

Introduction

In negotiations for a three-year successor agreement to begin December 27, 2004, the parties agreed to extend current language of 27 contract articles, and reached tentative agreement to changes on five others. They were unable to agree on wages, health care, and disciplinary issues. After five bargaining sessions, the union rejected a final offer from the city in March, and the parties scheduled an April 26, 2005 fact-finding hearing. The Bargaining Unit includes nineteen full time positions -- Patrol Officers and Detectives below the rank of sergeant. West Carrolton, a city of over 13,000, employs approximately 85 individuals full time, including police and clerical personnel represented by four separate bargaining units and unrepresented employees.

The Employer and FOP/OLCI have been parties to collective bargaining agreements since 1996 (96-REP-01-0005), and the police have had union representation since 1976.

The parties exchanged and submitted pre-hearing position statements that summarized their proposals, and they prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, 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, and 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.”

Fact Finding Hearing: April 26 2005 City of West Carrolton Municipal Building

The fact-finding hearing was then conducted from 9:05 a.m. until 1:50 p.m. with presentation of evidence and argument on the following five issues addressed in this report:

1. Article 19.1 Wages
2. Article 19.2 and 19.3 Step Increases
3. Article 29.1 Insurance Coverage Section A Employer/Employee Contribution Rate
4. Article 29.1 Section A Coverage Proposed New Article 29.4 Reimbursement Program
5. Proposed New Article on Quotas/Performance/Standards

Agreements

At the hearing, the parties confirmed their tentative agreement on new language for Articles 8, 19.5, 23, 24, 28.1 and 28.2. The Fact-Finder recommends that all those previously negotiated terms be included in the successor agreement.

In addition, the Employer and Union agreed at the hearing that compensation increases would be retroactive to the start of the new agreement by accepting the final contract Article on DURATION:

This Contract shall be effective from December 27, 2004 through December 31, 2007, and for yearly periods from year to year thereafter, unless either party shall give the other written notice of its intention to terminate this Agreement not more than one hundred twenty (120) days and not less than ninety (90) days prior to the expiration date, or the end of any yearly extension period.

Issue 1: Article 19.1 Wages

FOP/OLCI Position:

The FOP proposes wage increases of 5.5% for each year of the agreement to put West Carrollton in the mid range of eight comparable jurisdictions. The increases are also sought to offset the significant increases the City proposes in employee contribution rates for Insurance coverage and the reduced benefits that will considerably increase members' health care expenses for office co-pays, deductibles, and drugs. The Union representative explained how anticipated medical expenses caused by reduced benefits would consume any increase in take-home pay resulting from additional compensation.

The FOP submitted the West Carrollton combined statements of Revenues, Expenditures and Changes in Fund Balances for 2000 through 2002 in order to demonstrate the city's ability to pay, if necessary by using inter-fund transfers. While acknowledging a decline in the General Fund balance, the Union representative noted the city had just begun to receive additional revenue in January 2005 from an income tax increase of .25%, and that a new fee for refuse collection was also assisting the City meet its expenses. News clippings were submitted to show large city expenditures for a YMCA and other projects.

City Position:

The City proposes wage increases of 2% for each year of the agreement that would put West Carrollton third or fourth in relation to eight comparable public employers. The FOP had the highest wage increases among West Carrollton employees over the past three years, 12%, well above the increase in the consumer price index. A recently concluded three year agreement with West Carrollton Police Sergeants provides 3% a year, unrepresented employees have a 2.5% increase in 2005, and the clerical union is completing an agreement that provided annual 3.5% salary increases. The City believes that it currently offers a competitive wage and that no significant increase is needed to attract well-qualified officers or to assist employees whose recent raises generously exceeded increases in the cost of living.

Most importantly, the City claims serious financial hardship in difficult economic times resulting in four years of unsustainable budget deficits. Three major employers closed, resulting in a critical loss of tax revenue. Seven positions, including one police officer, have been cut in

those lean years. Health insurance costs have been increasing 15 per cent a year. Tom Reilly, Finance Director, reported on a 50% drop since 2001 in the general fund balance causing a significant loss of investment revenue. The neighboring city of Moraine, where many West Carrollton residents work, recently increased its income tax, reducing by \$120,000 West Carrollton's anticipated revenue gains from its own five year tax increase. Ohio also reduced the Local Government Fund annual allocation for West Carrollton, and further cuts or total elimination have been proposed. Estate tax revenues of approximately \$100,000 for the City may also be eliminated by the state legislature

A City projection that assumes no further cuts in either of those state funding sources anticipates that even with the new .25% income tax increase the General Fund Balance will continue to decline leaving a 2009 balance of \$700,000, an inadequate reserve less than 10% of budgeted annual expenditures. The City seeks to have an unencumbered balance of 50% as a cushion for difficult economic times, and had 52% in 2002.

Discussion:

While the parties submitted the same maximum salary figures for West Carrollton officers, they submitted different numbers for the top pay rates in Kettering, Vandalia, Miamisburg, and Moraine. Two of the "comparable" jurisdictions identified by the FOP are in central Ohio, a different labor market. Neither party reported the percent salary increase for police officers in recent city agreements elsewhere. The fact finder was not given West Carrollton's combined statement of revenues and expenditures for 2003 or 2004, nor the City's 2005 budget and is not certain what percentage increase was assumed for wages or the basis for predicting health care expenses in the City's budget projections through 2009.

The City submitted a 3 page April 2005 letter from the City manager to the City Council members and Mayor reporting actual General Fund revenue for 2004 of \$7,449,361 and actual expenditures for that year of \$6,415,753 (p. 2). If in fact there was a decrease of nearly \$500,000 in the General Fund balance for that year, then actual revenue for 2004 would be about \$5.9 million rather than \$7.5 million; the lower figure is consistent with the power point Chart of Revenue and Expenditures submitted by the city and the combined statement of revenues and expenditures for 2002 in the Union submission.

The Fact Finder concludes that West Carrollton is likely to run another deficit in 2005, further reducing the General Fund balance, and that inter-fund transfers are unavailable for increased compensation. The FOP has an interest in both a fair wage increase and in preventing further cuts in bargaining unit positions resulting from the employer's budget problems.

Despite the City's projection of continued losses through 2009, West Carrollton has recognized its responsibility to increase employee compensation at a time of increases in health care expenses and the cost of living. Although financial exigency may prevent the City from granting increases comparable to the prior agreement, the Police Officers deserve no less of a percentage wage increase than the more highly paid Police Sergeants. As noted below in the discussion of health insurance benefits coverage, the fact finder recommends the City's proposed core plan that will significantly increase employees' out of pocket expenses in September 2005. The fact finder thus recommends an additional modest wage increase for 2006 as a partial offset.

<u>Recommended Salary Increases</u>	2005	3%	(effective December 27, 2004)
	2006	3.5%	
	2007	3%	

Issue 2: Article 19.2 and 19.3 Step Increases

FOP/OLCI Position:

The FOP proposes that the practice of the parties for annual step increases be codified by deleting reference to “eligibility” and “merit” and by mandating in Sections 19.2 and 19.3 that members “shall” receive automatic step increases each year. In support, the Union representative noted that every member eligible had always been granted an annual step increase until the maximum step was reached.

City Position:

The City countered the proposal with Article X of the 1967 City Charter “Personnel” Section 10.01 *Merit System Established*: “promotions in the civil service of the Municipality shall be made solely on the basis of merit . . .” The current contract language dates back to the first collective bargaining agreement in 1976 and was incorporated into the first FOP contract in 1996.

Discussion:

The fact-finder was not provided with any collective bargaining agreement for West Carrolton or police in other cities with language comparable to the proposal, and so has no basis to support the employee position.

Suggested Language: No new language proposed

Issue 3: Article 29.1 Insurance Coverage A Employer/Employee Contribution Rate

City Position:

The Employer proposes that employee contributions to the monthly health insurance premium increase from 12% to 15% effective September 1, 2005 when the City proposes changing to a core health plan for all with substantial increases in office visit, emergency room, and drug co-pays, hospital and overall deductibles, and co-insurance. As alternatives, employees could a) pay an additional monthly fee to retain most current benefits in a “buy-up” plan or b) elect a high deductible health plan with a Health Savings Account funded by the employer’s savings on the cost of paying for the core plan.

Health Care Consultant Scott McGohan explained the City’s membership in the Ohio Benefits Cooperative that includes 13 public employers. West Carrolton is unable to negotiate for competitive bids, because the City’s current very generous benefit plan is not available in the market. The City plans to implement major changes for all its employees when the current health insurance contract expires on September 1, 2005. The Police Sergeants have agreed to pay 13% of the health care premium for the next three years, and their contract provides review by a new insurance committee with union representation that can offer recommendations on proposed future premium increases and benefit changes prior to approval by the City Council.

In the three year period between 2001 and 2004, annual health care cost increases for the City averaged 16%, going from \$466,419 to \$730,751. West Carrolton’s annual average health care expenditure per employee exceeds \$8,000. Since 1994 the City has made only one benefit change, a reduction in the office visit co-pay from \$10 to \$5. A list of 16 comparable jurisdictions reveals that West Carrolton offers considerably higher benefits for office visit,

emergency room, and drug co-pays, hospital and overall deductibles, and co-insurance. In three of those jurisdictions, officers also pay 15% to 20% of the monthly premium.

FOP/OLCI Position:

The Union opposes any increase to the 12% share of the monthly insurance premium paid by employees and seeks to maintain existing benefit levels. If the City shifts to a new plan with reduced benefits, the Union proposes reimbursement for all the additional out of pocket expenses incurred by its members.

The Union submitted two pages from the SERB 2003 Annual Report on the Cost of Health Insurance in Ohio’s Public Sector to show that cities of less than 25,000 employees on average paid no more than 9.1% of the monthly premiums and those were less than half the amount currently paid by West Carrollton employees.

The proposed new plans would significantly reduce the City’s health care expenses by shifting to its employees unacceptably high premium payments with unprecedented new co-pays, deductibles, and co-insurance charges.

Discussion:

The City reports that it spent \$643,601 on total employee health care insurance in 2004 and proposes a new core plan that would for 2005 cost West Carrollton \$605,101. That savings of nearly \$40,000 is achieved by significantly reducing plan benefits while increasing employee premium contributions 25% (Single: from \$38.25 to \$47.65 per month; Family \$107.55 to \$134.02 per month.) If the employee contribution remained at 12% instead of the higher 15% proposed by the city, then West Carrollton would still save \$27,000 in the calculation for 2005; at 12% monthly premium contributions by FOP members would not increase, but the new core plan would require much higher out of pocket health care expenses. Based on individual need, employees electing the high deductible plan with Health Savings Account might save. The cost of the “buy-up” plan to maintain current benefit levels is 166% of the monthly premium for the core plan, an unlikely option. The Union indicated that its members when asked had all rejected the two alternatives, and the FOP/OLCI proposed continuation of current benefits with a 12% contribution rate. The City presented the premium costs of continuing the current benefits that the fact finder used to calculate the monthly cost of a 12% contribution for employees shown in Table 1 below.

	Current 12% 04	Current 12% 05 FOP/OLCI	Core 15% 05 City	Core 12% 05 Fact Finder
Single	\$38.25	\$44.02	\$47.65	\$38.12
Family	\$107.55	\$123.68	\$134.02	\$107.21
Single/City 4	280.73	322.83	270.00	279.52
Family/City 15	788.70	907.01	759.42	786.23
Total City Cost/yr	155,441.04	178,757.38	149,655.60	154,937.98

The data on sixteen comparable jurisdictions provided by the city does not support its proposal to raise the employee contribution rate to 15%, nor does the analysis provided by SERB. Based on the 2002 SERB Annual Report on the Cost of Health Insurance in Ohio’s Public Sector, the fact finder prepared the following comparison. The fact finder did not have the latest data from the most recent SERB report, and also notes the following potential problems in making reliable comparisons. Based on 655 survey returns from 1374 employers, the 2002 SERB Report warns that information about monthly and annual costs for all health care benefits may not be statistically valid due to small sample size. Most of the tables exclude cities that pay

100% of the premium. The report gives cost information, but provides insufficient data to compare health care benefits that vary by employer. The reported average cost per employee has limited comparative value because premiums are considerably higher for those electing a family plan, and the report doesn't correct for disparities in the number of employees taking single and family coverage.

Table 2 Monthly & Annual Costs -- All Health Care

	Monthly Premium		Annual Cost
	Single	Family	Average
State wide in 2002	\$339.66	\$828.79	\$7,992
Cities under 25,000	\$319.55	\$813.78	\$8,272
Dayton Region	\$327.50	\$804.45	\$7,871
50-99 Employees	\$338.00	\$841.56	\$7,573
West Carrolton 2004	\$319.01	\$896.25	

Table 3

	Employee Premium Contributions			
	Total	Premium	Average % Contribution	
	Single	Family	Single	Family
Statewide in 2002	\$35.44	\$97.09	12%	13%
Cities under 25,000	\$25.17	\$69.25	8.8%	9.2%
Dayton Region	\$34.35	\$101.13	11.6%	13.6%
West Carrolton 2004	\$38.28	\$107.55	12%	12%
12% in 2005	\$38.12	\$107.21	12%	12%

In the 2002 SERB report, 43% of public medical plans in Ohio required no employee contribution, and 64% of the reporting cities contribute more than 90%. 76% of reporting Ohio cities contributed more than the 85% rate proposed by West Carrolton. The FOP/OLCI members' share of the premium increased from 10% to 12% in the prior agreement. In light of the savings achieved by reducing benefits and the practice in comparable jurisdictions, the City's proposal for a 15% employee contribution appears unreasonable. The fact finder recommends the plan options proposed by the City with the 12% contribution rate proposed by the FOP/OLCI.

The fact finder also recommends that the City

- a) provide an annual open enrollment period so that employees may change their plan choices for the coming year,
- b) assure that Union members who experience a change in family status have an immediate opportunity to change their plan choice as provided by federal law, and
- c) explore the option of a reduced premium for employees with one dependent, lower than the family premium for employees with two or more dependents.

Suggested Language: New language underlined

Section 29.1 Coverage

A.

1. The City shall continue through August 30, 2005 the employees' current group health care program. Effective September 1, 2005 the City will make available to employees covered hereunder three options for group health care -- (1) a high deductible health plan (HDHP) with a Health Savings Account, (2) a core plan known as Blue Access Option #63, and (3) a buy-up plan, known as Blue Access Option #48. The City will contribute eighty-eight (88%) of the monthly premium for the core plan to any option selected by the employee. The City will contribute to an employee's Health Savings Account the difference between the premiums for the core plan and the high deductible health plan. The employee will pay the difference between the premiums for the core plan and the buy-up plan.

2. Each employee must elect to subscribe to one of the plan options before insurance payments for same will be made by the City. In the event the employee should elect not to subscribe to a plan, additional compensation shall not be paid to the employee. Employees not electing to subscribe to the plan must sign a waiver form. An employee shall become eligible for said insurance upon being hired in a full-time non-temporary status.

Issue 4: Article 29.1 A Coverage + Proposed New Article 29.4 Reimbursement Program

City Position:

As noted above, the City claims inability to pay due to lost revenues and escalating expenses. The proposed core health plan negotiated with Anthem Blue Cross/Blue Shield would roll back insurance costs to a sustainable level before annual 15% increases resume. The City offered data on plan benefits provided to officers in 16 comparable jurisdictions demonstrating the West Carrolton's current plan is among the most generous. Based on charts presented at the hearing by the health care consultant, the fact finder prepared the following table to summarize/highlight the most important changes in the benefit package proposed by the City.

Service	Current	Proposed Core	Buy-up	High Ded
Office Visit Co-pay	\$5	\$20	15	Ded + CI
Drug Co-pay	5/12	10/20/30	10/20/30	Ded + CI
Deductible Hospital	0	250/500 + CI	0	1,000/2,500
Deductible General	100/200	250/550 + CI	0	1,000/2,500
Co-Insurance	0	20%	0	20%
Emergency Room	50	100	50	Ded + CI
Assorted Other	\$5	20% + Deductible		

\$385.41 Single HSA 1 yr
\$1,083.78 Family HSA 1 yr

The City's contract proposal identifies the three plans by name only without specifying benefit levels. In order to address changing benefit levels, the City submitted draft language for a new paragraph in Article 29 Section A identical to a provision included in the recent three year agreement with the Police Sergeants. A new Insurance Committee with members from different employee groups and one Labor Council representative would by majority vote make recommendations to City Council concerning future changes in benefit levels and plan costs.

FOP/OLCI Position:

The Union opposes any cut in health care benefits and proposes to maintain current levels with a new Article providing for reimbursement of any employee expenses that result from a change to a new insurance plan. When informed of the proposed new options, no members expressed interest in either the High Deductible or the buy-up plan.

The Union submitted analysis showing a predicted increase of \$912 in prescription drug expenses for one employee that would exceed the total increase in his take home pay with the 2% pay raise proposed by the city. The FOP/OLCI rejected the proposed Insurance Committee, arguing that it would have no binding authority and could only make recommendations to City Council.

Discussion

The Union's calculation of increased prescription drug costs was based on a \$10/\$30/50% proposal which the City subsequently altered, proposing \$10/20/30 at the hearing. Under the current plan employees can by mail obtain a sixty day supply for one co-pay, changed in the proposed core plan to a 90 supply for a double co-pay (currently 5/12). Based on the City presentation at the hearing, the fact finder recalculated the potential increase for the FOP member, determining that his costs would increase between \$336 and \$432. The Union properly notes the extraordinary increases for nearly every benefit with the overall out-of-pocket limit increased by \$1,500 for single employees and by \$3,000 for family coverage—from 500/1000 to 2000/4000.

Based on the data from comparable jurisdictions provided by the employer, the core plan would leave West Carrolton officers paying out of pocket expenses somewhat higher than the median. \$20 for co-pays rather than \$15; 10/20/30 for prescription drugs rather than 8/15/25. deductibles of 250/500 rather than 100/200. 20% co-insurance rather than 0%.

One advantage to both the City and the Union of accepting reduced benefits is the saving on premiums. The fact finder calculates that under the core plan single members would pay \$76 less per year and family members would pay \$197 less per year than premiums would cost to continue current benefits. (See Table 1, pg 6 above) The fact finder also recommends an additional salary increase in 2006 that amounts to an extra \$270 a year based on the top officer wage. The single member would then have an additional \$346 and the family member \$467 per year for additional out of pocket expenses that in the worst case scenario could be an additional \$1,500 for the four singles and \$3,000 for the fifteen family members. The City expects members of all employee groups to share the heavy burden of exploding health care costs. The fact finder believes that out of pocket expenses encourage the health care recipient to limit unnecessary individual expenses and to support needed collective action to address the problem. Those expenses might also discourage preventive care measures resulting in more costly illness.

The employer has proposed language for Article 29 that places no meaningful limit on its freedom to reduce health care benefits in new insurance plans arranged during 2006 and 2007. The current agreement commits the employer to maintain benefits, but the level has not changed for over a decade. The City wants ultimate authority to decide on future changes while the Union wants its members to be compensated for any additional expenses that result. Processing of insurance claim forms is so burdensome that the fact finder can not conceive of a workable method to implement the Union's reimbursement proposal. Employees should however be encouraged to keep detailed personal medical expense records that enable the bargaining agent to

determine the impact of changes in the plan that would clarify the need for future proposed reforms.

The fact finder recommends making the changes in the core plan proposed by the City with maintenance of the benefit levels presented at the hearing for the duration of the agreement. By agreeing to pay a fixed per cent of increased premium costs, the employees carry a reasonable share of the risk when costs increase, and they should not also be exposed to further reduction in benefits beyond the major changes in a shift to the core plan.

The parties have a mutual interest in negotiating reductions with health care insurance providers. The City's proposal for an Insurance Committee to discuss future changes has merit, but the committee's membership is not specified beyond providing for one Labor Council representative and representatives of other employee groups. The Labor Management Committee established in Article 12.1 specifies equal representation by the city and the Labor Council, with no more than four representatives of each. The City and FOP/OLCI should discuss the fact finder's recommendations for an annual enrollment period, opportunities to make a new plan choice after a change in family status, and the possibility of a lower family premium for members with a single dependent as well as possible savings in plan changes that might be recommended in 2006 and 2007.

Suggested Language: New language underlined

Section 29.1 Coverage

A.

3. The core plan Blue Access Option #63 will require the employee to make deductible, co-insurance, out-of pocket, prescription drug, and other contributions no greater than those presented in the appended chart presented at the SERB Fact Finding Hearing on April 26, 2005 - CITY OF WEST CARROLTON Health Insurance Contribution Analysis - "Option Plan" Anthem Blue Cross Blue Shield ABD Package "Core" Blue Access Option #63 VO2. During the term of this agreement, the City shall make available to employees covered hereunder a group health care program which is the same as or similar to the core plan Blue Access Option #63, unless an alternate plan becomes available that provides lower employee contributions than those required by the core plan adopted in September 2005. The City will contribute eighty-eight (88%) of the monthly premium for any plan during the term of this agreement.

4. With each sharing in costs, the Union and City have a mutual interest in maintaining the lowest possible costs for health care coverage. In order to consult on reducing costs without loss of benefits, to share research, and to consider cost saving alternatives on future plan changes during the term of this agreement, the parties may form an Insurance Committee comprised of members from various segments of City Service including the Labor Council, or may use the Labor Management Committee established in Section 12.1. Recommendations following such consultation may be submitted to City Council for consideration.

Issue 5: Proposed New Article on Quotas/Performance Standards

FOP/OLCI Position:

The FOP proposed that employees not be disciplined merely for not meeting a quota, an issue first raised with the city in 2001 negotiations. In December 2001 the city's representative assured the FOP that the city did not have performance standards and that if the Police Chief decided to initiate standards that they would be negotiated prior to implementation.

The Police Chief implemented standards in June 2003. Patrol officers were instructed that for each shift worked they should on average issue "one traffic citation, one written warning, and complete one park & walk business, one park & walk residential, and one permit holder check." (M-400) Failure to meet the performance statistics would then be considered in job evaluations and possible disciplinary action. Supervisors were to note each month special events or activities that might impact completion of the expected self-initiated activity.

The FOP filed an unsuccessful SERB Unfair Labor Practice Charge claiming that the city had refused to bargain over terms and conditions of employment. Officer Ron Jensen testified at the fact-finding hearing about warnings that he had received for failing to meet quotas for traffic citations during his night shift and a currently pending threat of disciplinary suspension. Officer Jensen presented analysis of how the city had miscalculated statistics in evaluating his performance, failing to give the promised credit for special events and activities. Documentary evidence of disciplinary action against other officers was also provided.

The FOP argues that rigid quotas for traffic citations are unfair to citizens and should not be used as a means to generate needed revenue. "The other huge problem with quotas is that Officer discretion is taken away because a specific number is required. This forces Officers to give citizens a ticket for example that would not have been issued had not a quota been in effect." In addition, "one size does not fit all" as officers work different shifts with considerable variation in business activity and vehicular traffic.

The Union while not opposed to standards, objected to discipline for failure to meet standards that were unjust and that had never been properly negotiated.

City Position:

The City Manager noted that West Carrolton residents complained most frequently about speeding, justifying the expectation that officers would issue citations. In addition, the City sought to promote greater interaction between patrol officers and the community by requiring "park & walk" activities. Statistics were based on reasonable monthly averages and revealed no significant differences by shift that would disadvantage any officers.

The employer representative objected to any consideration whatever of the proposed article on quotas because SERB had dismissed the ULP on grounds that the standards were a permissive rather than a mandatory subject of bargaining. The Union has not challenged the SERB decision in Common Pleas court. The contract's management rights article 5 empowers the employer to discipline for "just cause." If Officer Jensen is suspended for failing to meet the standards, the Union's only recourse is to seek arbitration. The officer's grievances and SERB's dismissal of the ULP can not be considered by a fact-finder in these proceedings.

Discussion:

The Administrative Law Judge's May 28, 2004 proposed order dismissing the ULP was adopted by SERB on February 5, 2005 (03-ULP-08-0414). The order notes a series of West Carrolton Labor Management Committee meetings in 2002 when the parties negotiated but were unable to agree on proposed performance standards that the Police Chief subsequently implemented. After thoroughly reviewing relevant case law on permissive vs. mandatory subjects of bargaining, the Administrative Law Judge concluded that the city was under no legal obligation to negotiate performance standards, although the employer had the discretion to

negotiate and accept such contract terms. While the fact-finder concludes that the FOP objections to the standards have considerable merit, the language of the May 28, 2004 order adopted by SERB expressly precludes consideration of the employee's proposal:

Because minimum standards are a permissive subject of collective bargaining, **the Union could not** have insisted on the inclusion of a contract provision regarding minimum standards during the statutory dispute resolution procedures of **fact finding** and conciliation. (p. 10 emphasis added)

Suggested Language: No Change Recommended

Conclusion:

The fact finder has attempted to resolve the difficult issues presented with a thorough review of interrelated contract provisions and with careful attention to all the evidence and argument presented. If the parties find any substantive error in this report needing correction, a conference call should be arranged to discuss the concern, and a request may be filed with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. The Fact Finder appreciates the courtesy extended by all individuals involved in the process.

Professor Howard Tolley, Jr., University of Cincinnati
May 6, 2005

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Fact Finding Report has been served via electronic mail and BY REGULAR MAIL to City Manager Tracy Williams, City of West Carrollton, 300 E. Central Ave. West Carrollton, Ohio 45240, and to Janet K. Cooper, Cooper & Gentile, 118 West First Street, Talbott Tower, Suite 850, Dayton, OH 45402 and to Mr. Thomas J. Fehr, Staff Representative, FOP/OLCI 5752 Cheviot Road Suite D, Cincinnati, Ohio 45247 on this 6th day of May, 2005.

Howard Tolley, Jr.