



STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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In Regard to the Matter of the Fact-Finding between: }

Fraternal Order of Police, Lodge No. 38
Union

and

City of Hamilton!
Employer

SERB Case No:
07-MED-05-0607

APPEARANCES:

For the Union:

Steven Lazarus	FOP Attorney
Brian Robinson	FOP #38 President
Mark Hayes	FOP Detective Representative
Jessup Gage	FOP Attorney
Robert Snyder	FOP Representative Vice President

For the Employer:

Timothy Werdmann	Assistant Law Director
James Hanson	Finance Director

Before: Richard J. Colvin, J.D., Fact-Finder
December 12, 2007

BACKGROUND:

The Hearing:

The Fact-Finder received his appointment on August 2, 2007, in compliance with ORC Section 4417.14 (C) (3).

At the direction of and with the agreement of the Parties, a hearing was scheduled and convened on December 12, 2007 in the City of Hamilton! and County of Butler, Ohio at 10:00 A.M. and was adjourned at 3:30 P.M. Timely, and in advance of the hearing the parties provided the Fact-Finder with their Position Statements regarding the above-captioned matter as required by Ohio Administrative Code, Rule 4117-09-05 (F).

The Agreement:

The Agreement between the Parties was effective September 1, 2004 through August 31, 2007. The bargaining unit consists of Police Officers and Detectives. There are approximately 85 Police Officers and 21 Detectives who are employed by the City of Hamilton!, a municipal corporation located in the County of Butler, State of Ohio. Hamilton is the county seat. These employees perform non-supervisory police and related law enforcement duties.

Prior to this hearing, the Parties had met on:	July 13, 24
	August 7, 22, 27
	September 6, 18
	October 1, 4, 15, 25 29
	November 9

Although many issues were resolved, these following Articles remain unresolved:

- Article VI – Wages
- Article IX – Holidays
- Article X – Sick Leave
- Article XI – Hospitalization, Medical-Surgical Coverage
- Article XIII - Vacation
- Article XIV - Clothing Allowance
- Article XXI – Attendance Incentive Awards
- Article – XXXIII – Compensatory Time Off
- Article XXXV – Miscellaneous
- Article XXXVI – No Layoffs, No Attrition
- Article – XLI – Duration
- Article – Shift Differential

When making his recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

The Parties have provided the Fact-Finder with very copious exhibits; comparisons, documentations, charts, statistics and justification/ rationale in support of their respective positions, all of which, to the extent relevant, together with the testimony and evidence presented at the hearing have been reviewed and evaluated before reaching my recommendations.

The Open Issues:

Article VI Wages

The Union's current proposal on wage rates is: *“Wage rates for unit members of FOP 38 shall be in accordance with Appendix A, which shall reflect a four percent (4%) wage increase effective at the beginning of the pay period that includes September 1, 2007, a four percent (4%) wage increase effective at the beginning of the pay period that includes September 1, 2008, a four percent (4%) wage increase effective at the beginning of the pay period that includes September 1, 2009.*

The top base pay for the rank of Detective shall be fifteen percent (15%) above the top base pay for the rank of Police Officer.”

“Unit members shall be paid bi-weekly and have no less than 26 pay periods per calendar year.

An additional step (Step 7) will be added to the merit adjustment steps for the rank of Police Officer. A Police Officer will be eligible for consideration for progression from Step 6 to Step 7 after six (6) months at Step 6. All unit members who, as of August 31, 2007, have four (4) years and six (6) months of service with the Hamilton Police Department will be placed at Step 7. The wage for Step 7 will be three and two tenths percent (3.2%) above the pay rate for Step 6.

This wage increase and additional step shall be retroactive to August 31, 2007.”

The Employer’s current proposal on wages is: “Wage rates for unit members of FOP 38 shall be in accordance with Appendix A, which shall reflect a two and one-half percent (2.5%) wage increase effective at the beginning of the pay period that includes September 1, 2007, a two and one-half percent (2.5%) wage increase effective at the beginning of the pay period that includes September 1, 2008, a two and one-half percent (2.5%) wage increase effective at the beginning of the pay period that includes September 1, 2009.

The top base pay for the rank of Detective shall be fifteen percent (15%) above the top base pay for the rank of Police Officer.”

On July 24, 2007, the **Union** presented their original proposal regarding wages of **five per cent (5%)** each year of the three (3) year Agreement and proposed the language on bi-weekly pay, twenty-six (26) pay periods per calendar year. Step 7 was initially proposed. The wage proposal and Step 7 were proposed to become effective retroactive to August 31, 2007.

The **Employer** initially made no wage proposal but language was proposed that would have required all bargaining unit members to have their paychecks directly deposited into an account at their own financial institution. **On October 1, 2007**, the **Employer** proposed: A **three percent (3%)** wage increase effective on September 1, 2007, September 1, 2008 and September 1, 2009; keep the fifteen percent difference in the Detectives’ pay rate and drop the proposal for direct deposit language. This proposal, however, was presented as part of a comprehensive package. The proposal was rejected by the Union.

The Union stated it was informed that City Council wanted to remind the Union that a three percent pay increase is not a given and that a three percent annual raise each year with changes that save money for the City was the only option. This was not rebutted during the Hearing.

Fact-Finder's Recommendations and Rationale:

1. Article VI. – Wages:

For the reasons set forth, I adopt the Union's position, in part. I find it appropriate and do recommend that this Article VI of the Agreement between the City of Hamilton! Ohio and Fraternal Order of Police Lodge 38 be amended only as follows:

“Wage rates for unit members of FOP 38 shall be in accordance with Appendix A, which shall reflect a **four percent (4%)** wage increase effective at the beginning of the pay period that includes September 1, 2007, a **three percent (3%)** wage increase effective at the beginning of the pay period that includes September 1, 2008, a **three percent (3%)** wage increase effective at the beginning of the pay period that includes September 1, 2009.

The top base pay for the rank of Detective shall be fifteen percent (15%) above the top base pay for the rank of Police Officer.”

A 4% general increase in the first year of the Agreement is, in my opinion, one that is reasonable, prudent and conservative. I concur with the sentiments expressed by Council and the Mayor to the effect that: The safety services are one of the basic responsibilities of local government. To retain and attract the most knowledgeable members of those services, a competitive wage is critical. Statistical data presented by the Union indicates, however, there is an historical disparity in wages between the City of Hamilton! and other comparable, local jurisdictions. A four percent (4%) wage increase in the first year of the Agreement is a reasonable step in closing the gap. The City's existing economic conditions do not support the Union's proposed increases for years two or three, at this time.

The City of Hamilton! is, in my opinion, after reviewing the data submitted, in a position to implement these increases without jeopardizing its present or projected budget. In reviewing the comparable agencies for purposes of comparison, I reference primarily the Cities of Middletown, and West Chester. West Chester has agreed to 3.75%, 3% and 3% increases. Middletown has a Fact-Finders recommendation for a 4% increase.¹ In that same exhibit, the State Employment Relations Board Annual Wage Settlement Report for 2006 shows a 3.23% increase for Police. In the previous Agreement between the Parties, there were three (3) general increases, each of three (3) percent.

¹ Union Exhibit Tab 5 of Prehearing Statement dated December 10, 2007

The amounts of salary adjustments granted by City Council to various salaried City employees, whatever their rank, are not persuasive. It can only be presumed that Council members are exercising their best judgment, in the best interest of the citizens of Hamilton!.

It is in fact, a matter of keeping the best employees and attracting the best employees the market can supply. The City of Hamilton! has experienced considerable losses in its business community yet has demonstrated commitment and success in retaining the remaining base while seeking new growth and positive economic development.

2. Article IX Holidays:

In reviewing the Union's position. I find no persuasive argument or justification for recommending the proposed modifications. Comparisons made to other jurisdictions are valid only if we were privy to the circumstances under which the parties bargained collectively. Each negotiation carries with it, its own *quid pro quo*. All rational persons recognize that law enforcement is in fact highly stressful work but whether providing more holidays would materially alleviate that stress or produce an offsetting economic benefit to the Employer is a matter of opinion only.

Therefore, I find it appropriate and do recommend that there be no changes to this Article IX during the term of this Agreement.

3. Article X Sick Leave:

Having heard no compelling arguments to the contrary, I adopt the Employer's current rationale with the exception of two (2) minor clerical changes proposed by the Union. The Employer proposed that the Parties maintain the current language in this Article. The two-tiered retirement pay out provisions of the present Agreement were negotiated to save the City money in the future, and the City has yet to see the benefit of that bargain. The City changed not just the payout at that time, but negotiated similar changes in all of its collectively bargained agreements, and amended its codified ordinances to impact all non-union employees in a like manner. To change the language at this point would deprive the City of savings it had relied upon and would create internal inconsistency among City employees. This is a valid position. Comparisons made to other jurisdictions are again valid only if we were privy to the circumstances under which the parties bargained collectively. Each negotiation carries with it, its own give and take, and as the Employer argued in this hearing, the Sick Leave Payout as proposed by the Union would be costly: The City would experience no benefit from this bargain were it to agree.

Therefore, I find it appropriate and do recommend that there be no changes to this Article X during the term of this Agreement other than the clerical changes as found below which were agreed to by the Parties at this hearing:

In Section 2. Administration.

A. “Sick leave may be used only in accordance with the provisions of the sick leave policy as established by **Administrative Directive 306 effective on October 1, 2007.**”

“Immediate family member as used above shall mean spouse, child, **stepchild**, or other relative if that relative actually resides in the home of the employee.”

4. Article XI Hospitalization, Medical-Surgical Coverage:

This issue has become contentious. To put the Parties’ present position in perspective, a review would be in order. The City of Hamilton! has had in place for a number of years a Health Benefits LMC consisting of representatives from each union as well as non-represented and management employees. This Committee is tasked with making recommendations to the City Manager and Council as to what the benefit design for all employees will look like. This Committee has made its recommendations for the plan year 2008, and the Employer will offer two plans to employees. The **2008** plan will offer one option, a renewal of the current health care plan (with a different company-Humana) and a second option will be the introduction of an HRA plan.

There is a “high” plan, a traditional PPO plan, while a “low” plan is a high deductible health plan coupled with an employer-funded health reimbursement account. The Employer has proposed that for plan year 2008, employees pay **20%** of the monthly premium costs, with the Employer paying the remaining 80%. This it is said would be in keeping with previously negotiated language in four of the City’s other collective bargaining agreements.

In plan years **2009** and **2010**, the Employer is proposing that the employee’s portion of the monthly premium be determined based upon the projected increase in overall insurance costs, and that if costs rise substantially, that the Employer be permitted to implement a MERP, a Medical Expense Reimbursement Plan, that would require employees with insurance available elsewhere to change to that other plan. The Employer would then reimburse those employees for any difference in benefits between that plan and the City plan.

The Union’s position is that there was no insurance co-pay until a few years ago. Now employees pay **15%** of total premium costs. Fifteen percent is equal to more than 4% of a top patrol officers pay while the additional amount would equal more than 1% in addition. Area comparables: Fairfield PD is 8%; Springfield PD is 10%; Kettering PD is 10% while West Chester PD has 6%, 8% and 10% over the life of their agreement, capped at \$70.00 a month.

During the present negotiations, the Employer predicted health care costs would rise 12%-14% for 2008. The Employer's health care costs, according to the Union, will actually decrease anywhere from 2% to 4% for 2008 from 2007 depending on which plan employees choose. The Employer's consultant for MERP predicted that the rise in costs would be 7%.

The MERP program is unacceptable to the Union and was not recommended by the Health Care Committee. Other union representatives, according to the Union, have informed the FOP that they will withdraw their representatives from this committee if the City forces a MERP on union members. The Union has therefore made a proposal that Section 3 of Article XI, their agreement to participate in the Committee, be deleted.

The Union has proposed an incentive program for employees who do not take coverage under the Employer's health plan. The Employer is not necessarily opposed to such a program, if it were coupled with the City's proposal, but the level of payout initially proposed by the Union, \$4,500.00, is excessive and has not been modified. The Parties appear, in the Fact-Finder's opinion capable: They have managed to avoid excessive health care premiums. There is no reason why they cannot continue to provide that stability. It would not be, in my opinion, reasonable for the Union to remove itself from participation in this body.

Suffice it to say, that after sifting through the arguments and counter-arguments it becomes apparent the neither party can present a cogent analysis as to whether future health care costs will escalate, whether they will remain stationary or actually be lower.

I find, under existing or projected conditions, no compelling reason to lower the present employee contribution level for the life of this Agreement. Neither do I find any compelling reason to raise that contribution level for the life of this Agreement. Nevertheless, both the Employer and the employees need some protection against the uncertainties of the health insurance market. The other concern is to recognize the existing disparity in employee contributions versus other jurisdictions. The familiar is often the best choice when in doubt. I recommend that the Parties rewrite the existing Section 1 by only changing the years to reflect the terms of the current Agreement.

Therefore, I find it appropriate and do recommend that there be the following modifications to this Article XI Section 1. Hospitalization, Medical-Surgical Coverage during the term of this Agreement:

“Section 1. The City shall provide a network plan of medical/hospital/surgical protection, in accordance with the recommendations of the joint LMC committee. The current plan is described as a managed care, point of service plan. It will continue to be packaged with a vision plan and dental coverage unless the subcommittee makes adjustments in plan years **200, 2009 or 2010**. A list of the current benefit structure is attached hereto as Appendix B.

The City and the employees shall share in the overall premium cost of the insurance plan in the following manner: For the plan year **2008**, the City shall contribute **88%** of the total premium cost and the employees shall contribute **12%** of the total premium cost through payroll deduction; for plan year **2009**, the City shall contribute **85%** of the total premium cost and the employees shall contribute **15%** of the total premium cost through payroll deduction; for the plan year **2010**, if the average increase in total citywide insurance premiums equals or exceeds **18%** for the average of plan years **2009 and 2010**, the City shall contribute **80%** of the total premium cost and the employees shall contribute **20%** of the total premium costs through payroll deduction. However, if the average increase in total citywide insurance premiums is less than **18%** for the average of plan years **2009 and 2010**, then in plan year **2010**, the City shall contribute **85%** of the total premium cost and the employees shall contribute **15%** of the total premium cost through payroll deduction.

Section 2. Maintain
Section 3. Maintain
Section 4. Maintain
Section 5. Maintain”

5. Article XII Vacation:

The Union has proposed three changes to the existing vacation plan:

<u>Years of Continuous Service</u>	<u>Vacation Leave Allowance</u>
7 years but less than 14	15 workdays
14 years	18 workdays
15 years	19 workdays

The Union referenced six other jurisdictions and made comparisons with their seven to fourteen years of service categories that do show a higher vacation benefit than that provided by the Employer.

The Employer has proposed to maintain the current language as it alleges that there is no justification for granting additional time off. The Employer has a strong interest in maintaining as much consistency as possible in vacation accruals for all employees of the City of Hamilton!.

I do not find the Union’s arguments persuasive. This is a limited sampling: Other jurisdictions have made other bargains with their employee’s representatives and could well have placed greater emphasis on other economic concerns. The Employer’s concerns are valid.

Therefore, I do not find it appropriate and do not recommend that Article XIII be modified.

6. Article XIV Clothing Allowance:

The Parties have recognized that an increase in the clothing allowance is appropriate in this negotiation. Comparisons with other police departments, supports this conclusion in my opinion. As they do have numerous disagreements over administrative details. I will attempt to rewrite Article XIV to reflect my conclusions.

Therefore, I do find it appropriate and do recommend that Article XIV Clothing Allowance be rewritten as follows:

“Section 1. Each unit member shall be entitled to a clothing allowance of \$800.00 annually.

A first-year officer is entitled to the sum total of the first and second year’s clothing allowance. This total shall not exceed an aggregate amount of \$1,600.00. If a newly hired officer elects to spend the entire amount of his first and second year clothing allowance in the first year, that officer shall not be entitled a clothing allowance until the officer’s third year.

A unit member promoted to the rank of Detective shall receive a one-time additional clothing allowance check of \$400.00 upon being promoted.

An officer promoted from plain-clothes duty to a higher level position requiring the wearing of a uniform will be entitled to the same allowance as a first year officer, provided the officer has served in plain clothes duty more than three (3) years at the time of promotion to uniform duty.

Clothing allowance funds to be expended for uniform and wearing apparel or duty-related accessory items to include brief case, off-duty badge, thermal underwear, insulated boots and rubber boots.

The use of clothing allowance funds for the purchase of duty-related accessory items will be subject to the following provisions:

- A. Items may be purchased from either a bid supplier or other vendor.
- B. Items purchased must be in compliance with established applicable standards of the Division.

Unit members may purchase authorized black, plain-toe low quarter, laced uniform-style shoes from a vendor other than the normal uniform supplier to assure the health and comfort of the officer.

The City of Hamilton!, Ohio shall pay to each member on or about March 15 of each calendar year, that amount of money which has been agreed to in this Section for uniform purchases in a given year.

This payment will be in check form, paid directly to each unit member. The Chief of Police shall authorize, in writing, the names of members and the amount(s) to which each is entitled for uniform purchase.

In lieu of the clothing allowance specified above, Detectives will be provided a clothing allowance of \$1,000.00 per year, issued by payroll check, with all applicable taxes and deductions taken.

Except upon administrative approval, or upon administrative notification of promotion to the rank of Sergeant, members holding the rank of Detective shall not be permitted to purchase a dress uniform coat. Upon being invoiced by the vendor, the City will pay for the dress uniform coat for those members facing promotion.

Section 3. Back Up Weapon Maintain
 Section 4. Inspections Maintain
 Section 5. Dry Cleaning Maintain
 Section.6. Termination Maintain
Section 7. Clothing Maintenance Allowance

- A. Maintain
- B. Maintain
- C. Maintain
- D. Maintain
- E. A unit member who has at least fifteen (15) years of service shall, in his final year of service prior to retirement, be permitted to use a portion of his annual clothing allowance to purchase his issued firearm for fair market value from the designated vendor.”

7. Article XXI Attendance Incentive Awards:

The Union has accepted the contract language that was agreed upon with the City pertaining Article XXI Attendance Incentive Awards as proposed on October 1, 2007, as part of a package proposal. That proposal amended Section 1 of Article XXI to read as follows:

Section 1. Each full time unit member shall be paid an annual incentive award for attendance as follows:

Perfect Attendance from December 1 – March 31	4 hours Comp Time
Perfect Attendance from April 1 – July 31	4 hours Comp Time

Perfect Attendance from August 1 – November 30 4 hours Comp Time
Each full time member who has Perfect Attendance for the year from
December 1 through November 30 shall receive an additional twelve (12)
hours of Compensatory Time

The Parties agreed to **maintain** Sections 2, 3, 4, 5, 7, 8 and 9.

Section 6 remains disputed. The Union has proposed an amendment to read in part:

Section 6. “An absence from work due to a duty related injury or illness *{for which}*
{deleted} **whether or not** an employee receives Worker’s Compensation benefits or
injury pay pursuant to ordinance provisions shall not be considered an absence for
purpose of these sections; except that approved absences from work while an employee is
hospitalized due to a duty related injury and the recovery period immediately subsequent
to the employee’s discharge from hospital inpatient care will not adversely affect benefit
eligibility.”

The Employer argues that the substitution of the words “whether or not” for the words
“for which” would undermine the purpose of this provision and the City’s ability to
determine an employee’s eligibility under this Article. I concur with the City’s reasoning.

Therefore, I do find it appropriate and do recommend that Article XXI Attendance
Incentive Awards be rewritten to reflect only the agreement made by the Parties, as
shown above, by amending Section 1 as follows:

“Section 1. Each full time unit member shall be paid an annual incentive award for
attendance as follows:

Perfect Attendance from December 1 – March 31 4 hours Comp Time
Perfect Attendance from April 1 – July 31 4 hours Comp Time
Perfect Attendance from August 1 – November 30 4 hours Comp Time
Each full time member who has Perfect Attendance for the year from
December 1 through November 30 shall receive an additional twelve (12)
hours of Compensatory Time”

8. Article XXXIII Compensatory Time Off:

The City proposed that the Parties maintain current contract language on this Article.
These employees have previously had two (2) separate banks of compensatory time. One
bank was able to be paid out, while the other was to be only taken as time off and never
was to be paid off. The Parties have agreed to combine all comp time banks into one and
the provisions of this Article will be applicable to all earned compensatory time.

Therefore, I do find it appropriate and do recommend that Article XXXIII Compensatory Time Off be rewritten now to reflect this agreement of the Parties.

9. Article XXXV Miscellaneous:

The Union proposed two (2) amendments to this Article.

Section 3 Field Training Officers

Effective September 1, 2007³ the Field Training Officer shall be compensated for training responsibilities in the amount of **one (1) hour of Compensatory Time** for each day when he/she engages in field training duties for four (4) or more hours.

Section 4. Drug Screening

Define the “applicable City ordinances” Put the policy as it appears in the General Orders now into the contract. (See General Order PM 1,8.5)

At the hearing, both Parties ratified the amendment, the addition of the new Section and the inclusion in this Article of General Orders Section PM 1.8.5 as revised on September 25, 2006.

Therefore, I do find it appropriate and do recommend that Article XXXV Section 2 be rewritten; that Section 4. Drug Screening be added and the applicable General Order be included, as shown above.

10. Article XXXVI No Layoffs, No Attrition:

Your Fact-Finder recognizes that there could well be future problems under the existing language in this Article. The Employer’s a position is that the entire Article should be deleted, as it believes that the Article is no longer applicable by its own terms.

Section 1 Reads: “It is hereby agreed between the City and the Fraternal Order of Police, Lodge #38, that there shall be no lay-offs by the City of any of the members of the Fraternal Order of Police. Lodge #38, nor attrition of any sworn position in the Division of Police through August 31, 1994.”

Section 2 reads: “The sworn complement is hereby defined as 105 officers.”

The Union proposes to: delete the words “**through August 31, 1994**” and to change the number of **105** now in this Article to **114**. A and B of Section 2 would be maintained as now written.

³ In the proposal, the effective year shown was **1994**. The Fact-Finder has taken the liberty of correcting this to read **2007**

The Union then references Article XLI Interim Staffing Levels. This Article, contrary to the provisions of Article XXXVI, **specifically provided** that: “This Article XLI in its entirety shall expire, cease to exist and become null and void on September 29, 2005” and also provided for, among other provisions, 117 sworn members.

The Union justifies its proposal by pointing out that: 1. The department currently has 126 total sworn positions. Nine (9) of these positions are funded by a police tax levy the voters approved in 2002. The tax levy was paid for using private donations from citizens and from a voluntary dues increase the FOP members imposed on themselves specifically to help pay for the levy campaign costs. The City promised the citizens of Hamilton! that the money generated would add 9 additional positions to patrol. 2. Today, that levy generates over \$750,000 yearly. The City has previously allowed the defined total sworn complement to be set at 117.

3. It only makes sense that the defined total sworn complement be raised nine additional officers from the previously defined complement in this Article [XXXVI]. A defined total sworn complement of 114 officers is still lower than a previously defined temporary complement of 117 officers and still allows the City to layoff 12 officers from its current authorized manpower limits if financial hardship dictated such drastic actions. If this Article were to be removed in its entirety then the City would be allowed to fluctuate the manpower levels at its own whim with no accountability to the citizens or to the members of the police department. None of these statements were challenged by the Employer as being in error or inaccurate.

The Union has presented valid argument to support its position to change 105 officers to 114 officers. The Union has not justified its position asking to remove the date of August 31, 1994 from this Article. If this becomes an issue, then there are other more appropriate forums in which to seek resolution.

Therefore, I do find it appropriate and do recommend that Article XXXVI Section 2 be rewritten as follows: “The sworn complement is hereby defined as 114 officers.”

11. Article XLII Duration of Agreement:

Both Parties have presented their rewritten versions of the present Article XLII for the Fact-Finder’s review. Neither Party has alluded to any past minor or major policy concerns prompting their respective proposals. The existing Agreement has upon its cover page the words: “Effective September 1, 2004 through August 31, 2007.” Those same words appear on the following page. Neither of these pages carries a number.

What follows are three pages numbered 1, 2 and 3 comprising the Table of Contents. Page 4 begins the body of the Agreement and is headed by a STATEMENT OF POLICY, underneath which is a paragraph reading: "This collective bargaining agreement made and entered into on the first day of September 2004, in the City of Hamilton, County of Butler, State of Ohio, by and between the City of Hamilton, hereinafter called the "CITY", and the Fraternal Order of Police, Lodge 38, hereinafter called "FOP 38." The Parties have, therefore, established their effective date, within the body of the Agreement. Appendices A establish differing effective dates for Schedule B-2 rates for Police Officers and Detectives for each of the three (3) years the Agreement was in effect. This presents no discernable problem based upon the arguments presented.

Article XLII, the Article in dispute, is titled DURATION OF AGREEMENT. The first sentence reads: "Except as otherwise provided herein, this Agreement shall be effective September 1, 2004, and shall remain in effect until August 30, 2007." While the heading reads DURATION OF AGREEMENT, I find there should be no concern over also showing the beginning date of the Agreement in this Article. A problem only arises with the words "until August 30" which logically can be construed as a typographical error. Neither Party's proposal presents a solution to their concern and further embellishment of the terms of the Article are unnecessary.

Therefore, I do find it appropriate and do recommend that the first sentence in Article XLII be rewritten at this time to read: "Except as otherwise provided herein, this Agreement shall be effective September 1, 2007, and shall remain in effect until midnight, August 31, 2010."

12. New Article:

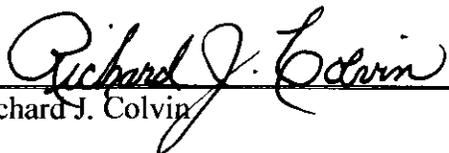
The Parties have addressed the issue of establishing a **Shift Differential** in past negotiations, without reaching agreement on its terms and conditions. While I find the Union's arguments for the most part reasonable, there exists no compelling argument for the Fact-Finder to impose a settlement, overriding the Employer's continuing objections. There is admittedly a cost attached to this proposal and there are legitimate administrative concerns.

Therefore, I do not find it appropriate and do not recommend that there be a new Article for a Shift Differential in the Agreement at this time.

Furthermore, I further find it appropriate and do recommend that the language of all previously executed tentative agreements reached by the Parties be adopted.

This Fact-Finding Report was signed and dated in the City of Mason, Ohio and County of Warren this 19th day of January 2008.

Respectively submitted,


 Richard J. Colvin

CERTIFICATE OF SERVICE
SERB Case No. 07-MED-05-0607

The undersigned hereby certifies that a true copy of the foregoing Fact-Finding Report dated January 17, 2008, has been sent by facsimile and by overnight U. S. mail this 22nd day of January 2008, to the following person(s):

Stephen S. Lazarus
 Attorney at Law
 Hardin, Lazarus, Lewis & Marks, LLC
 915 Cincinnati Club Building
 30 Garfield Place
 Cincinnati, Ohio 45202-4322

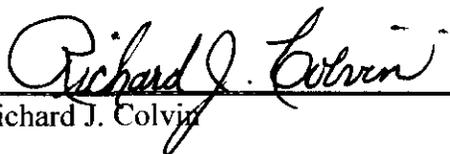
Timothy G. Werdmann
 Assistant Law Director
 Department of Law
 City of Hamilton! Ohio
 One Renaissance Center
 345 High St.
 Hamilton!, Ohio 45011

Facsimile No: 513-721-7008

513-785-7187

The undersigned hereby certifies that a true copy of the foregoing Fact-Finding Report dated January 17, 2008, has also been sent by regular U. S. mail this 22nd day of January 2008 to:

Edward E. Turner
 Administrator, Bureau of Mediation
 65 East State Street, 12th Floor
 Columbus, Ohio 43215-4213


 Richard J. Colvin