

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2009 JAN 30 P 12:43

In the Matter of Fact-Finding Between

The Fraternal Order of Police,
Ohio Labor Council, Inc.

Employee Organization

Case Nos. 08- MED-05-0640

and

The City of East Cleveland, Ohio
Division of Police, Dispatchers

Fact-Finder: Jerry B. Sellman
Date of Report: January 29, 2009

The Employer

FACT FINDERS REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Otto J. Holm Jr. - Staff Representative FOP/OLC Inc., representing the Union

FOR THE EMPLOYER:

Almeta A. Johnson, Esq. – Director of Law for the City of East Cleveland, Ohio

I. INTRODUCTION

This matter concerns a fact-finding proceeding between the City of East Cleveland, Ohio (hereinafter referred to as the “Employer” or the “City”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. An initial Fact-finding hearing was held on December 17, 2008 at which time the Fact-Finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. Both parties accepted the offer to mediate and in good faith tried to resolve the outstanding issues, but they were ultimately unable to resolve all of the outstanding issues. A second day of hearing was necessary and a Fact-finding hearing was commenced on January 6, 2009.

The only open issues identified and discussed by both parties included:

ARTICLE 23 – CLOTHING ALLOWANCE

ARTICLE 24 - WAGES

ARTICLE 28 – SUPPLEMENTAL COMPENSATION

ARTICLE 29 – HEALTH, DENTAL AND LIFE INSURANCE

ARTICLE 35 – RESIDENCY

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to

present arguments and evidence in support of their respective positions on the issues remaining for this Fact-Finder's consideration.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issues before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

II. BACKGROUND

The FOP represents the Dispatchers in the City of East Cleveland, Ohio Police Department. The City of East Cleveland, Ohio is a municipality located to the east of Cleveland, Ohio. According to the most recent census, it has a population of 27,217.¹ It has a bargaining relationship with the Fraternal Order of Police, Ohio Labor Council, Inc. which represents, for purposes of this case, fourteen (14) Full-Time Dispatchers.

The City has had a history of financial problems. In February of 2006 it was taken out of fiscal emergency status by the State of Ohio Auditor for the first time in eighteen (18) years.

Under the current administration efforts taken on behalf of the City have keep its budget stable. While revenues mainly come from income tax, property tax and local government revenue sharing from the State, the City has benefited from additional revenues that resulted from the implementation of the Nestor Traffic System's automated speed enforcement program. Through this program, the City increased it income by a little over \$900,000 through the collection of only 40% of traffic tickets generated through the program, which program is partially credited for helping it to get out of fiscal emergency status. Notwithstanding the increase in revenues in the past two years, testimony of the City's Finance Director indicated that sources of revenue in 2009 are anticipated to decline. Local government revenue funds will probably be reduced by cuts in State budgets. The city lost 25% of its tax base as a result of a declining population from 27,000 to 19,000 residents. Income from property taxes is down. The City is one of the hardest hit by foreclosures in the state. At the same time, expenses for fuel costs, medical benefit costs and operational costs continue to go up. While the City's budget is estimated to be around \$16.5 Million, it could be up to \$19M if collections under the Nester program increase above the 40% collection rate.

The Dispatch Unit was originally represented by the OPBA, a competing labor organization of the FOP/OLC, Inc. In 2003, the men and women of the dispatch division were disbanded. The City operated without any dispatchers during this interim period, choosing to use police officers to perform the tasks of a dispatcher.

In 2007 individuals were once again hired to fill the position of Dispatcher. The group of dispatchers sought a change in their representation and elected the FOP to be their new representing organization. In part, these decisions are made because the FOP has a current

¹ The Mayor testified that the population has decreased to 19,000.

working relationship with other police units in the city. Therefore, the transition to the FOP as a current partner to the city made sense.

In the new proposed contract, the FOP elected to use language which was generally accepted in other FOP contracts, with modifications where applicable, to meet the terms and conditions of employment germane to this unit. It was the Union's objective to have one set of language, terms and conditions to be the same wherever possible between the FOP's many bargaining units in the city. The benefits that were provided in the last collective bargaining agreement between the City and the employees of the Dispatch Unit (at the time OPBA) did not materially change.

The current wages paid to the Dispatchers, as with all other benefits, are basically the same that existed in 2003. The proposals by the Union in the current Agreement are to increase those wages. The Dispatchers, who are party to this contract, were newly hired in 2007-08 and were not carried over from the prior bargaining-unit agreement.

During negotiations with the City, attempts to negotiate and settle all issues under the proposed collective bargaining agreement failed. The Union reused, reissued, and copied as a pattern the contract language it has with the City in other current agreements with police officers for the construction of the Dispatcher's agreement. Most of the contract language was acceptable to the City, but there remained several unresolved issues upon which there was no agreement as to the language proposed.

Bargaining sessions were held on July 17, 2008 and continued on July 21 & 31; August 12; November 11; and December 8.

III. UNRESOLVED ISSUES

1. ARTICLE 23: CLOTHING ALLOWANCE, Section 23.2 Payment of Reimbursement.

The Union's Position

The Union and the City agreed on the amount of a clothing allowance, but they disagreed on a reimbursement method. The Union wants the City to pay the \$715 clothing allowance at the beginning of the year and not require the employees to submit receipts for purchases, which purchases are then repaid within ten (10) days of the next calendar quarter. The Union believes that it is unfair to expect the employees of this unit to, in essence, provide a cash flow benefit to the city by asking the employees to front the money for the uniforms the city requires. Considering the low wages that these men and women are paid, the union considers a reimbursement requirement to be a hardship on the employees. Since the city has not put a mechanism into place for the reimbursement procedure, they should provide the clothing allowance in advance.

The City's Position

While the City agreed with the Union on the amount of a uniform allowance, it wants the Dispatchers to submit receipts for all items for which reimbursement is sought. Receipts submitted more than thirty (30) days prior to the commencement of a calendar quarter would be paid by the City in the first ten (10) days of the next calendar quarter. This is the same reimbursement method that is used by the other police divisions and should be the same here. It would not be prudent for the City to provide a uniform allowance to its employees at the

beginning of the year and then later find that the allowance was not used to purchase uniforms.

Discussion, Findings and Recommendation

The Union does make a valid argument that advancing uniform costs is more of a hardship to the Dispatchers than the other police units, because their pay is significantly lower than the other police units. The City does have a compelling argument that the proposed reimbursement system ensures that uniforms are purchased and the money is not spent elsewhere. While the Union argued that the City did not have a workable reimbursement system or method in place, there was no evidence demonstrating that employees who sought reimbursement were not paid. Since this reimbursement system has not been shown to be ineffective, and since it is in place with the other patrol units, the Fact-Finder sees no reason to change the reimbursement method proposed by the city.

RECOMMENDATION

It is recommended that the City's proposal under ARTICLE 23: CLOTHING ALLOWANCE, Section 23.2 be adopted. That Section should read as follows:

Payment of Reimbursement Members shall submit receipts for all items for which reimbursement is sought. Receipts submitted more than thirty (30) days prior to commencement of a calendar quarter shall be paid by the City in the first ten (10) days of the next calendar quarter.

2. ARTICLE 24: WAGES

Wages are being negotiated for the year 2008 year (retroactive) only. The Union and City negotiated a Wage Re-Opener providing that the Union may file a Notice to negotiate over

wages in 2009 and 2010 prior to the end of the year.

The Union's Position

The Union proposes that wages for the year 2008, effective January 1, 2008, be established as follows:

- Grade 3 Dispatcher (\$13.50/Hr.) \$28,000 (Probationary wage)
- Grade 2 Dispatcher (\$14.54/Hr.) \$30,240 (At the start of the Second year of Service)
- Grade 1 Dispatcher (\$15.41/Hr.) \$32,052 (At the start of the Third year of Service)

The Union contends that the wages it proposes to be paid to the Dispatchers compare equally with comparable cities in Cuyahoga County (target cities). Wages for this unit are the same as those paid to Dispatchers in the City in 2003.

The Dispatchers in the City are currently paid as follows:

- Grade 3 Dispatcher (\$12.85/Hr.) \$26,728 (Probationary wage)
- Grade 2 Dispatcher (\$13.13/Hr.) \$27,310 (At the start of the Second year of Service)
- Grade 1 Dispatcher (\$13.41/Hr.) \$27,893 (At the start of the Third year of Service)

The SERB Benchmark Report dated December 9, 2008 for the target cities shows that the lowest entry level wage for dispatchers is \$26,728 (East Cleveland).² The City of Olmstead Falls, a much smaller city with a population of 7,962, is next with an entry level wage of \$28,030. The average entry level wage for dispatchers in Cuyahoga County is \$33,133.68. The lowest top level wage paid to Dispatchers in the target cities was \$27,893 (East Cleveland).³ The City of Euclid, with a population of 52,717, is next with a top level salary of \$37,688. The

² The Union indicated in its summary that the entry level pay was \$25, 875.20, but the Fact-Finder used the entry level salary information produced by the city at the hearing.

³ The Union indicated in its summary that the entry level pay was \$26,728.00, but the Fact-Finder used the entry level salary information produced by the city at the hearing.

average top level wage paid to Dispatchers in the target cities is \$42,732.01.

It is critical to balance the interests and welfare of the public with the ability of the public employer to finance and administer wages of its employees. The city needs to maintain their workforce and to have the ability to attract new employees to fill up-coming openings in this unit. The concern is to address a fair wage, for both retention and growth. The Union recognizes that the City was placed on fiscal emergency, as defined by the State of Ohio Auditors Office, for a number of years, but it is in the best financial condition it has been in the last ten (10) years and does have the ability to pay the increases.

The current SERB Benchmark Report indicates that the Dispatchers in the city of East Cleveland are far behind the comparison group. As the comparison indicates, the Dispatchers are grossly underpaid. The union wage proposal will only help them keep pace at the bottom of these reports. The Union proposal, even at its full potential, will not substantially move this group up the chart as they compare to the other municipalities listed. Even if all wage requests of the Union are granted, this unit would still be the lowest paid in the county

The Dispatch Unit was recreated, or brought back, in order to save the City money. By not using the higher paid patrol officers, operations are more efficient and expenses were reduced. If the Dispatchers are able to marginally collect more than the 40% collection rate from Nester speed enforcement program, the increased collections will easily pay the increased wages sought.

FOP police officers have already been granted a 4% raise. Even though the City objected to such an increase, SERB requires a fair working wage and it was granted. This group is more than 30% below the lowest other fair working wage. The lowest paid dispatcher on the SERB Benchmark Report made more than the highest paid dispatcher in the City. The increases sought

are justified.

The City's Position

The City proposes that wages for the year 2008 effective January 1, 2008 be increased as follows:

Grade 3 Dispatcher	(\$13.13/Hr.)	\$27,310 (Probationary wage)
Grade 2 Dispatcher	(\$13.41/Hr.)	\$27,892 (At the start of the Second year of Service)
Grade 1 Dispatcher	(\$13.69/Hr.)	\$28,476 (At the start of the Third year of Service)

This proposal reflects a two percent (2%) increase in wages for each of the three levels. The City cannot afford more than this, even though it recognizes that the wages it pays are below the level of dispatchers in comparable jurisdictions. While it projects a \$16 Million budget that might be stretched to \$19 Million with a successful collection rate with the Nester program, it needs to control costs in order to maintain the current level of services to the City residents. Some costs cannot be controlled. The city has inherited grants dating back to 1972 that need to be repaid; it is paying workers compensation claims for 2005; it has a \$300,000 deficit in the Water Department, a \$900,000 deficit in the Sewer Department and a \$260,000 deficit for a Senior Center that has to be paid over time; it is repaying loans on funds borrowed from the local government revenue fund that was used to get the City out of fiscal emergency; and ongoing costs such as fuel costs and collection of waste refuse continue to rise. Its hospitalization costs have increased by 10% and its Workers Compensation premiums have increased by 10%.

In order to provide an acceptable minimum level of safety to the citizens of the City, the City increased its police force from 20 officers to over 50. In 2007 it hired dispatchers to support the efforts of the police officers. It recognizes that in order to get more tax paying residents into

city, it must have a good police force. Nonetheless, it cannot increase wages in one department and put another department at risk. In the 2003-04 budget of the prior administration, one department was given significant increases and, as a result, the City had to lay off 18 other employees. It does not want this to happen again.

The City gave its non-union employees a 2% increase in 2008. The wages in this case will be wages paid retroactively out of the 2009 budget. The 2% increase offered to the Dispatchers is the same as all the other City employees received. While these City employees received increases, none of the City's Directors have had any increases since 2006. In light of the City's expected financial expenses, this is a fair increase. The Union proposal, which seeks to pay the Dispatchers 72% of the pay of its police officers, is unreasonable and unaffordable by the City.

Discussion, Findings and Recommendation

In assessing what is a fair recommendation on wages for employees in this bargaining unit, the Fact Finder considered the wages of public employees doing comparable work, the level of any wage increases over the past several years given to the bargaining unit, and the Employer's ability to pay, among other factors.

There is little question that the City of Cleveland is faced with financial difficulties. Even before the current economic crisis confronted this State, let alone the Nation, the City had suffered extreme financial crises for many years. The current Administration is to be commended for its admirable work in bringing the City out of fiscal emergency and at the same time providing increased services to its citizens. The Mayor in particular has been a leading figure in achieving these results.

There is also little question that the Dispatch Unit of the Police Department is woefully underpaid. As pointed out by the Union, the wage of this unit is more than 30% below the lowest wage paid other dispatchers in twenty four (24) other jurisdictions in the County. While the current dispatcher bargaining unit is new, the City did have a dispatcher unit organized by the OBPA, which was disbanded in 2003. The evidence shows the wages paid the dispatchers in 2003 is the same rate currently paid the FOP Dispatcher Unit.

Providing a recommendation to the parties in regard to wages in this case proves challenging for several reasons. First, the wage sought to be established is for the calendar year 2008, will be applied retroactively from a 2009 budget yet to be presented. When negotiations started in 2008 the economy was in somewhat stable condition. It is anything but that now. Secondly, while the City provided testimony concerning flat revenue projections, obligations to pay off prior deficits and rising costs, it did not provide any financial documentation, such as projected operations statements or balance sheets, to allow the Fact-Finder to put this information into fiscal perspective. And finally, the disparity of pay for these dispatchers is so wide the services they provide, which are essential to support the patrol officers specifically, and are essential to the public safety in general, must be carefully balanced with city's representations as to their ability, or inability, to pay.

The Parties began their negotiation on July 17, 2008 and continued on July 21 & 31; August 12; November 11; and December 8. While many issues were resolved, the economic issues were not. The City provided its non-employees with 2% increases in 2008 and indicated that it "budgeted" 2% increases for this unit. Since current financial information is relied upon by the City in regard to its ability to pay, only that information could be considered by the Fact-Finder.

Despite the City's forecast of a tight budget and the danger of slipping back into the status of fiscal emergency, the testimony did not demonstrate any specific picture of revenues and expenditures. Testimony indicates that revenues are projected between \$16 Million Dollars to \$19M Dollars and expenses are rising, as well as current obligations to pay off prior deficits, but that does not establish an accurate picture of the economic status of the City. There is no doubt that the City is struggling financially, but the level of increases sought by the Dispatchers needs to be considered in regard to the overall budget, which was not specifically presented.

Based upon the testimony presented, the Fact-Finder concludes that the Dispatcher Unit was "brought back" because it actually saved the City money. It is difficult, if not impossible, for patrol officers to be effective on the street without dispatchers. Prior to hiring new dispatchers, Police Officers were performing those duties. Those officers were paid not only a higher base rate, but were paid overtime, to accomplish the job now performed by the dispatchers. By hiring the new dispatchers, the job could be performed at a much reduced cost. Now that the dispatchers are back, they are entitled to compensation comparable to other public and private employees doing comparable work, within the Employer's ability to pay.

While the Dispatchers are paid far below other public and private employees doing comparable work within a comparable area, the increases sought by the Union for each level (4.8%, 10.7% and 14.9%) to bring them up to their counterparts in one year is unrealistic. Likewise, it is unrealistic for the City to propose a 2% increase. Such an increase does little to move the Dispatchers even to the next lowest level of other dispatchers in their area. I would agree with the Union representative that to keep the dispatchers at the proposed levels would do a disservice to the City. The City would be a training ground for dispatchers. The experienced

ones would very likely leave the jurisdiction once any opening is available in contiguous jurisdictions, all of which pay at least 30% more.

I am recommending a 5% increase for each of the Dispatcher levels. Such an increase will bring the entry level Dispatcher equal to least paid dispatcher in the comparable SERB Benchmark Report even though it is \$5,000 below the average pay. Such an increase will bring the top level Dispatcher within \$8,000 of the lowest paid dispatcher in the comparable SERB Benchmark Report and within \$13,400 of the average dispatcher in the comparable SERB Benchmark Report. Even at the top level, the increase will only amount to an annual increase of \$19,500, if all fourteen (14) Dispatchers were to be paid at this level. Even with the financial problems presented by the City, the Fact Finder does not find that there is an inability to pay this amount in light of the importance these employees have to the Police Department and the safety of the City. To recommend more at this time would not, however, be prudent.

RECOMMENDATION

It is recommended that ARTICLE 24, WAGES be increased by 5% over current wages for each of the three steps. Section 24.1 would provide a 2008 rate of \$13.49 for Dispatcher Class/AAA; \$13.79 for Dispatcher Class/AA; and \$14.08 for Dispatcher Class/A. The remainder of the language in Article 24 should remain the same.

3. **ARTICLE 28: SUPPLEMENTAL COMPENSATION, Section 28.1. L.E.A.D.S.**

Certification

The Union's Position

The Union is proposing a new provision that would entitle members of the bargaining unit who are L.E.A.D.S. certified to receive an additional Forty-Five Cents (\$0.45) per hour additional compensation. Since members of other bargaining units in the City receive additional pay for certifications, the Dispatchers should be entitled to additional pay if they receive this certification. This would only apply to the Dispatchers.

The City's Position

The City does not agree that there should be any additional pay for L.E.A.D.S. certification. All dispatchers are required to have L.E.A.D.S. certification as a qualification to hold the position of dispatcher.

Discussion, Findings and Recommendation

Since all dispatchers are required to be L.E.A.D.S. certified in order to perform their job, the proposal of the Union serves no useful purpose. Consideration of this is included in wages.

RECOMMENDATION

**It is recommended that ARTICLE 28: SUPPLEMENTAL
COMPENSATION be eliminated.**

4. ARTICLE 29: HEALTH, DENTAL AND LIFE INSURANCE, Section 29.4.

The Union's Position

In regard to a proposed dental plan, the Union proposes that each full-time employee eligible and desiring to participate in the City's dental service coverage would only be required to contribute, toward the premium charge, Fifteen Dollars (\$15.00) per month as to single person coverage and the sum of Forty-Two Dollars (\$42.00) per month as to family coverage. Because of the Dispatcher's low wage rate, they should have a cap on their dental insurance premium.

The City's Position

The City proposes that each full-time employee eligible and desiring to participate in the City's dental plan should pay the cost of the premium. The City offers dental and vision to all its employees at cost. The amounts set forth in the Union's proposal are the current amounts of the full premium. If these costs go up, then the employee should pay the increased cost.

Discussion, Findings and Recommendation

The City has negotiated a reasonable dental plan for its employees. Currently employees have a choice to participate in the dental program or opt out. If they participate, the current cost is reflected in the proposal of the Union. The City is proposing to increase the employee premium cost from current amounts, if they increase during the life of the Agreement. The facts indicate that other collective bargaining agreements recently negotiated by the City with other Unions, in particular the Patrol Unit, did not include a provision for such an increase. Based upon internal comparables, the Union's position should be adopted.

RECOMMENDATION

It is recommended that the proposal of the Union be adopted and that
ARTICLE 29: HEALTH, DENTAL AND LIFE INSURANCE, Section 29.4, read as
follows: “Each full-time employee eligible and desiring participation in the City's dental
service coverage shall be required to contribute, toward the premium charge, the
following: as to single person coverage the sum of Fifteen Dollars (\$15.00) per month
and as to family coverage the sum of Forty-Two Dollars (\$42.00) per month.”

5. ARTICLE 35: RESIDENCY

The Union’s Position

The Union proposes that Section 35.1 of Article 35 provide that “No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland.” This is the same language contained in other FOP contracts in the city and was the language in the prior OPBA contract the City negotiated with the Dispatch Unit at that time.

The City of East Cleveland is a compact city and the dispatchers who work in the city are well recognized. This situation increases the risk to these men and women who would or could be recognized by individuals that have been under the focus of the law. East Cleveland has one of the highest crime rates in the state and the likelihood that run-ins with individuals or their cohorts, who have fallen under the scrutiny of the law, could be a daily occurrence for the dispatchers and/or their family members. With the close proximity of shopping and retail in the city limits, the union believes that its members and their family would be exposed to these types

of encounters in the confined area of the city limits.

Most of the dispatchers would need to relocate, if the City required residency. The amount of suitable housing that is currently available in the City at the price the dispatchers could afford is minimal on their wage scale. The city housing market cannot even supply enough adequate housing should the city prevail in applying this issue citywide. The men and women of the Dispatch Unit consider the ability to live outside the city as one of the few perks they receive.

The City argues that its City Charter mandates residency and neither the Fact-Finder, nor the Union, has the legal ability to avoid the residency requirement. This is not true. O.R.C. Code 4117 can be read to indicate that a local charter with an exclusive residency provision would prevail over provisions in a collective bargaining agreement, but the City of East Cleveland's Charter allows for the City Council to waive the requirement through an appropriate vote.

The bargaining history of the parties has been to allow the union members to live in areas outside the city limits of The City of East Cleveland. They should continue to do so here.

The Union points out that the Ohio General Assembly enacted S.B. No. 82 in May 2006, *making residency requirements as a condition of employment invalid*. The Union supports the law. It is noted that this law was appealed in the local Appellate District of Ohio, in which the City of East Cleveland is located, and was determined by the Appellate District Court to be invalid and unconstitutional. As such, the current status of the law is that the cities in this jurisdiction have the legal authority to impose a residency requirement under their Home Rule authority. This decision has been appealed to the Ohio Supreme Court and is pending a decision.

The City's Position

The City objects to any elimination of the residency requirement. Its City Charter requires that all employees of the City of East Cleveland must, within six months of employment, become a bona fide resident of the City and shall remain such while employed by the City. Further, the Ohio Revised Code provides at Section 4117.10 that "...Laws pertaining to civil rights, affirmative actions, unemployment compensation workers' compensation, the retirement of public employees, and residency requirements ... prevail over conflicting provisions of agreements between employee organizations and public employers." By virtue of these provisions, the City cannot enter into a collective bargaining agreement that does not require residency.

Notwithstanding the legal side of the argument, the City is losing residents and it needs new residents to add to the quality of the city and pay city taxes. It is in the best interest of the City to require its employees to live where they work.

Discussion, Findings and Recommendation

Both the City and the Union have cogent arguments for and against imposing a residency requirement within the City limits. The Fact-Finder recommends that a residency requirement not be part of the proposed agreement for a variety of reasons. First, the prior bargaining history among the parties has not been to require residency. The other FOP collective bargaining agreements with the City do not require residency and the former agreements with the Dispatcher Unit (OPBA) did not require residency. The Residency Requirement in the City Charter has been in existence since 1996 and for these units the City Council has routinely voted to provide a waiver. It most recently did so with the Blue and Gold Police Officer contracts. While the

representative of the City indicated that it would be a violation of law to fail to require residency, such is not the case where the City Charter itself provides for a waiver. The Fact-Finder does not believe it to be in the best interest of the City to have different residency requirements for members of similar departments. If the police officers do not have a residency requirement, requiring the dispatchers to have one is demoralizing and counterproductive. Further, residency requirements for police officers often relate to response time. This is not applicable to dispatchers.

The state of the law concerning a city's right to require residency as a condition of employment is in legal limbo in the State of Ohio. The decision of the District Appellate Court of Ohio in which the City is located has been appealed to the Supreme Court of Ohio. Based upon the bargaining history among the parties, the internal comparisons of residency issues in other union contracts with the city and the state of the law in Ohio at the moment, there is no reason to recommend a residency requirement at this time.

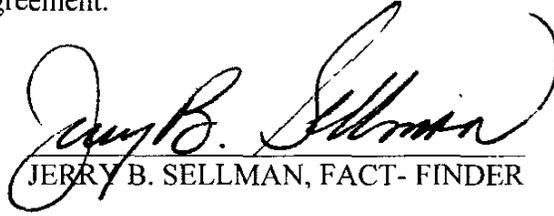
RECOMMENDATION

It is recommended that the Union's position be adopted and a residency requirement be omitted from the Agreement. It is recommended that ARTICLE 35: RESIDENCY, Section 35.1 read as follows: "No employee, as a condition of employment, shall be required to be a resident of the City of East Cleveland."

CONCLUSION

In conclusion, this Fact-Finder hereby submits the above referenced recommendations on the outstanding issues presented to him for his consideration. Further, the Fact-Finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

January 29, 2009


JERRY B. SELLMAN, FACT-FINDER

CERTIFICATE OF SERVICE

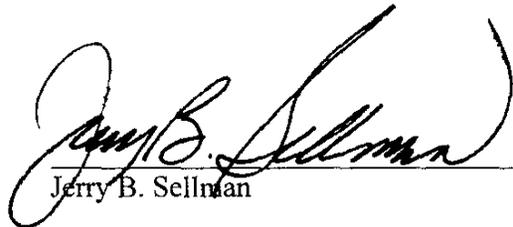
The undersigned certifies that a true copy of the Fact Finder's Report was sent by E-mail and First Class Mail on January 29, 2009 to:

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January 29, 2009

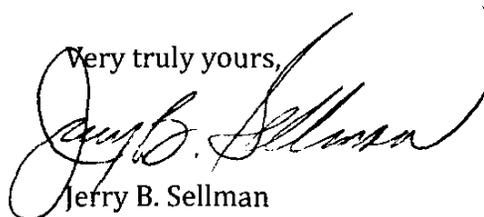
Mr. Edward E. Turner
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Re: FOP/OLC, Inc. and City of East Cleveland, Ohio
08-MED-05-0640

Dear Mr. Turner:

Enclosed herewith is the original of the Findings and Recommendations in the above-captioned case, which was issued as of today's date.

Very truly yours,



Jerry B. Sellman

cc: Otto Holm, Jr., FOP
Almeta A. Johnson, Esq., City of East Cleveland, Ohio