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

STATE EMPLOYMENT
RELATIONS BOARD
2007 FEB 15 P 12:49

IN THE MATTER OF	:	
FACTFINDING BETWEEN	:	
	:	
CITY OF TROY,	:	
PUBLIC EMPLOYER	:	
	:	REPORT OF THE FACTFINDER
-AND-	:	
	:	
FOP-OHIO LABOR COUNCIL, INC.,	:	
TROY POLICE OFFICERS ASSOCIATION,	:	
EMPLOYEE ASSOCIATION	:	

<u>SERB CASE NO.:</u>	06-MED-08-0851
<u>BARGAINING UNIT:</u>	The Bargaining Unit consists of all sworn Police Officers below the rank of Sergeant.
<u>MEDIATION/ FACTFINDING PROCEEDING:</u>	January 18, 2007; Troy, Ohio
<u>FACTFINDER:</u>	David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER:

Mark E. Lutz, Attorney
Sue Knight, Clerk of Council
Tom Funderburg, HR Director
Charles Phelps, Chief of Police
Jessie Sletten, Legal Assistant

FOR THE FOP

Dennis E. Sterling, Staff Rep.
Scott A. Gates, President
Chris Madigan, Vice President
Jeff Hubbard, Patrolman
Brandon Fellers, Patrolman

ADMINISTRATION

By correspondence dated November 28, 2006, from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Factfinder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); in an effort to facilitate resolution of those issues that remained at impasse between these parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Factfinder discussed with the Parties, through their designated representatives, the overall "atmosphere" relative to the prior negotiation efforts by and between them and learned that overall, these Parties have enjoyed, and continue to enjoy, what can best be characterized as an amicable Collective Bargaining relationship.

On January 18, 2007, at the Administration Offices of the City of Troy, the Factfinding Proceeding was conducted wherein, prior to the commencement of the presentation of evidence of the supporting arguments, the Parties were offered Mediation with the assistance of the Factfinder concerning those issues that remained at impasse. Through the informal discussions that followed, the Parties were able to reach tentative agreement concerning Article XXXIV, titled, "Medical and Life Insurance," and Article XXXV, titled, "Uniform/Equipment Allowance," and as such those tentative agreements will be recommended herein as part of this Factfinding Report and Recommendations.

At the conclusion of the Mediation efforts culminating in the tentative agreements set forth above, the Parties indicated their desire to commence forthright with the Factfinding Proceeding concerning the impasse relative to the remaining Articles. The Parties' request was recognized and complied with by the Factfinder. During the course of the Factfinding Proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced relative to the unresolved issues. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Factfinding Proceeding and those issues that remain at impasse are the subject matter for the issuance for this Report hereunder.

STATUTORY CRITERIA

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

1. Past collectively-bargained agreements if any, between the Parties;
2. Comparison of unresolved issues relative to the Employees within the Bargaining Unit with those issues related to other Public and Private Employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved;
3. The 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 adjustment on a normal standard of public service;
4. The lawful authority of the Public Employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the Public Service or in private employment.

THE BARGAINING UNIT DEFINED;

ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY;

AND, GENERAL BACKGROUND CONSIDERATIONS

The Collective Bargaining Agreement between the City of Troy, Ohio (hereinafter referred to as the "Employer") and the Fraternal Order of Police, Ohio Labor Council, Inc., (hereinafter referred to as the "Union") expired on December 31, 2006; thus triggering application of the statutory dispute resolution process relative to negotiating a successor thereto. As contained therein, Article 1, titled, "Association Recognition/Cooperation," sets forth in Section 1.1 the scope of the Collective Bargaining Unit as follows:

The City recognizes the Association as the sole and exclusive Bargaining Representative for all sworn police officers of the Troy Police Department below the rank of Sergeant, but excluding all other Employees.

* * * * *

As the evidentiary record demonstrates, there are currently approximately 33 positions/members within the Bargaining Unit identified under the Certification Order issued by the State Employment Relation Board prior to December 18, 1985. As is typical with any law enforcement agency, its duties and responsibilities to this community are to “protect and serve” the members thereof with respect to law enforcement or other policing activities generally recognized for any law enforcement agency within the State of Ohio.

As the record further demonstrates, the Parties have met and negotiated on September 21; September 29; and October 10, 2006 to negotiate a successor Collective Bargaining Agreement and have experienced significant success in reaching tentative agreements relative to most Articles contained in the predecessor Collective Bargaining Agreement. Unfortunately, those efforts did not resolve the impasse subject to Article 36 titled “Wages,” Article 40 titled “Duration,” and, a new Article proposed by the FOP titled “Residency.” As previously indicated, the Parties did, in fact, reach tentative agreement relative to Articles 34 and 35, respectively, addressing Medical and Life Insurance and Uniform/Equipment Allowances.

During the course of the negotiations previously identified, the Parties either did not open or were able to reach tentative agreement relative to the following Articles, and are subject to recommendation by the Factfinder to be included in the successor Collective Bargaining Agreement as agreed to by and between these Parties:

- Article 1 “Union Recognition/Cooperation”
- Article 2 “Severability”
- Article 3 “Waiver of State Civil Service and Related Laws”
- Article 4 “Waiver in Case of Emergency”
- Article 5 “Non-Discrimination”
- Article 6 “Management Rights”
- Article 7 “Work Rules”
- Article 8 “No Strike/No Lockout”
- Article 9 “Probationary Period”
- Article 10 “Seniority”
- Article 11 “Layoff and Recall”
- Article 12 “Postings/Promotions”
- Article 13 “Bulletin Boards”
- Article 14 “Position Descriptions”
- Article 15 “Personnel Files”
- Article 16 “Performance Evaluations”
- Article 17 “Health and Safety”

Article 18 "Labor/Management Meetings"
Article 19 "Union Business"
Article 20 "Union Dues Check-off"
Article 21 "Hours of Work/Overtime"
Article 22 "Call-in Pay"
Article 23 "Sick Leave"
Article 24 "Sick Leave Conversion Upon Separation"
Article 25 "Holidays"
Article 26 "Vacation" – (Tentative Agreement)
Article 27 "Military Leave"
Article 28 "Court Leave"
Article 29 "Funeral Leave"
Article 30 "Duty Injury Leave"
Article 31 "Leave Without Pay"
Article 32 "Discipline"
Article 33 "Grievance Procedure"
Article 37 "Longevity"
Article 38 "Drug Testing"
Article 40 "Educational Incentive"

As previously indicated herein, the Parties engaged in Mediation with the undersigned prior to the presentation of evidence relative to the issues that remained at impasse. During the course thereof, the Parties were able to reach tentative agreement relative to Article 34, titled, "Medical and Life Insurance" as proposed by the Employer, and Article 35, titled, "Uniform/Equipment Allowance" based on the last package proposal made by the Employer, and as such are recommended for inclusion into the successor Collective Bargaining Agreement as identified. The tentative agreements reached by the Parties were formalized based on a document identified as the "City Package Proposal of October 10, 2006," and as previously indicated, were signed off to by the Parties prior to the presentation of evidence at the Factfinding Proceeding.

Based on the evidence presented, the City of Troy has a population of approximately 22,000 citizens based on the 2000 Census Report and is the County Seat of Miami County located approximately 20 miles north of the City of Dayton, the first major metropolitan area in close proximity. The Parties have been Parties to a series of Collecting Bargaining Agreements and the City has other bargaining relationships with the City's Police Sergeants, Police Captains, Police Clericals/Custodians in three separate Bargaining Units and the International Association of Firefighters, "IAFF," with Firefighters below the rank of Assistant Chief and with AFSCME Local 1342 for all non-supervisory employees in its Electrical, Refuse, Street, Water Plant,

Water Distribution, Sewage Plant, Sewer Maintenance and Cemetery Departments. As the evidence of record demonstrates further, the other FOP Units reached tentative agreements with the City for three year contracts as did the City with the IAFF and AFSCME.

The Parties agreed to incorporate 37 Articles from the predecessor Collective Bargaining Agreement into the new or successor Agreement without any changes leaving five unresolved issues, Wages, Insurances, Uniforms/Equipment Allowances, Residency and Duration subject to this Report. The Insurances and Uniforms/ Equipment Allowances Articles have been agreed to during the course of the Mediation efforts engaged in prior to the Factfinding Proceeding.

As further indicated, the City made a package proposal relative to the remaining issues on October 10, 2006 to which membership of the FOP declined to approve hence triggering the application of the Dispute Resolution Process under Chapter 4117 of the Ohio Revised Code. It is clear to the Factfinder that these Parties have engaged in painstaking efforts to reach this level of the statutory process, with relatively few, but important to both sides, issues in which they simply could not reach agreement.

The Employer has not raised any “inability to pay” considerations or arguments but emphasizes its accountability to the community concerning fiscal prudence and its ability to finance economic enhancements that may be recommended herein for the duration under this successor Collective Bargaining Agreement without jeopardizing the level of services it currently provides and further to not deviate from the economic enhancements received through negotiations with the other Bargaining Units with whom the City negotiates.

The Union seeks what it characterizes as necessary contractual economic improvements based on the comparables it has relied upon namely the Cities of Englewood; Fairborn; Huber Heights; Piqua; and Vandalia, all within close proximity to the City of Troy’s logistically and population-wise and urges the Factfinder to deviate from the “pattern bargaining” the City insists is necessary. Entry levels and top levels of pay based on the SERB Benchmark Report it was able to obtain were set forth and relied upon in its presentation. It maintains that the enhancements it seeks relative to the remaining economic Articles will assist it with the ability to provide a fair and equitable Collective Bargaining Agreement for this Bargaining Unit as it compares to the other Police Departments and the comparables it has relied upon.

Based on the Collective Bargaining Agreement dated January 1, 2004 through and including December 31, 2006 at Article 36, page 26 thereof, the Bargaining Unit realized a 3%;

3-1/2%; and 3-1/2%; effective January 1st of each of the years pertaining to that Collective Bargaining Agreement, or in other words a 10% package for the three year Agreement. The Union urges that the Factfinder recognize the Wages Article is indeed the most important of those remaining at impasse, and given the comparable jurisdictions it has relied upon, it urges the Factfinder to follow its logic relative to the recommendation of 5% for each of the three years of the successor Agreement as its Hearing Position Statement indicates.

The City's economic proposals would increase wages 3-1/2%, 3-1/2% and 3% over the three years of the successor Collective Bargaining Agreement, with compounding would yield 10.34% over the three years, while maintaining the 12% employee health insurance premium contribution; recognizing the increase in the current Uniform/Equipment Allowances as accepted during the Mediation efforts prior to the Factfinding Proceedings; and, consistent with the other Bargaining Units which have ratified their respective Agreements. The City emphasizes that these are indeed consistent with the other internal Bargaining Units that have, in fact, reached agreement and have had their respective Collective Bargaining Agreements ratified. It simply wants to maintain the long-standing practice of granting all City Employees the same percentage annual wage increases and that all City Employees contribute the same percentage for health insurance premiums. It has chosen its comparable jurisdictions as those within a 35 mile radius from the City and with a population range from 10,000 to 30,000. Those are: Bellefontaine; Centerville; Englewood; Greenville; Miamisburg; Piqua; Sidney; Trotwood; Urbana; Vandalia; West Carrollton; and, Xenia, and while it does not agree with the Union's application of the data relied upon, it does agree that Piqua is the most pertinent external comparable. Both are located within Miami County, are relatively the same size and are approximately 8.6 miles apart; however, based on the Union's data, it fails to address Troy's Longevity Pay.

Based on this aspect of the statutory process, the Factfinder is required to consider comparable employee units with regard to their overall makeup and service provided to the members of their respective communities. As is typical and is required by statute, both Parties, in their respective Pre-Hearing Statements filed in accordance with the Procedural Guidelines of the Statutory Process; and, the supporting documentation provided at the Factfinding Proceeding, have relied upon the comparable jurisdictions and/or municipalities referenced above concerning what they deem "comparable work" provided by this Bargaining Unit. As is typically apparent,

there is no “on point comparison,” only similarities, relative to this Bargaining Unit concerning the statutory criteria as will be discussed further by the Factfinder based thereon.

It is, and has been, the position of this Factfinder, that the Party proposing any addition, deletion or modification of either contract language; or, a *status quo* practice, where an initial Collective Bargaining Unit may exist, bears the burden of proof and persuasion to compel the addition, deletion or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo*, whether that is the previous Collective Bargaining language or a practice previously engaged in by the Parties. Based thereon, the Union which is seeking certain economic enhancements relative to the three year wage package of the successor Collective Bargaining Agreement will have the burden of proof and persuasion to compel the Factfinder to make a recommendation that would recognize what it is seeking in financial enhancements.

Moreover, it is important to note, based upon the statutory criteria that the Public Employer, herein, has not raised any “inability to pay or financing” arguments relative to its overall economic status. The Factfinder is mindful of the apparent need of the City to engage in prudent financial endeavors including the funding for this Collective Bargaining Agreement and recognizing that it urges the Factfinder to base any recommendations on the internal comparability of the other Collective Bargaining Units that have already ratified their Agreements recognizing the same financial package as being proposed to this Bargaining Unit.

As was previously identified, numerous Articles were agreed to during the course of the negotiation sessions conducted by the Parties, as well as, those in Mediation that occurred prior to the commencement of the Factfinding Proceeding. It is hereby recommended that those not opened or those previously agreed to by and between the Parties, either during the course of negotiation sessions and/or Mediation, be “transferred” for inclusion into the successor Collective Bargaining Agreement either unchanged or modified by the Parties as set forth in the tentative agreements reached by them during these discussions.

THE UNRESOLVED ISSUE(S)

The following issues remaining at impasse between these Parties are listed as follows:

Article 36 - Wages

FOP Position – The FOP urges the Factfinder to recommend its wage increase of 5% for each of the three years of the successor Collective Bargaining Agreement based on what it contends as the means by which to place these Employees in a most comparable position with other jurisdictions in the Miami County area. It emphasizes that the Employer has a \$5 million dollar surplus, and based all on a recent School tax increase effective November 2006 these Employees will have less take home pay despite an increase. It emphasizes that the Managers of the City received significant increases – 4.6% - and City Council members received a 40% increase in their salaries. It emphasizes that this City has no inability to pay given the surplus and as such Wage increases should be consistent with those within other agencies in the Miami Valley area.

The 3-1/2%, 3-1/2%, 3% general Wage increases for this Bargaining Unit was rejected by the body of this Bargaining Unit sending an obvious message that the increases are insufficient. This is not an issue of pattern bargaining for the Wages of this Bargaining Unit since it rests on its own ability to negotiate what it deems to be necessary enhancements for these Employees.

It emphasizes that based on its comparables recognizing 2006 Averages, these employees are 9.2% below the averages for Entry Level Officers and 5.4% below for Top Pay Level Officers. Based on a broader scope of comparables, it is 9.77% below the average including its Wage Scale and 10.34% below average without its Wages included. It emphasizes that the recently enacted School Tax and rising energy and fuel costs will impose a greater economic hardship on these employees and based on the City's overall economic status, it can certainly afford and/or finance its Wage proposal.

The FOP notes that its Ordinance Case Filed were second to those of Piqua and third to the Department of Taxation and its Traffic and State Cases filed provide significant proof that this Department is very active and the Newspaper articles submitted reveal that indeed the City has the economic means to finance the Wage proposal it seeks.

For These reasons the FOP urges its position regarding base Wages.

City Position – The City proposes to increase base wages 3-1/2%, 3-1/2% and 3% for each of the three years of the successor Collective Bargaining Agreement while recognizing that the compounding of these increases would yield a total increase of 10.34% over the life of the Collective Bargaining Agreement. It emphasizes that indeed internal equity among the other Collective Bargaining Units must be observed and the City has traditionally provided the same percentage increases for all Employees. Maintaining internal equity is reflected in the City's recent adoption of a Salary Ordinance covering the non-represented Employees which received a similar increase.

It notes that the IAFF Agreement provides for a "re-opener" for the purpose of negotiating 2008 and 2009 Wage rates only the event that this Contract contains a greater percentage than they received. To agree to a greater wage increase than it proposed would subject it to the re-opener with the Fire Department for both years subject to the re-opener. Such would be inconsistent with the stance it took with the other Units and a violation of trust it was hoping to gain by negotiating to agreement the amount set forth in their Agreements.

Moreover, it contends that the external comparables support the City's Proposal particularly as it relates to the City of Piqua, as relied upon by FOP, which fails to take into consideration the Longevity increase which is the functional equivalent of 2% step increase every five years of service and simply cannot be disregarded. It is clear that the City of Troy is well within the comparable levels in its increases at the 5, 10, 15, 20, 25 year step increases as they exceed those of the 12 city average it has relied upon. As such, the FOP's Wage Proposal simply cannot be justified. Based on the previous year's salary figures, the average Troy police officer was paid \$59,582.64. It notes that 20 of the 31 active officers were paid over \$60,000.00 in 2006 and 4 were paid over \$65,000.00.

Indeed, the City has not raised any inability to pay arguments, however, it maintains it must remain prudent with respect to its governmental, economic obligations and the 2007 budget exemplifies its need to remain cost efficient. It notes that for each 1% increase in wages, the City must pay \$40,000.00.

Finally based on national averages, the increases it proposes are indeed above those or based on the package are identical to that of those recognized on all settlements of Collective

Bargaining Agreements. Such are somewhat inflated based on the geographic areas but for the Midwest they are indeed above those generally seen.

For these reasons, the City urges the Factfinder to recommend its Wage Proposal.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the successor Collective Bargaining Agreement, at Article 36, titled, "Wages" reflect the proposal of a wage increase to the basic wage structure of 3-1/2% effective January 1, 2007, 3-1/2% effective January 1, 2008, and 3% effective January 1, 2009. It is clear that this City has enjoyed financial stability over the past three years of the predecessor Collective Bargaining Agreement in which these Employees realized a wage package of 10%, which is identical to the increase recommended herein. Based thereon, consideration of the "past collectively-bargained Agreement," is indeed applicable as this recommendation is consistent with that previously enjoyed by this Bargaining Unit.

Secondly, it is indeed a factor in consideration of recommendations of increases based on Wages to look at internal comparability of other Bargaining Units. Those that have settled prior to engaging the statutory process have all settled for the identical amount proposed by the City for this Unit. Indeed, internal comparability can be a significant factor when making a recommendation for economic enhancements and there is no compelling reason to ignore that consideration herein. While the Factfinder recognizes that each Collective Bargaining Unit stands on its own right to negotiate and is subject to negotiating the Agreements based on their own individual Unit's needs, it is indeed important to recognize that internal parity with other Collective Bargaining Units is indeed critical to such an analysis. It is indeed noteworthy to recognize the stability with respect to morale of other City Employees as it relates to maintaining some consistency within City Government and its Contracts with other Bargaining Units. While indeed the service providers in Police and Fire Units are often recognized to be in "life threatening" situations, the argument can always be made that they are certainly worthy of additional consideration relative thereto. The Fire Department has agreed to the same wage package as that being proposed herein, subject to a re-opener, in the event that the Police Officers receive more than they. Based on this recommendation, the re-opener would remain

inapplicable based on the fact that there would not be any reason to trigger its applicability since no increase above Fire is recommended.

With respect to the external comparables, it is indeed important to note that with respect to the City of Piqua, which is located within Miami County and of similar size and close proximity, the Troy's Longevity pay is indeed an important consideration based on the 2% increase every 5 years of service. That is in addition to any increase based on the January 1 effective date of the succeeding year. Moreover, based on the municipalities relied upon, it is clear that the Police Officers in this Department move from the starting base rate to the top base rate after only 3 years, which is faster than Police Officers in any other survey city. A 4 year Troy officer would make \$55,617.00 in annual base pay under the City's proposal, which would be 12.2% higher than the 12 city average of \$49,557.00. After year 4, the 4 year officer would then receive a 2% increase at the 5 year mark. Based on the 5 year averages of the cities utilized, the 5 year rate for a Troy officer is \$56,730.00 compared to the \$53,779.00 survey average or 5.5% higher. A 10 year Troy Police Officer will earn \$57,842.00 compared to \$54,614.00 of the 12 city average or 5.9% higher. A 15 year Troy Police Officer would receive \$58,954.00 versus \$54,902.00 or 7.4% higher; a 20 year Troy Police Officer would receive \$60,067.00 compared to \$55,098.00 or 9% higher based on the averages. The 25 year Troy officer would receive \$61,179.00 compared to \$55,082.00 or 11% higher based on the 12 city average. Clearly, these Officers will enjoy a fair and equitable Wage package.

With respect to the ability to pay emphasized by the FOP, while inability to pay may not justify any economic enhancements, the "ability to pay" or the financial capability to fund, simply does not authorize or validate a proposal that would be higher than that recognized based on the comparable data, internal comparables and the overall indices for consideration such as inflation rates, the CPI Index, national and regional trends, etc. The ability to pay or capability to fund does not justify a Wage increase higher than what the Wages in comparable cities otherwise warrant unless of course the Unit is deemed to be in a "catch up" situation. No evidence exists that this Unit is, in any way, in need of a Wage package to catch it up to other like jurisdictions.

Based on the data provided, the City's Wage Proposal is fair and reasonable based on the comparable data provided, the internal parity that certainly must be considered, and the increases

based on the previous Collective Bargaining Agreement as they relate to statewide, regional and national trends.

Moreover, it is important to note that the Insurances Article, under the prior Collective Bargaining Agreement for each of the three years, titrated the percentage of Employee contribution from 10% to 12%, respectively. Under the successor Collective Bargaining Agreement that percentage of contribution by the Employee will remain constant at 12%. While it does take into consideration that the premiums may increase, it will not be any higher than 12% based on a previous Contract. That is indeed a significant financial plus with respect to the trends statewide, regionally and on a national basis concerning the cost of healthcare and employee contributions for premiums in relation thereto.

Additionally, with respect to the Uniform/Equipment Allowance tentative agreement, there are significant strides made with respect to Section 35.1 with clothing allowance increase to \$850.00 and the carryover of \$500.00 from one year to the next. Those are indeed significant financial considerations as they relate to and impact this particular Article.

Therefore, based on the totality of the evidence presented, it is hereby recommended that the Parties adopt a Wage increase to the base wage set forth in Article 36 of 3-1/2% effective January 1, 2007, 3-1/2% increase effective January 1, 2008 and 3% increase effective January 1, 2009.

Article 5 - Residency

FOP Position – The FOP has proposed to include a new Article titled, “Residency,” to address Senate Bill 82 signed into law by the Governor. It seeks to grandfather a Bargaining Unit Member in the event that the Bargaining Unit Member purchased a residence within the confines of Senate Bill 82, which is the County in which they reside and the adjacent Counties – Miami County and those Counties adjacent to it. In the event that such is overturned by a Court of competent jurisdiction, then the Employee would be required to move within the current five mile distance from the City limits. It emphasizes that the City enacted “emergency legislation” requiring all City Employees to live within five miles of the corporation limits of the City of Troy. The Union contends that this “move” during negotiations to make the Residency issue moot at the bargaining table is indeed inappropriate. If, indeed, this law is enacted then it is the Parties’ responsibility to follow that law unless and until such law is changed. The City’s

reliance on the Home Rule Provision as their reason not to follow the State law is simply misplaced.

City Position – The City contends that the successor Collective Bargaining Agreement not include any Article relative to Residency and thus continuing the City’s longstanding rule that all Employees reside within 5 miles of the City limits. It contends that the Senate Bill 82 purports to deprive local governments of their right to adopt Residency requirements more restrictive than the new State law. The new State law has been challenged as unconstitutional in a number of lawsuits and the potential for the unconstitutionality of Senate Bill 82 was recognized by the Ohio Legislative Service Commission’s Bill Analysis. The City has maintained that the Parties should agree to await the final disposition of these lawsuits before any discussions or negotiations ensue relative to Residency. If, indeed, the final ruling upholds the State law, the City of Troy will obviously comply with it and if such is held unconstitutional, the City will maintain its current Residency rule under the Home Rule Provision.

RECOMMENDATION AND RATIONALE

As indicated previously, the Party proposing a deletion, addition or modification of/to the current Collective Bargaining Provision maintains the burden of proof and persuasion to compel the Factfinder to recommend such a change. Based on this evidentiary record, there simply does not exist compelling evidentiary reason to include in the successor Collective Bargaining Agreement the Union’s proposed Article 5, titled, “Residency.” It is uncertain at this juncture what the final outcome will be relative to the challenges to the constitutionality of the current status of the law. Inasmuch as it would be prudent to maintain the *status quo* until such time that a different approach is mandated. A recommendation relative to maintaining the *status quo*, that there is no Residency Article in the Parties’ Collective Bargaining Agreement as proposed by the Union, until such time that a final adjudication of these issues is forthcoming. Given the substantial constitutional challenge to the new State law, any change at this juncture to the *status quo* would be premature. It is indeed less problematic to address the findings or conclusions of the Courts with competent jurisdiction relative to the challenge to the new State law after such is issued as opposed to addressing the impact of the changes and need to renegotiate the provision that makes its way into a Collective Bargaining Agreement.

Based on foregoing, it is recommended that the Union's proposal not be included in the successor Collective Bargaining Agreement.

Article 41 - Duration

FOP Position – The FOP proposes that the successor Collective Bargaining Agreement be of three years duration and that all economic issues be retroactive to January 1, 2007.

City Position – The City also proposes a three year Agreement, however, the economic enhancements would become effective upon the signing of the new Agreement, which would not take into consideration retroactivity.

RECOMMENDATION AND RATIONALE

It is hereby recommended, based on the apparent agreement between the Parties, that the successor Collective Bargaining Agreement be of three years duration with an effective date of January 1, 2007, through and including, December 31, 2009.

It is also recommended that the Parties adopt retroactivity relative to the economic enhancements of the successor Collective Bargaining Agreement. With respect to retroactivity, there is nothing in this evidentiary record that would suggest that either Party has in any way abused the statutory process. As such, the Bargaining Unit Members should not be penalized for the reasonable delays normally associated with adjudicating unresolved issues in the course of the statutory process. Accordingly, the Employees shall be awarded retroactivity based thereon.

Articles Not Specifically Addressed Herein

In the event that there are any issues/Articles that have not been subject to consideration in this Report shall be subject to the recommendation that the *status quo* be maintained for consideration in the successor Agreement.

CONCLUSION

Hopefully the recommendations contained herein can be deemed as reasonable in light of the data presented; the representations made by the Parties; and, based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in many

tentative agreements being reached. It is hopeful that the Parties can adopt the recommendations contained herein so that the successor Collective Bargaining Agreement can be ratified and the Collective Bargaining relationship can continue without further interruption. Moreover, these recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; those tentative agreements reached by and between them; any stipulations of these Parties; the positions indicated to the Factfinder during the course of Mediation and during the course of the Factfinding Proceeding; and, are based on the mutual interests and concerns of each Party to this successor Agreement.

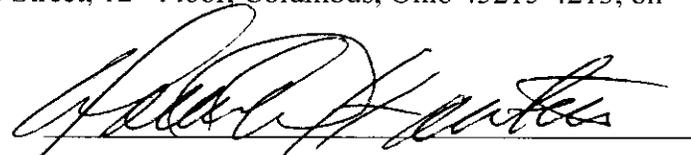


David W. Stanton, Esq.
Factfinder

Dated: February 4, 2007
Cincinnati, Ohio

STATE OF OHIO
COUNTY OF HAMILTON

The undersigned certifies that a true copy of the foregoing Factfinding Report and Recommendations has been forwarded by Overnight U.S. mail service to Dennis E. Sterling, Staff Representative, FOP, Ohio Labor Council, Inc., 222 E. Town Street, Columbus, Ohio 43215; Mark E. Lutz, Esq., Denlinger, Rosenthal & Greenberg, Suite 2300, 425 Walnut Street, Cincinnati, Ohio 45202-3918; and, Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 E. State Street, 12th Floor, Columbus, Ohio 43215-4213, on this 4th day of February, 2007.



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*

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February 14, 2007

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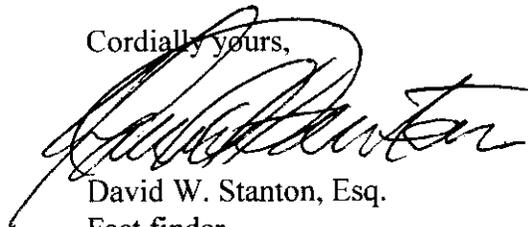
SERB Case No. 06-MED-08-0851
City of Troy -and- FOP/Ohio Labor Council, Inc.
Factfinding

Gentlemen,

Enclosed herewith please find the Factfinder's Report with supporting Rationale; and, the Statement for Professional Services, copies of which are being mailed to Catherine A. Brockman and Sue Knight to ensure payment thereof within the time frame noted thereon.

Thanking you in advance for your courtesy, cooperation and for my selection as Factfinder, I remain.....

Cordially yours,



David W. Stanton, Esq.
Fact finder

DWS:lp.
Encs.

cc: Catherine A. Brockman (w/encs.)
Sue Knight (w/encs.)