

**FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

STATE EMPLOYMENT
RELATIONS BOARD

2010 FEB 23 P 3: 31

IN THE MATTER OF	:	
FACT FINDING BETWEEN	:	
	:	
THE CITY OF LEBANON, OHIO;	:	REPORT OF THE
PUBLIC EMPLOYER	:	FACT FINDER
	:	
-AND-	:	
	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY, AND MUNICIPAL EMPLOYEES,	:	
AFL-CIO, OHIO COUNCIL 8;	:	
EMPLOYEE ORGANIZATION	:	

SERB CASE NO.: 08-MED-05-0618

BARGAINING UNIT:

The Bargaining Unit consists of all full-time, regular part-time or intermittent Employees of the City of Lebanon Division of Public Works including the classifications of Municipal Service Worker I, Municipal Service Worker II, Senior Municipal Service Worker and Mechanics.

MEDIATION SESSION(S): November 23, 2009; Lebanon, Ohio

FACT FINDING HEARING(S): December 14, 2009; Lebanon, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE CITY

Jeffrey S. Shoskin, Attorney
George P. "Pat" Clements, City Manager

FOR THE UNION

Peter M. McClinden,
Regional Director
Renita Jones-Street, Staff
Representative
Mark Mann, President
Chris Swank,
Secretary/Treasurer

ADMINISTRATION

By correspondence dated October 19, 2009 from the State of Ohio State Employment Relations Board, forwarded via e-mail transmission to the undersigned by Jeffrey S. Shoskin, Counsel for the Employer, the undersigned was notified of his mutual selection to serve as Fact Finder 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 the initial Collective Bargaining Agreement between the Parties proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties the overall “atmosphere” of the negotiations efforts by and between them and learned that overall these Parties, based on this initial Collective Bargaining Agreement, will likely enjoy what can be characterized as an amicable Collective Bargaining relationship.

On November 23, 2009, pursuant to the undersigned’s recommendation, the Parties engaged in Mediation efforts with the Fact Finder relative to those issues that remained at impasse. During the course thereof, positions were articulated and proposals were exchanged and, during the course thereof, certain Articles that will be identified *infra* resolved and those that were not remain at impasse.

On December 14, 2009, the Fact Finding Hearing was conducted wherein each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Fact Finding Proceeding

subject to the Parties engaging in further discussions relative to certain other Articles that were identified as possibly being the subject of tentative agreements that could be achieved. The undersigned advised the Parties the evidentiary record of this proceeding would remain open until such time the Parties were either successful in reaching tentative agreement relative to the “Modification” and “New Classifications” Articles and that further efforts to resolve those Articles should be pursued. By e-mail correspondence exchanged by the Parties and that requested by the undersigned, the Articles subject to subsequent discussions post-hearing were ultimately agreed to relative to Article 27 titled, “Modification” and Article 36 titled, “New Classifications”.

The evidentiary record of this proceeding was then closed subject to the issuance of this Report and recommendation addressing those issues that remain at impasse.

As was articulated to the Parties, given the unprecedented inclement weather resulting in record snowfall accumulation in the Fact Finder’s business area as well as that throughout the Midwest, the issuance date of this Report had to be modified based on the closure of offices, etc. resulting from the snow accumulation. Moreover, the issuance of the Report was also extended based on the Parties extended consideration of Articles 27 and 36 which ultimately were resolved by them and will be identified as tentative agreements for the purposes of this Report with recommendations.

Accordingly, those issues that remain at impasse are the subject matter for the issuance of this Report with recommendations based on the supporting rationale set forth hereunder.

STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are

made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Fact Finding statutory process as follows:

1. Past collectively bargained agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the Bargaining Unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests 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**

As the evidentiary record demonstrates, this represents the Parties efforts to negotiate an initial Collective Bargaining Agreement between the City of Lebanon, Ohio, hereinafter referred to as the “City” and/or the “Employer”, and Ohio Council 8, an affiliate of the American Federation of State, County and Municipal Employees, AFL-CIO, which represents the Division of Public Works. As the record demonstrates, this Collective Bargaining Unit, the Division of Public Works, was certified by the State Employment Relations Board on April 24, 2008 and consists of all full-time regular part-time or intermittent employees of the City of Lebanon Division of Public Works

including classifications of MSW I, MSW II, Senior MSW and Mechanics. These Employees utilize one (1) and two (2) ton Dump Trucks; a Street Sweeper; asphalt repair equipment; Mowers; and, a salt brine unit as well as perform repairs and maintenance of these pieces of equipment .The City is a Municipal Corporation operating under a City Charter pursuant to the Home Rule provisions of the Ohio Constitution, Article XVIII, Section 7; has a population of approximately 21,000; is comprised of 12.2 square miles within Warren County, with 84 miles of roadways, 30 miles of Storm Sewers, and over 300 acres of Public Parks; and, is positioned midway between Cincinnati and Dayton downtown metropolitan areas accessible by Interstates 71 and 75 respectively, and State Routes 42 and 48 respectively.

The City of Lebanon maintains a staff of approximately 135 full-time and 65 part-time employees. It is party to Collective Bargaining Agreements with the City's Electric Department employees, that includes Linemen, Groundsmen, Meter Readers, Power Plant Operators, Storeroom Clerk, Power Plant Supervisor, and Meter and Electronics Technicians, which are represented by the IBEW Local 648. The full-time employees within the classification of Dispatcher, Head Dispatcher, Police Officer, and Police Sergeant are represented by the Fraternal Order of Police, Ohio Labor Council, Inc., and its affiliated Lodge #133. This Bargaining Unit is the third now recognized by the City relative to its collective bargaining obligations.

The City Charter was adopted on October 4, 1960 and mandates the Council Manager form of Government which combines the political leadership of the elected officials with the managerial experience of an appointed manager. The City Council is the legislative body comprised of seven (7) members which determines the policies and

directs the actions of the City's government. The City Manager, George P. "Pat" Clements is appointed by the City Council and serves as the Chief Executive Officer of the City. He manages the daily operations and is responsible for the development and execution of policies, administration of personnel, allocation of resources and enforcement of the City's laws.

The Public Works Department represented by AFSCME Ohio Council 8 and its affiliated Local 363 is comprised of approximately 11 full-time Bargaining Unit employees under the supervision of the Superintendant of Public Works. These Bargaining Unit employees provide general maintenance services including grass cutting, leaf collection, pothole repair, snow removal and assist with the overall maintenance, cleanliness, etc. within the confines of the City's jurisdictional boundaries. As described, these Employees may perform a variety of tasks as the seasons dictate or as the need arises. The Mechanics classification services and repairs the city's various pieces of equipment and its vehicles.

As the record demonstrates, the Parties have engaged in twelve (12) bargaining sessions: October 1, 2008; October 8, 2008; October 27, 2008; February 5, 2009; March 18, 2009; April 10, 2009; May 6, 2009; May 14, 2009; June 10, 2009; June 19, 2009; August 10, 2009; and August 26, 2009. The sessions beginning with May 6, 2009 through and including August 26, 2009 were with State Employment Relations Board Mediator, John Gray. As previously indicated, the undersigned engaged in further mediation efforts on November 23, 2009 with these Parties; however, those efforts proved unsuccessful.

The Fact Finding Proceeding was conducted on December 14 at the Administrative Offices of the City of Lebanon wherein prior thereto the undersigned again approached the Parties about engaging in further mediation that the Parties indicated would not be beneficial at that time. The Fact Finding Hearing commenced forthright. Throughout the course of this proceeding, these Parties have made great strides with the assistance of State Mediator, John Gray, in resolving various issues for inclusion in the initial Collective Bargaining Agreement between them. However, certain issues remain unresolved and are the subject matter for the issuance of this Report containing “recommendations and rationale” in support thereof and is issued for consideration by these Parties.

During the course of the mediations that occurred prior to the undersigned’s involvement with these Parties, and subsequent to the Fact Finding Hearing, the Parties were able to reach tentative agreement on certain Articles, and such will be recognized as tentative agreements for consideration of this Report with recommendations and rationale. The following Articles were tentatively agreed to by and between the Parties during their various negotiation sessions both with and without the assistance of State Mediator, John Gray, and with and/or without the assistance of the undersigned Fact Finder. Those Articles tentatively agreed to are set forth as follows:

- Article 1 – Preamble
- Article 2 – Recognition
- Article 3 – Union Business
- Article 5 – No Strike No Lockout
- Article 6 – Probationary Period
- Article 8 – No Discrimination
- Article 9 – Discipline
- Article 10 – Grievance Procedure
- Article 11 – FMLA and ADA Obligations
- Article 12 – Labor Management Committee

Article 13 – Documentation
Article 14 – Uniforms
Article 16 – Hours of Work and Overtime
Article 17 – Compensatory Time
Article 18 – Personal Days
Article 19 – Longevity Pay
Article 20 – Holidays
Article 22 – Leaves of Absence
Article 23 – Sick Leave
Article 25 – Drug Free Workplace
Article 26 – Bulletin Boards
Article 28 – Seniority
Article 29 – Safety
Article 31 – Waiver in Case of Emergency
Article 32 – Tuition Reimbursement
Article 33 – Certification and Licenses
Article 34 – Mileage
Article 35 – Job Descriptions
Article 37 – YMCA
Article 38 – Deferred Compensation Program

Moreover, these Articles, while not numbered, were nonetheless tentatively agreed to and are subject to the Parties identifying them by their respective Article numbers as they fall numerically in the final version of this initial Collective Bargaining Agreement. They are as follows:

Computing Time
Direct Deposit
Ohio Public Employees Retirement Systems.

During the course of the Parties continued deliberations relative to Article 27, titled, “Modification, Separability and Conflict of Laws” and Article 36, titled, “New Classifications”, the Parties, Post-Fact Finding, were able to continue deliberation over these two (2) Articles and by virtue of those efforts were able to reach tentative agreement. As such, the aforementioned Articles tentatively agreed to by and between

the Parties are recommended for inclusion in this initial Collective Bargaining Agreement.

The following Articles are subject to the impasse culminating in the Fact Finding component of the Statutory process arising under 4117 as follows:

- Article 4 – Management Rights
- Article 5 – Union Dues Deductions
- Article 7 – Union Dues Deductions
- Article 12 – Layoff and Recall
- Article 15 – Wages (un-numbered by Union)
- Article 21 – Vacation
- Article 24 – Insurance
- Article 30 – Layoff and Recall
- Article 31 – Insurances
- Article 38 – People Check-off
- Article __ – Subcontracting
- Article __ - Bargaining Unit Work
- Article 40 – Duration

Based on this aspect of the statutory process, the Arbitrator is required to consider comparable employee units with regard to their overall makeup and services 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 Fact Finding Hearing, each Party has relied upon both internal and external comparable jurisdictions and/or municipalities concerning what they deem “comparable work” and/or “comparable jurisdictions” provided by this Bargaining Unit. Moreover, the Parties have relied upon what was recognized internally with respect to the other Bargaining Units that are recognized by the City of Lebanon, namely IBEW Local 648 and the FOP, Ohio Labor Council, Inc., Lodge #133. However, as is typically

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

The collective bargaining process is one that generally recognizes incremental changes to what may have been the status quo between the Parties. Generally, drastic changes in the day-to-day endeavors of the Parties in their collective bargaining relationship are rare, but sometimes are evident and warranted. Given the fact that this represents the initial Collective Bargaining Agreement between these Parties and the type of functions these Bargaining Unit Members perform, this record simply does not support “wholesale” recommendations to effectuate drastic changes and/or to significantly modify practices that existed prior to the Unit’s certification. It is and continues to be the position of the Fact Finder that the Party proposing any addition, deletion or modification of either current contract language, which in this case does not represent since it is an initial Collective Bargaining Agreement, or a *status quo* practice where an initial Collective Bargaining Agreement like this case represents, 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 and recognized as such by the Parties. In other words, the “moving” Party bears the burden of proof and persuasion to compel the Fact Finder to make the recommendation that would recognize what it deems to be appropriate relative to the changes it seeks. Each Party, in some sense, is seeking relative changes to the mechanics of the language at impasse between them and such will be identified as such herein.

As previously indicated, the Parties were simply unable to resolve those aforementioned issues proposed for addition, deletion or modification during the course of the various negotiation sessions with the assistance of State Mediator, John Gray, with the assistance of the Fact Finder and those engaged in by the Parties without the assistance of either. As was previously indicated, there were certain aspects during the course of the Mediation and Fact Finding proceedings that may lend consideration to a recommendation that seemingly identifies a position taken by these Parties during the course thereof. As such, those will be recognized as previously chronicled as was indicated by the Fact Finder to the Parties and referenced as such in this Report. Moreover, it is recommended that those Articles/Policies that remained unchanged as previously identified be transferred for inclusion into the initial Collective Bargaining Agreement as agreed to by and between these Parties during the course of those chronicled discussions and negotiations and/or those that have remained unchanged by them. The following issues that remain at impasse between these Parties are listed as follows and are the subject matter for the recommendations contained herein:

1) **ARTICLE 4 - MANAGEMENT RIGHTS**

CITY POSITION

The City's Management Rights proposal, in Section "T" thereof, confirms its right to manage the Public Works Department including the utilization of other City employees to perform the kind of work performed by this Bargaining Unit. Pat Clements, City Manager, testified that historically the City has utilized other City employees for the removal of ice and snow as the situation dictates that may otherwise normally be performed by the Bargaining Unit. It has directed Public Works employees

to perform other duties when deemed necessary in emergency situations involving utility service disruptions where employees with the Water and Waste Management Departments have been assisted with the repair of broken water and sewer mainlines and performance of other maintenance operations, etc. There are times during the calendar year that the need for certain of the job responsibilities of this Bargaining Unit may not be required given those seasonal operations. The City contends that there simply cannot be “ownership” over this work. The Union’s attempt to inject a work jurisdiction and preservation barrier into this first Collective Bargaining Agreement is simply misplaced.

With respect to subsection U, the Union’s attempt to delete this section from this proposal relative to Subcontracting is simply unworkable. The City contends that it has subcontracted work when such work could be effectively and economically performed by a third party. The City wishes to maintain the managerial right to determine when it is fiscally prudent to contract out certain services. The Union’s Subcontracting proposal strives to inject job security by permitting the City to contract out so long as that decision would not result in the layoff or reduction of regular hours of any Bargaining Unit employee. The City emphasizes that the current economic environment requires that it maintain fiscal accountability and responsibility to the City’s citizens it serves and government accountability would be unnecessarily jettisoned if the City agreed it could not reap the economic benefit of securing less costly general maintenance services.

The City recognizes that in the event that certain Bargaining Unit positions were reduced due to Subcontracting, such would be bargained with the Union. The City wishes to maintain flexibility to subcontract out work that historically has occurred.

UNION POSITION

The Union takes the position that its Management Rights Article should be recommended for inclusion in this initial Collective Bargaining Agreement between the Parties. It emphasizes that it desires the same type of Management Rights language that is contained in 4117.08 recognizing just cause for disciplinary action. Moreover, its proposal would mirror that of other Collective Bargaining Agreements involving the City in similar jurisdictions.

It contends that Section T of the Employer's proposal is broad and is without limitation, and Section U relative to Subcontracting is simply counterproductive to the existence of this Bargaining Unit. It referenced the \$106,000 mowing contract entered into by the City which suggests that indeed that that aspect of these employees' job responsibilities would be significantly diminished if not eliminated as a result therefrom. The Union insists that placing certain limitations on the Employer's right to utilize other Employees to perform historic Bargaining Unit work is indeed necessary.

RECOMMENDATION AND RATIONALE

Based on the proposals made, the Employer's is recommended with the modifications noted herein. Please note that the subject matter of the Union's Bargaining Unit Work and Subcontracting Articles are also addressed herein. Further references relative thereto will be referred back to this discussion where certain deviations are evident.

It is hereby recommended that the Parties initially adopt that language recognizing the requirement for "just cause" in for the issuance of disciplinary action that the Parties seemingly agreed to during the course of the Fact Finding Proceeding. As such, that would be recommended for inclusion herein.

With respect to this Article, the Employer's proposal is consistent with typical Management Rights provisions which afford the Employer the, and sometimes on some occasions, unfettered right to manage the workforce. It is the restrictions placed upon it that the Union seeks and emphasizes are typical with respect to the Union's involvement in this collective bargaining relationship. Without any limitations placed upon the Employer, the Employer would have the unfettered and unrestricted right to engage in whatever conduct it deems necessary. The tentatively agreed to articles relative to the Grievance and Arbitration Procedure, certainly provide an opportunity for employees who believe that that right of management to direct the workforce is, in some way, beyond that which typically is recognized under a Management Rights provision. It is indeed the Employer's right to manage its workforce and, given this current economic environment, it is indeed necessary for the City to have the flexibility it seeks; however, within limits.

With respect to Section "T", concerning the City's use of other City Employees to perform the duties normally and/or customarily performed by these Employees, i.e., the Union's Bargaining Unit work Article concerning the use of other employees to perform the work it normally performs and the use of Supervisors in the performance thereof, it is recommended that the Parties include language in the Employer's proposal that would limit the use of "other City Employees" except in those circumstances where the use thereof arises in an "emergency" or "unavoidable" situations or when the Bargaining Unit Employees do not possess the skill set to perform such tasks given the size of this Unit.

With respect to Subcontracting, Section "U", it must be emphasized that this is the initial Collective Bargaining Agreement between these Parties, and while the Fact

Finder is mindful that once language appears in a Collective Bargaining Agreement, the difficulty of modifying or deleting it is indeed tantamount. However, based on this evidentiary record, it is clear that for many years prior to the Union's involvement herein, the Employer has engaged in activities that utilized third party service providers to perform certain of these duties.

As the City Manager indicates, it is certainly not the City's intention to eliminate all duties of the Bargaining Unit, simply those that would be more economically and efficiently performed by the use of a third party contractor. In this regard, that language subject to allowing Subcontracting, but only in "emergency" or "unavoidable" situations and those when and where the qualifications, skills and abilities of the Bargaining Unit employees would not permit the performance of those duties be subject to Subcontracting.

2) ARTICLE 7 - DUES DEDUCTIONS

UNION POSITION

The Union proposes a bi-weekly dues deduction and monthly payment structure submitted with an alphabetical listing of City employee Bargaining Unit members and their addresses whose Union dues or fair-share fees have been deducted on a monthly basis. The Union recognizes that such would include an indemnification clause for both dues and fee deductions and fair-share fee deduction language as found in other Collective Bargaining Agreements regarding this City and the FOP and IBEW as well as other similar City Bargaining Unit jurisdictions.

EMPLOYER POSITION

The Employer proposes a voluntary dues payment deducted from the last pay of the month and a revocable check off at any time by a Bargaining Unit employee. It also opposes a fair-share fee. The City contends that in this first Collective Bargaining Agreement and it is fundamentally opposed to a fair-share fee and the extremely narrow revocation window including the first ten (10) days of the thirty-day period preceding the termination of the Agreement as set forth in the Union's proposal is simply very limiting.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the Union's language relative to Dues Deduction for the initial Collective Bargaining Agreement between these Parties. It is indeed fundamental in public sector labor relations that, as confirmed by the Ohio Supreme Court and that of the United States, the charging of a fair-share fee, which does not include any charges for "ideological and/or political" advancements by the Union, is indeed a way to offset the "free-rider" implications without jeopardizing or impeding upon one's right conferred under the First Amendment. It is indeed beneficial to the Union to at least charge a fair-share for the services rendered as its Collective Bargaining Agent for these employees. Given the existence of the Union, it is hereby recommended that the Parties adopt the Union's language which does indeed allow for indemnification to the City as well as a window of opportunity for those wishing not to be a member but, nonetheless, be charged a fair-share fee which is subject to yearly arbitral scrutiny concerning the percentage charged based on expenditures made on behalf of collective bargaining efforts statewide. As such, it is hereby recommended the Parties adopt the Union's proposal relative to this Article.

3) ARTICLE 15 - WAGES

UNION POSITION

The Union seeks annual classification step increases equal to 4% beginning January 1, 2010 to replace the City's current cost-of-living adjustment and discretionary merit pay increase. It also proposes an additional 4% across-the-board wage equity increase on January 1, 2011. It proposes the starting rate for probationary Employees be at \$12.00 while also providing an automatic MSW I-II classification progression after five (5) years of service.

It insists that these Employees are paid on average \$2.00 to \$5.00 less than other jurisdictions doing comparable work. It emphasizes this City is "healthy" financially based on its review and analysis of its operating budget, financial reports and General Fund. It notes the City has an unreserved fund balance of \$3.4 million in the General Fund and \$2.1 in its Special Revenue Fund. The FOP received annual wage increases of 4.25% for 2009 and 2010, respectively. It projects its revenues will increase by 3.8% and the 2008 City Road Improvement Bond received an "A-1" grade by Moody's Financial Services. The City's FY 2010 Proposed Budget recognized significant increases in the Police Officers' wages and a mowing contract worth \$44,500.00

It contends that its wage increase proposal is fair and reasonable and is similar to wage increases and step progressions given to other City of Lebanon Bargaining Units and classification wage rates paid by similar city Bargaining Unit jurisdictions as set forth in its supporting documentation.

CITY POSITION

The City contends that the initial proposal received by and from the Union included a 31% increase to the Union's base wages in the first year of the contract

described as a “catch up” increase since they were allegedly underpaid. Such would increase to approximately 63% over the three (3) years of the Collective Bargaining Agreement and including the other economic items contained therein would be approximately \$1.2 million for the three-year cost increase for this Bargaining Unit and approximately \$73,000 per Bargaining Unit Member. The City contends that the Fact Finder recommend the *status quo* regarding how these employees would be compensated. That would include the same periodic cost-of-living increase, if so provided, to its classified, non-exempt employees. Moreover, they would be eligible to receive a periodic performance pay increases based on the City’s performance evaluation process which also applies to its classified, non-exempt employees. It emphasizes that this Bargaining Unit received anywhere from 4.6% increase up to and including an 18.9% increase which indicates that indeed its way of compensating these employees is indeed fair and reasonable.

The August 26, 2009 AFSCME proposal indicates a 9.5% wage increase in year two and 8.4% increase in year three. Including its demand for “Care Plan” Insurance, the two-year total would be approximately \$105,000 for this eleven-person unit. Such, the City contends, defies logic based on this current economic climate, and the City must maintain fiscal prudence and responsibility to this community.

The City Manager testified regarding the proposed 2010 operating budget which recognizes systematic funding shortages in the General Fund, and that its overall financial health will continue to be impacted based on the economic climate nationally and locally. It insists that it must be financially and fiscally responsible in awarding pay increases to employees, Union and non-Union alike. It has targeted a 1% cost of living

increase with a 1% performance pay increase allowance for the 2010 non-Union staff. The City insists that it wants to reward employees for performance and not have a lock-step system in place especially in an initial Collective Bargaining Agreement that would reward employees based on performance and not just years of service. It contends that that system has worked well and these employees have received fair and reasonable increases and should be continued.

By e-mail correspondence from the City's Labor Counsel, during the time the record remained open pending receipt of verification that Articles 27 and 36, respectively, had been resolved, and based on the references made during Fact Finding involving the IBEW negotiations for a successor Agreement, the IBEW Bargaining Unit ratified wage increases of 1.75%; 1.5%; and, 1.5% under its three-year Agreement with the City.

The City contends that the effective date for any applicable wage increase for the second year take effect on the effective date of the labor contract and, as such, opposes Retroactivity.

RECOMMENDATION AND RATIONALE

The Fact Finder is indeed mindful of the economic climate experienced both nationally and locally with respect to the downturn of economic indicators as well as the overall sluggish economy and, in many instances, nonexistent with respect to growth. Nonetheless, it is indeed the Fact Finder's responsibility to consider the factual and statutory criteria relied upon by the Parties with respect to any recommendation. Economic increases and one's ability to earn a sustainable living is indeed at the forefront in most Fact Findings throughout this as well as other jurisdictions. The current or *status*

quo manner in which these employees are paid has a component relative to one's performance thereby constituting some form of merit increase which, in the opinion of the Fact Finder, is indeed a useful tool in most scenarios, but also lends itself to subjectivity with respect to what allowances are made for certain employees regardless of length of service and/or performance.

While the evidence of record does indeed indicate and suggest that the manner in which these employees have been compensated prior to the Union's involvement has been anything less than unfair, it is, for lack of a better characterization, questionable with respect to the variation recognized for those employees identified by the employer relative to the ranges of increases they have received over the last few years. While I do recognize and, based on the explanations given, that these employees had their wages "adjusted" for various reasons, the emphasis of objectivity is one that is recognized in the collective bargaining process. The comparables relied upon by the Parties do indeed suggest that wage increases throughout the state have varied, and the economic impact placed upon employers has indeed seen its ability to provide better increases significantly diminished.

The internal comparability of other bargaining units, the IBEW and the FOP are distinguishable in that, with respect to Police, they perform an entirely different function than do Department of Public Works employees. This is not to diminish or devalue the importance of what duties they do in fact perform, simply they are different. A Police Officer is in the line of fire and subjects himself to potential injury and/or death on a daily basis. This does not suggest that these employees, from time to time, do not place themselves in "harm's way" in the performance of their duties, but not the frequency that

a Police Officer does. Moreover, those employees under the IBEW contract are skilled and certified individuals with respect to their ability to perform duties associated with electrical services etc., which are indeed a more skilled job than what the Division of Public Works would otherwise be. Again, not to devalue the performance of duties that these employees provide, they are simply different with respect to what they provide to the City on a day-to-day basis in light of the varying degrees of risk of potential harm and the skill sets required.

Given the certainty of an across-the-board type pay scale allows employees to better prepare themselves for subsequent years under the Collective Bargaining Agreement. This is not to say that the manner in which these employees have been compensated and had salaries adjusted based on where they were placed was unfair, simply that they can better prepare for subsequent years based on an objective, across-the-board percentage increase.

Given the activity within the other bargaining units, the FOP and the IBEW and the raises realized by each in conjunction with that being sought by the Union, it is indeed critical that these employees receive a fair and reasonable hourly increase without placing the Employer in the untenable position of not being able to finance that which is being recommended. In addition, it does indeed appear that certain adjustments are necessary based on the comparables provided. As such, it is hereby recommended that the Parties adopt a wage increase of 2% for each year of the Collective Bargaining Agreement for each remaining year of the Collective Bargaining Agreement and that such be effective on January 1 instead of at the time when the Agreement may be ratified. This recommended increase above that ratified by the IBEW recognizes the adjustments

that appear necessary given their placement regionally as well as the size of the Unit and thus the attendant cost to the City of the additional .5% for year two (2) and year three (3) of this Agreement. T

There is no basis to conclude that either Party has deliberately stalled these proceedings that would otherwise perhaps warrant a recommendation not allowing for Retroactivity.

It is also recommended that the Parties do not adopt the step increases as proposed by the Union or an automatic MSW I – II Classification progression after five (5) years of service.

It is recommended that the probationary rate be set at \$12.00 as proposed by the Union. Overall, this recommendation factors in a level of objectivity into this Article while recognizing the internal comparables as well as those gleaned from other areas within the State.

4) **ARTICLE 21 - VACATION**

CITY POSITION

The City contends that the language insisted by the Union to be deleted is 21.7.2 and that 21.8.1 be revised. Section 21.7 covers when an Employee, after one (1) year of employment separates from the City, that Employee may receive any earned, but unused vacation leave. To receive such payment, the Employee must successfully pass his or her probationary period; not be dismissed for cause; and, give at least fourteen (14) calendar days notice of resignation. The Union wishes to delete the dismissal for cause disqualifier. The City wishes to maintain the *status quo* that appears in the Employee Manual relative thereto. If an Employee is discharged for cause, subject to the Grievance

and Arbitration procedure, that person should not be rewarded to “cash out” unused vacation hours.

With respect to Section 21.8.1 where an Employee may request vacation buyback after completing at least five (5) years of continuous City service, the current language as set forth in the Employee Manual, mandates that the Employee shall complete at least ten (10) years of continuous service. In this regard, the City wishes to maintain the *status quo* relative to this benefit.

UNION POSITION

The Union proposes that Bargaining Unit members be afforded vacation credit accrual, recognition of prior public service, excess carryover provisions, post-employment pay-out, buy-back after five (5) years of service, pay in lieu of vacation leave, donation and other rights as provided for by the City of Lebanon Employee Handbook and the Lebanon Ordinance code and as found in other Collective Bargaining Agreements between the City and other Bargaining Units in other similar city jurisdictions. It also proposes that part-time Employees, who work thirty (30) or more hours weekly, be eligible for Vacation benefits. It also seeks language that would prohibit the change of an Employee’s Vacation without his/her written approval and that if called in for emergency work, that Employee would be compensated at double time and be allowed to schedule his/her Vacation time at a later date.

RECOMMENDATION AND RATIONAL

During the course of the Fact Finding Proceeding, the Parties reached tentative agreement relative to Section 21.3 and as such, it is recommended for inclusion in the Parties’ Agreement.

The two issues concern 21.7 and 21.8 as referenced in the Employer's proposal. As such, all other language proposals are hereby recommended relative thereto. With respect for disqualifying an Employee for cashing out his accrued vacation time if terminated for cause, it is hereby recommended that that in fact be included which is subject to Grievance and Arbitration consideration. In the event that it is determined that Employee was not discharged for just cause, then reinstatement would be forthcoming which usually addresses the consideration of unused benefits that would be otherwise applicable.

With respect to the consideration of "cashing out" one's accrued Vacation time, it is hereby recommended that the Parties allow for this to occur after seven (7) years of completed service. This takes into consideration the current practice of ten (10) years versus that being sought by the Union of five (5) in order to hopefully reach a common approach to addressing this language.

Moreover, as set forth in the Fact Finding Proceeding, the Union would agree to the Employer's proposal as written except for those considerations of 21.7 and 21.8 as previously discussed. With respect to the language unopposed by the Union other than 21.7 and 21.8, the other provisions, as proposed by the Employer, would be recommended as tentative agreement by and between the Parties.

5) ARTICLE 24 - INSURANCES

UNION POSITION

The Union proposes that the City provide a group hospitalization major medical insurance plan with individual and family coverage. The Union proposes that the City not be allowed to unilaterally change the existing Plan that may adversely change the Plan

design, increase costs to Employees or decrease benefit coverage. Moreover, it seeks an employee annual premium contribution rate of 5%, a medical insurance coverage rate provided to other City Employees, and a City-paid AFSCME CarePlan benefit Plan supplemental to other benefits provided, at the rate of \$63.75 per Employee.

In addition to indemnification, “hold harmless” language, the Union also proposes the City provide group term life insurance coverage with a death benefit of \$40,000. The Union recognizes that there is some overlapping and duplicate coverage that the AFSCME plan provides, but it provides additional life insurance thereunder. The Union also seeks to maintain the current benefit levels and requests that the language lock in the benefit level of coverage so long as such does not decrease over the term of the Parties’ Agreement.

CITY POSITION

The City proposed that AFSCME Bargaining Unit members continue to be eligible for the same group health including dental insurance coverage under the same terms and conditions that the classified non-exempt employees receive. It recognizes that in the event that changes occur it be provided the ability to make any necessary changes relative to the insurance coverage. In this regard, the City would maintain the *status quo* relative to this initial Collective Bargaining Agreement.

While the City seeks uniform coverage at a citywide basis to ensure cost containment and uniform coverage, it would be allowed to select carriers and change the carriers at its discretions. It insists that it needs to properly address exorbitant group insurance cost increases and select different, less expensive coverage at levels that would benefit the City’s employment staff as a whole. To have the same identical coverage at

the same cost is simply unrealistic. In the event that it decided to change carriers, it would propose language requiring it to meet with the Union and discuss the plan changes prior to implementation. The City does not agree to a set 5% of the total applicable premium rate for the length of the contract and opposes any “me too” clause relative to coverage rate negotiated by other City Bargaining Units. The City concedes that similar language exists in the Police contract that was done so by what it characterizes as a “mistake” and that the IBEW unit is under the same insurance plan as the classified non-exempt employees. In this day and time, the employer must seek flexibility to create and shop insurance coverage without being handcuffed by limitations set forth in one unit’s contract.

RECOMMENDATION AND RATIONALE

As the Parties have indicated during the course of the Fact Finding Proceeding, the insurance benefit for contract year 2010 was tentatively agreed to. As such, the applicability of this recommendation with supporting rationale is for contract year 2011.

Undeniably, insurance benefits are such in this economic climate, or even prior to the demise of our national economy, the most troubling and problematic experienced by an employer regardless of its size. From the self-insured sole proprietor to the Fortune 100 and 500 companies, the necessity of an employer to be able to negotiate with insurance carriers becomes a yearly endeavor in most industries. The benefit structure would benefit the Employer and ultimately the Employees through its ability to negotiate greater numbers with the carriers thereby affording certain cost containment and/or reductions is at the forefront of the need for an employer to be able to enter in negotiations with carriers. In most instances, it is more often than not that the employees

do in fact benefit from the City's ability to negotiate such changes when the need dictates. It is therefore recommended that the Parties maintain the *status quo* relative to the manner in which insurance benefits are structured. In other words, the City would continue to provide the same insurance coverage that its classified, non-exempt employees receive and would be permitted, subject to discussions and involvement by the Union, via the creation of an Insurance Committee, to provide input and/or at least receive information regarding that which the City is considering relative to subsequent opportunities to negotiate better rates for insurance coverage.

As the record demonstrates, this would only be applicable to the final year of the Parties Collective Bargaining Agreement and, as such, in the opinion of the Fact Finder, does not pose a significant issue relative to its implementation. The current levels of coverage are indeed as recognized by the Union consisting of decent benefit levels at a decent cost to the employees. As such, it is hereby recommended that the Parties maintain the *status quo* while recognizing and providing the City with the ability to entertain and enter into negotiations with carriers to obtain more feasible, cost efficient, and in many ways, better levels of coverage if available for the employees in this Bargaining Unit as well as those on a city-wide basis.

Additionally, it is recommended that the Parties incorporate language recognizing the AFSCME CarePlan as an option for the Employees at their expense.

**6) ARTICLE 27 - MODIFICATION, SEPARABILITY AND CONFLICT
OF LAW**

Based on the information received by the Fact Finder via e-mail transmission and USPS mail service, the Parties have reached tentative agreement relative to this Article, and as such it is recommended for inclusion herein.

7) ARTICLE 12 - LAYOFF AND RECALL

UNION POSITION

The Union seeks language that would structure layoff and recall rights as identified in the other Collective Bargaining Agreements with the City and/or similar City Bargaining Unit jurisdictions based on its comparable data provided and that as provided for by Lebanon Ordinance Section 131.171(A) and the City of Lebanon Staff Employee Handbook, Chapter 800.5(A). The Union emphasizes that it seeks to have layoff or recall rights for employees in that the City must not maintain the sole discretion to effectuate a layoff. It seeks written reasons to justify the City's layoff and a timely statement of a rationale for its implementation while defining an Employee's right to appeal via the Civil Service Commission or the Parties' Grievance Procedure. It also seeks an order of layoff while protecting the seniority and bumping rights of those affected while providing a seniority list to the Union and providing certain recall rights via a recall list for 36 months. It seeks language requiring Holiday, Compensatory time and accumulated Vacation payouts. It also seeks to have recall and notification timeframes of five (5) days and fourteen (14) days to return and that such is done by Certified Mail.

It emphasizes that seniority be the determining factor and the affected employees be able to transfer within other AFSCME divisions as seen with the City of Cincinnati.

CITY PROPOSAL

The City agrees to effectuate a layoff Article that would, in effect, layoff probationary employees first followed by regular part-time employees or intermittent employees within the Bargaining Unit before laying full-time Bargaining Unit members. However, full-time employees could be laid off in the City's sole discretion where there is lack of work or lack of funds and the final determination of who would be laid off would be based on skill ability and/or performance. The City would notify the Union of the reasons for the layoff prior to the effective date of the layoff, and those employees would be placed on a recall list for 365 calendar days. Those on that list if recalled would have five (5) calendar days to notify the City of their intent to return to work. It opposes the Union's proposal to allow those affected to transfer between departments or divisions as this labor agreement pertains to this Bargaining Unit and not the City's entire workforce.

Moreover, the City recognizes that seniority is indeed a stumbling block relative to its proposal, but emphasizes it must employ the best available employee for the position, not the most senior.

RECOMMENDATION AND RATIONALE

Throughout the course of the negotiation sessions, the mediation engaged in with the Fact Finder and the positions articulated throughout the course of this process and in Fact Finding, it seems that the problematic issue from the Union agreeing to the Employer's proposal relative to this Article pertains to mandating seniority as the sole determining factor for any layoff. Generally speaking, the use of a hybrid-seniority provision relative to what rights and obligations become instrumental during the course of a layoff and/or recall is one that takes into consideration the skill, ability,

qualifications, etc., of the individual, and in the event those qualifications are deemed in essence equal, then seniority shall be the determining factor. Such is true with those units where different skill sets are necessary in the performance of the job duties recognized under the Agreement.

With respect to this Department, the Division of Public Works, the classifications at issue seemingly overlap with respect to the Service Worker I and Service Worker II classifications but would be distinguishable from that of the Mechanics, which obviously require a certain skill set to perform the duties attendant therewith. In this regard, the cross transfer of those individuals would not be feasible given the skill set and abilities necessary to perform those job functions. In this regard, the City's proposal relative to this language is recommended subject to the inclusion of a modified seniority provision recognizing Seniority as the determining factor in the event skill and ability are deemed equal. In other works, if skill and ability of an individual are considered, and in essence, deemed equal, then seniority would be the controlling factor relative to layoff and recall.

Moreover, the Parties are apart relative to the timeframe in which an individual stays on a recall list, the City proposing one (1) year and the Union proposing three (3). Therefore, it is recommended that the Parties adopt a two-year timeframe for placement on the recall list.

With respect to notice, it is recommended that the Parties adopt the modified version of each Party's proposal in that the Employee would have seven (7) days following the date of the mailing of the recall notice to notify the Employer of his or her intention to return to work and then have fourteen (14) calendar days following the date

of the mailing of the recall notice in which to report to duty. This seemingly addresses the core differences between the Parties relative to those aspects thereof.

It is also recommended that the Parties adopt language that would require the Employer to provide reasons to justify the City's decision to implement a layoff and the proposed individual(s) subject to its implementation. Moreover, as previously indicated, the ability of Employees to transfer within divisions would only be feasible in the event that they can demonstrate the necessary skill and ability and skill set necessary for the job in question, and if the Employee is able to do so, then that would be the only instance in which they would be able to transfer and utilize their city-wide seniority. If in fact they cannot meet the necessary qualifications and skill sets then they would be subject to the layoff as implemented.

Additionally, the order of layoff, is as agreed to by the Employer, the full-time Employees be laid off last and in the event of a layoff, those affected would be allowed to obtain accumulated Vacation, Compensatory and Holiday pay outs by the subsequent pay period following the layoff.

This recommendation also takes into consideration that Seniority, while a very important factor, is but one factor in the consideration of what employees would be affected relative to the implementation of the layoff and the subsequent rights relative to recall and/or bumping within the City.

8) ARTICLE 36 - NEW CLASSIFICATION

As previously indicated, the Parties engaged in post-Fact Finding Hearing negotiations concerning this Article and have reached tentative agreement pursuant to the e-mail correspondence as well as that submitted by USPS regular mail service to the

undersigned confirming that indeed this matter was subject to tentative agreement. As such, it shall be recommended as such for inclusion in the initial Collective Bargaining Agreement between the Parties.

9) ARTICLE 39 - SUBCONTRACTING

CITY POSITION

The City proposal amplifies its management rights set forth in the Management Rights Article, Article 4 of the initial Collective Bargaining Agreement, since as it contends, it has historically contracted out work of the type performed by this Bargaining Unit. Moreover, it has also utilized non-bargaining unit employees to perform this work and does not desire to relinquish that right simply because this unit has been unionized. It insists that the two proposals the Union made relative to job security in this Bargaining Unit work proposal and the prohibition against subcontracting is simply inconsistent with its need to gain flexibility given the size of this department and the historical nature in which certain work has in fact been contracted out. Such as City Manager, Pat Clements, indicated, it is a cost effective way of delivering services to the community thereby emphasizing the need for this flexibility. It insists that there is no work jurisdiction right, and that such is simply inefficient.

It also requests that its proposal be adopted relative to the use of supervisors in that it has used them in the past in unavoidable matters and situations where there is not enough Bargaining Unit employees to perform the work necessary. This is not standard practice, it contends, but that general maintenance duties have been performed by Public Works Supervisors in the past. It again emphasizes the size of this unit and certain maintenance duties are in fact performed by supervision.

With respect to the subcontracting proposal made by the Union prohibiting the City from subcontracting out work that would result in a layoff or reduction of regular hours of any Bargaining Unit employee, this economic climate demands that the City be able to pursue true cost savings. While the City has not laid off Public Works employees in the past because of subcontracting of certain work and has no present intention to do so, it must have the financial flexibility to make such decisions in the future if the economic situation dictates.

UNION POSITION

The Union proposes subcontracting language defining the rights and protections of Bargaining Unit members as normally provided in other Collective Bargaining Agreements involving similar city Bargaining Unit jurisdictions. The other two City Collective Bargaining Agreements do not include any subcontracting language. It insists that the Bargaining Unit has in fact decreased in size thereby rendering the City's position as to not having enough employees to perform the work in question a realistic potential to subcontract. It insists that the City has not filled those positions but instead has subcontracted the work normally performed by these employees. It insists that such protections are necessary and why a Collective Bargaining Agreement exists. That work traditionally performed by the Bargaining Unit must remain that Bargaining Unit's work.

It recognizes that certain occasions arise where emergencies or unavoidable circumstances arise that require deviation from this proposition, and the Union recognizes that work needs to be performed simply, it cannot maintain the *status quo* as suggested by the Employer. It emphasizes that it has lost four (4) members of the Bargaining Unit

through retirement and one (1) other where that employee took another position that have not been filled by the City.

It emphasizes it does not want to see certain aspects of the Bargaining Unit's work such as that with garbage collection that is now being subcontracted through Rumke and that relative to the purchase of wholesale water from the Cincinnati Water Works. It emphasizes the need for some protection in this language to ensure that those types of circumstances do not arise and adversely affect this Bargaining Unit to the point where the Bargaining Unit no longer exists if the City chooses to subcontract all such duties of these Employees.

RECOMMENDATION AND RATIONALE

Please refer to Article 4, titled, Management Rights set forth *supra* regarding the Recommendation and Rational for the Subcontracting and use of other City employees issues.

Again, the distinction must be drawn between the skilled Bargaining Units of the Police and the IBEW versus the more general type labor recognized with this Bargaining Unit. The need to subcontract would not arise as frequently with respect to those Bargaining Units as compared to this involving general labor type functions.

Moreover, Supervisors should be utilized in the event that not enough Bargaining Unit members are available to perform those duties and should only occur in situations where an emergency dictates or unavoidable circumstances arise.

10) ARTICLE 40 - DURATION

RECOMMENDATION AND RATIONALE

Inasmuch as each Party has recognized that a three-year Agreement be in place, the Employer's point of contention is that of Retroactivity concerning the second year or calendar year 2010 since 2009 has already occurred and certain financial enhancements have been made.

The Union recognizes that the Bargaining Unit members should not be penalized relative to retroactivity, and apparently the consideration of a 90-day timeframe relative to Section 40.2 regarding written notice of intent to amend or modify the agreement be given prior to the expiration of the contract. The Parties were apparently in agreement relative to that aspect of Article 40, and as such, it shall be recommended as a tentative agreement.

Moreover, with respect to the Duration Article of the Parties' Agreement, the three-year agreement is in effect, and has been in effect since calendar year 2009, so the subsequent years 2010 and 2011 are the subject for the issuance of this Report with recommendations and rationale.

With respect to Retroactivity, there has not been any evidence produced that would suggest to the undersigned that either Party has deliberately caused undue delay or placed either Party in jeopardy with respect to the time limits recognized under the statutory process. It has long been said that collective bargaining is an incremental process where once benefits are recognized contractually they then are subject to further consideration relative to incremental modification and/or enhancement between the Parties. That process is indeed time-consuming.

In this regard, it is recommended that the Collective Bargaining Agreement have an effective date of January 1, 2009 for a duration of three (3) years through and

including December 31, 2011 and that the Collective Bargaining Unit members receive retroactivity for any and all economic enhancements in place and/or recommended herein.

11) **ARTICLE ____ - PEOPLE CHECK OFF**

UNION POSITION

The Union concedes that the PEOPLE Check Off is indeed the International's Legislative/Political Action Committee and is a voluntary deduction for which the City provided no counter proposal. It notes that its withdrawal is voluntary and can be effectuated like the United Way, the Red Cross, etc. Its proposal contains language recognizing an employee's right to contribute via written authorization, the right to revoke such in writing, and contains the same indemnification protections as seen in the Fair Share Fee provision. It contends that other like regional AFSCME represented City jurisdictions contain such language and seeks its inclusion in this Collective Bargaining Agreement.

CITY POSITION

The City opposes the inclusion of this Article in the initial Collective Bargaining Agreement based on what it contends as adding yet another layer of administrative payroll work to its already lean staff. It recognizes that this is a voluntary matter and is simply not in the City's best interest seemingly acquiescing to whatever activities the International supports thus sending the wrong message to City employees and the community at large. It emphasizes that such is a voluntary contribution and such can be made outside the City employment relationship.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties include the People Check Off language as proposed by the Union. I see no adverse impact to the City if an employee wishes to make a voluntary contribution to the Union's International Political Action Committee. While I recognize it indeed is a layer of administrative payroll responsibility, it is not so cumbersome given the size of this unit that it would be overwhelming. Therefore, it is recommended for inclusion herein.

12) ARTICLE ___ - BARGAINING UNIT WORK

UNION POSITION

The Union seeks protective language regarding that work ordinarily and customarily performed by the Bargaining Unit, including the maintenance of roadways, storm sewer City Public Parks, and other seasonal services as they arise. It emphasizes its language, "except in unavoidable situations" affords the City certain flexibility for those circumstances when there are insufficient Bargaining Unit personnel to perform such work.

CITY POSITION

The City opposes the inclusion of such language based on the same reasons articulated in the Management Right section of this Report.

RECOMMENDATION AND RATIONALE

The issue of the use of other City employees and/or Supervisors has been previously addressed in the Management Rights and/or Subcontracting Sections of this Report.

13) ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

It is recommended that those issues, if any, not subject to the presentation of evidence in this Fact Finding hearing, by either Party, or those not referenced by either Party during the course thereof shall be subject to the recommendation that the *status quo* relative thereto concerning whatever policy, practice or procedure that may exist, or might have existed prior to the Parties' attempts to enter an initial Collective Bargaining Agreement between them, be maintained for consideration in the initial Collective Bargaining Agreement ratified and implemented by the Parties.

CONCLUSION

It is hopeful that the recommendations contained herein can be deemed reasonable in light of the data presented; the presentation by the Parties; and, based on the common interest of both entities recognizing the painstaking efforts at the bargaining table. While certain tentative agreements were in fact reached during the course of those negotiation sessions, each Party was willing to engage in additional bargaining subsequent to the presentation of evidence during the course of the Fact Finding Proceeding. The Fact Finder is grateful that the Parties were amenable to engage in such activity and in doing so were successful in reaching agreement on two (2) Articles recognized herein and above. It is hopeful that the Parties can adopt the recommendations contained herein so that the initial Collective Bargaining Agreement can be ratified, and this relationship can begin to prosper and to grow without further interruption.

These recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of various negotiation sessions, the mediation with the State Mediator, and that with the assistance of the Fact

Finder during this aspect of the statutory process; any stipulations of these Parties that occurred during the course of the mediation engaged in by them with the assistance of the State Mediator and the Fact Finder and during the course of the Fact Finding proceeding; the positions indicated to the Fact Finder during the course of the mediation and the Fact Finding; and that which were made based on the mutual interests and concerns of each Party to this initial Collective Bargaining Agreement.

David W. Stanton

David W. Stanton, Esq.
Fact Finder

Dated: February 22, 2010
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Fact Finding Report with recommendations and rationale has been forwarded by both e-mail transmission and overnight U.S. Mail service to Jeffrey S. Shoskin, Esq., Frost Brown Todd LLC, 2200 PNC Center, 201 East 5th Street Cincinnati, Ohio 45202; Peter M. McClinden, Regional Director, AFSCME Ohio Council 8, AFL-CIO, 1213 Tennessee Avenue, Cincinnati, Ohio, 45229-1097 ; and, to J. Russell Keith, Esq., General Counsel & Assistant Executive Director, State Employment Relations Board, 65 East State Street, Columbus, Ohio, 43215-4213 on this 22nd day of February 2010.

David W. Stanton

David W. Stanton, Esq. (0042532)
Fact Finder

DAVID W. STANTON
ATTORNEY & COUNSELOR AT LAW
Arbitrator & Mediator

Cincinnati Office
4820 Glenway Avenue
2nd Floor
Cincinnati, Ohio 45238
Phone 513-941-9016
Fax 513-941-9016

E-MAIL DAVIDWSTANTON@BELLSOUTH.NET

Louisville Office
7321 New LaGrange Road
Suite 106
Louisville, Kentucky 40222
Phone 502-292-0616
Fax 502-292-0616

February 22, 2010

Peter M. McLinden
Regional Director
AFSCME, Ohio Council 8, AFL-CIO
1213 Tennessee Avenue
Cincinnati, OH 45229-1097

Jeffrey S. Shoskin, Esq.
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202-4182

J. Russell Keith, Esq.
General Counsel & Assistant Executive Director
State Employment Relations Board
65 East State Street, 12 th Floor
Columbus, OH 43215-4213

SERB Case No. 08-MED-05-0618
City of Lebanon -and- AFSCME, Ohio Council 8, AFL-CIO, Local 363
Fact Finding - Initial Contract - Division of Public Works

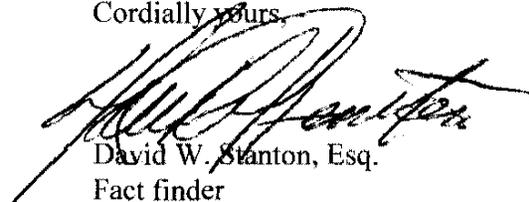
Gentlemen,

Enclosed herewith please find the Fact Finder's Report with Recommendations and supporting Rationale; and, the Statement for Professional Services. Please forward the Statement to your respective Client and/or Local to ensure payment thereof within the time frame noted thereon.

Good luck and continued success with your Collective-bargaining relationship.

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

Cordially yours,


David W. Stanton, Esq.
Fact finder

DWS/lp.
Encs.

cc: Pat Clements (w/encs.)
AFSCME Ohio Council 8 (w/Statement)

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