect on police department operations.

The fact finder agrees with the FOP that the dispatcher contract should not limit vacation to only those times where overtime is not created. Because of the fact that there are only five dispatchers, it is often difficult to find a time when a vacation would not create overtime.

Thus, the fact finder will recommend that the City's proposal for Section 30.10 of the Patrol Officers and Supervisors unit be adopted in its entirety.

The fact finder also recommends the adoption of the FOP's proposal for Section 30.10 of the Dispatcher/Parking Enforcement Officer agreement, except that the last sentence of the City's proposal for Section 30.10 should be added to the end of Section 30.10. Thus, the final sentence in Section 30.10 will be identical in all three collective bargaining agreements.

5. Section 30.11

The parties have agreed to delete Section 30.11. The fact finder will adopt this agreements as a recommendation.

ARTICLE 34 - BREAKS AND MEAL PERIODS

The FOP proposes a change in the meal breaks for dispatchers and parking enforcement officers only. Currently, these units do not receive a paid meal break. They are permitted a 30-minute unpaid meal break each shift. In addition, both units receive two paid 15-minute breaks per shift.

Position of the FOP

The FOP states that dispatchers and parking enforcement officers should be treated the same as police officers. The officers are given a paid meal period but are subject to call back to

work during the meal period. The FOP asserts that dispatchers and parking enforcement officers have the same call back to duty requirement, but are not compensated for the lunch period. In addition, the FOP points out that these two units received paid meal breaks prior to the first collective bargaining agreement.

The FOP also proposes that police officers be permitted to bring food to dispatchers who are required to work overtime. The FOP proposes that they would only be allowed to pick up food if time permits, and if the picking up of the food does not cause the officers to neglect the operational needs of the department. The FOP contends that dispatchers who have to work overtime unexpectedly cannot be expected to bring additional food with them to work. Since officers can only obtain food for dispatchers when it does not disrupt the operation of the department, there is no reason that the dispatchers cannot be accommodated.

Position of the City

The City notes that city clerks do not receive a paid meal period. It acknowledges that dispatchers are not allowed to eat in the dispatch room. However it asserts that most dispatchers merely eat during one or both of their 15-minute breaks. Further, the City argues that dispatchers should bring extra food to work so that it is not necessary to disturb the work of a police officer to provide food to dispatchers.

Recommendation

Dispatchers and parking enforcement officers have different responsibilities than police officers. Thus, there is no reason that they should have the same paid meal period as the officers. The parties recognized this fact during the previous negotiations. Allowing a paid one-half hour lunch period would result in additional costs to the City. The City is not in a financial position to provide additional benefits which would increase costs to the City.

The fact finder agrees with the FOP that a dispatcher who unexpectedly is required to work overtime cannot be expected to have planned for this contingency by bringing extra food. Dispatchers would have to bring extra food with them to work on virtually every shift on the chance that they might be required to work overtime. This is not practical and is unfair to the dispatchers. The proposal by the FOP which allows police officers to pick up food for the dispatchers is reasonable. The language proposed by the FOP contains adequate safeguards to prevent police officers from neglecting their duties.

The fact finder recommends that the current language be retained in Section 34.1 of the Dispatcher and Parking Enforcement Officer agreement. The fact finder also recommends the adoption of the FOP's proposal for Section 34.4.

ARTICLE 38 -WAGES

Position of the FOP

The FOP proposes a wage increase of three percent for each contract year for dispatchers, parking enforcement officers and patrol officers. In addition, it proposes that the rank differential between police officer and sergeant, and between sergeant and lieutenant, be increased. The FOP

contends that increasing the rank differential will encourage more officers to apply for supervisory positions. It proposes that the current differential of eight percent be increased to ten percent, effective January 1, 2005, to twelve percent effective January 1, 2006, and to fourteen percent effective January 1, 2007.

The FOP states that the job of Senior Dispatcher has a high level of responsibility, and that this responsibility should be recognized by an increase in achievement pay. The Senior Dispatcher is now paid achievement pay of \$0.10 per hour. The FOP proposes increasing this to \$0.20 an hour.

In addition, the FOP proposes that dispatch training officers receive a \$0.20 per hour supplement when engaged in training new dispatchers. The FOP notes that dispatch training officers have additional preparation work, additional responsibility, and increased liability.

For patrol officers and supervisors, the FOP proposes that the current achievement pay of \$0.10 per hour be increased to \$0.20 per hour. In addition, the FOP proposes a change from the current language, which provides that the achievement pay is only paid during hours that officers are actually working in the specialty area. The FOP proposes that the supplement be applied to all hours worked.

Currently, there are four specialty areas for which achievement pay is paid. The areas are: Certified Accident Reconstruction Specialist, Evidence Technician, Detective, and SWAT team. The FOP proposes the addition of three specialty areas. The additional areas are: Field Training Officer, Hostage Negotiator, and D.A.R.E. Officer. In support of its proposal for additional achievement pay, the FOP argues that the increase in pay would encourage officers to become certified and to keep their certification current.

Position of the City

For the dispatchers, parking enforcement officers and patrol officers, the City proposes a two percent increase in 2005, a two percent increase in 2006, and and two percent in 2007. The City proposes that the rank differential remain at eight percent. The City is opposed to any increase in achievement pay. Further, the City opposes any provision for achievement pay for the job of the dispatch training officer.

The City asserts that, due to a decrease in revenue, it has less money to appropriate for the budgets of the various departments, such as the Police Department. The City notes that many jurisdictions in Ohio have agreed to a wage freeze for one or more years of a three-year agreement. The City argues that public jurisdictions in Ohio do not have the funds to pay the large wage increases that employees received in the previous decade.

The City notes that Richland County is somewhat economically disadvantaged, compared to other counties in the state. In 2002, Richland County was 44th of the 88 counties in the state in per capita income, which was \$4,000 less than the state average. In 2000, the percent of persons 25 and older who had at least a Bachelor's Degree was 12.6 percent, compared to 21.1 percent statewide.

Discussion

1. City Finances

Funds for police salaries and benefits are paid from the City's General Fund. The main source of money for the General Fund is the city income tax which brought in \$4,300,000 in 2004. The City normally applies 50 percent of its revenue to the General Fund.

In order to pay operating expenses, the city has had to increase the percentage of revenue going into the General Fund. During two months in 2004, the City transferred 100 percent of the income tax revenue to the General Fund. For three months of 2004, eighty percent was transferred. In 2005, the City Council passed ordinances which transfer 80 percent of the tax revenue to the General Fund during the first six months of the year. In order to increase contributions to the General Fund, the City has had to underfund the street improvement fund and the capital improvements fund. If the City continues to fail to fund the street improvement fund, the fund will be out of money in 2006 or 2007.

The auditor's records show 2004 revenue of \$14,086,747, which was \$462,500 less than in 2003. Total expenditures in 2004 were \$15,220,612. Thus, the City spent \$1,133,864 more than it took in 2004. However, these numbers are misleading, due to the fact that the income tax and certain items are, through accounting procedures, actually counted twice.

Looking at income tax revenue alone, the City had \$23,800 less income tax revenue in 2004 than in 2003. In 2004, the expenses of the police department were \$1,670,810, which was 52 percent of the City's General Fund expenditures. Expenditures for the police department have remained relatively constant, between \$1.6 and \$1.7 million, in each of the last three years.

However, the cost in 2004 was reduced because, at various times in the year, the City was short three police officers and one dispatcher. Filling these positions will increase operating costs.

The City has the ability to fund a modest wage increase in 2005. However, the City cannot continue to underfund its capital improvements fund or its street improvement fund for the long term. Several manufacturing facilities, which traditionally pay high wages, have recently closed or reduced the number of employees. There has been a reduction in the number of employees at the General Motors plant, which had supplied one-half of the city income tax revenue. However, on the plus side, Ontario issues building permits averaging approximately \$2.0 million per month.

2. Comparison data

The FOP selected comparable jurisdictions which, like Ontario, include both a large shopping center and an automobile plant. The FOP contends that, since the City has these characteristics, other cities with the same characteristics would be comparable. Other comparables selected by the FOP are based either on population or on proximity to the City of Ontario. The cities of comparable size selected by the FOP include Clyde, Crestline, Northwood, Port Clinton, and Moraine. The FOP also selected as comparables the City of Mansfield and the Richland County Sheriff's Office. Even though these have significant differences in population from Ontario, the Ontario officers have to work side-by-side with officers from these jurisdictions.

The Employer has selected other cities which are in the counties contiguous to Richland County. The cities in contiguous counties include Bucyrus, Crestline, Gallion, Mansfield, Mt.

Vernon, Norwalk, Shelby and Willard. The Employer has also selected other cities with a similar population, located throughout the state. The data is summarized in the following tables:

DISPATCHERS

	<i>Entry Rate</i>	<i>Top Rate</i>
<i>FOP Comprables</i>	25,345	32,795
<i>City Comprables - Contiguous Counties</i>	24,613	29,797
<i>City Comprables - Statewide by Size</i>	24,811	29,083
<i>Ontario - 2004</i>	23,733	32,864
<i>2005 - City Proposal- Contiguous Counties</i>	24,207	35,131
<i>2005 - FOP Proposal - Statewide by Size</i>	28,392	35,485

POLICE OFFICERS

	<i>Entry Rate</i>	
<i>FOP Comprables</i>	31,048	40,040
<i>City Comprables by Location</i>	31,766	38,630
<i>City Comprables by Size</i>	30,386	38,313
<i>Ontario - 2004</i>	31,013	40,976
<i>2005 - City Proposal</i>	31,637	41,787
<i>2005 - FOP Proposal</i>	31,949	42,203

Reviewing the comparables submitted by both parties, the fact finder notes that there is a wide variation in compensation among the comparable cities. Part of this difference is due to the fact that municipal finances differ greatly from city to city, even in the same geographical area. However, reviewing the information submitted by both parties, and looking at the averages, it appears that the members of all bargaining units are fairly compensated in an amount which is

similar to their counterparts. Thus, there is need for a wage a increase to “catch up” with other jurisdictions.

3. Recommendations

The financial information reviewed by the fact finder indicates that the City has sufficient funds to finance a moderate pay increase for all bargaining units. However, the City must carefully control its expenditures due to the uncertainty as to the funds which will be available in future years.

In most jurisdictions, a portion of each wage increase is absorbed by an increase in employee cost for health insurance. Here, the City and its employees were able to come to an agreement on health insurance which does not require a contribution by employees. Thus, even if the wage increases may be smaller than in some other jurisdictions, the bargaining unit members will benefit because none of their wage increase will be eliminated by an increase in health insurance contributions.

The fact finder believes that a general wage increase of two percent is proper for 2005. The cost of a wage increase in 2005 must be paid from the City’s funds, which are already tightly stretched. The parties have agreed on a one-time wage adjustment for the dispatchers for 2005. The wage increase for dispatchers is to be applied to the adjusted amount.

For 2006 and 2007, the fact finder recommends a general wage increase of 2.5 percent each year. The larger increase in the second and third years of the contract is reflective of the fact that the City will have more time to budget for the increase in wages.

The fact finder does not believe that this is a proper time to increase achievement pay, Senior Dispatcher compensation. It is not the the time to implement a wage supplement for a dispatcher training officer. The fact finder notes that the parties are only negotiating their second contract. The FOP has not presented any evidence of these types of supplemental pay in other jurisdictions. The compensation structure was established in its entirety, only about three years ago. This is not the proper time to implement a change in the agreement originally negotiated by the parties.

The proposal of the FOP to increase rank differential pay was also devised at the previous round of negotiations. In the last collective bargaining agreement the rank differential was increased from six percent to eight percent. There is insufficient evidence to show that the differential should be increased again.

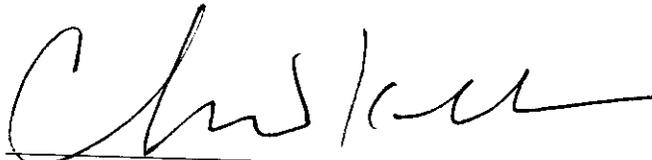
ARTICLE 41 - DURATION

The parties disagree as to the duration of the contract. The FOP desires that the contract be back-dated to January 1, 2005. The FOP contends that it was the City's fault that negotiations have taken so long. The City, on the other hand, proposes that the collective bargaining agreement be effective on the day of execution. Both parties propose an expiration date of December 21, 2007. The parties are in agreement that wages and other matters with economic implications are to be effective as of January 1, 2005. However, the Employer is concerned that it would be confusing to make the entire agreement retroactive, as there are many provisions that have been changed, and the effect of retroactivity has not been discussed during negotiations.

Recommendation

The fact finder recommends the adoption of the proposal of the City, which makes the contract effective on the day of execution. However, matters which have economic implications would be retroactive to January 1, 2005. The parties have made numerous changes to the agreement during negotiations. Other changes will be made on many of the outstanding issues. The parties have not included provisions in their proposals as to the effect of full retroactivity. Therefore, the fact finder recommends the adoption of the City's proposal.

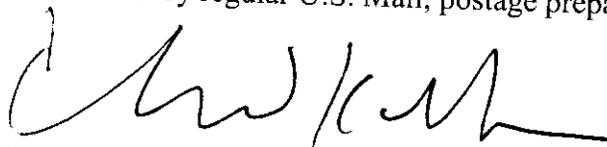
The above recommendations are respectfully submitted to the parties for their consideration.



Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 13th day of June 2005, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Dennis Sterling, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Edward S. Kim, Downes, Hurst & Fishel, 400 S. Fifth Street, Suite 200, Columbus, Ohio 43215, each by Federal Express overnight delivery; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder



First Class Mail
First Class Mail

LAW OFFICE OF CHARLES W. KOHLER
100 East Campus View Boulevard, Suite 250
Columbus, Ohio 43235

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

