

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

STATE EMPLOYMENT  
RELATIONS BOARD

2009 JUL 16 P 12: 54

**IN THE MATTER OF** :  
**FACT FINDING BETWEEN** :  
 :  
**CITY OF HAMILTON;** :  
**PUBLIC EMPLOYER** : **REPORT OF THE**  
 : **FACT FINDER**  
**-AND-** :  
 :  
**FRATERNAL ORDER OF POLICE,** :  
**OHIO LABOR COUNCIL, INC.;** :  
**EMPLOYEE ASSOCIATION** :

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**SERB CASE NO.:** 09-MED-01-0024

**BARGAINING UNIT:** The Bargaining Unit consists of all full-time and part-time Corrections/Special Police Officers.

**FACT FINDING PROCEEDING:** May 28, 2009; Hamilton, Ohio

**FACT FINDER:** David W. Stanton, Esq.

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**APPEARANCES**

**FOR THE PUBLIC EMPLOYER:**

Timothy G. Werdmann, Assistant Law Director  
Daniel Schultz, Correction Manager  
Steve Poulemanos, Captain

**FOR THE UNION**

Tracy Rader, Staff Representative  
James Carpenter, Correction/Special  
Police Officer  
Steve Schmitz, Special Police  
Officer

## ADMINISTRATION

By correspondence from the State Employment Relations Board, Columbus, Ohio, 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 an initial Collective Bargaining Agreement proved unsuccessful. Through the course of administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties, the overall "atmosphere" relative to the prior negotiation efforts by and between them and learned that overall these Parties have enjoyed and will likely continue to enjoy, what can best be characterized as an amicable, yet achieved by incremental measures, collective bargaining relationship.

On May 28, 2009, a Fact Finding Proceeding was conducted wherein prior to the commencement of the presentation of evidence and supporting arguments, the Parties were offered Mediation with the assistance of the Fact Finder concerning those issues that remained at impasse. Through the course thereof, it became apparent that the Parties were indeed at a true impasse and the Mediation efforts offered by the Fact Finder proved unsuccessful. During the course of the Fact Finding Proceeding, however, there were certain items that were tentatively agreed to that will be referenced herein and recommended by the Parties to be included in that portion of the "tentative agreements" that were reached prior to the Fact Finder's involvement herein.

During the course of the Fact Finding Proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive

of positions advanced. The evidentiary record of the proceeding was subsequently closed at the conclusion of the Fact Finding Proceeding, and those issues that remain at impasse are the subject matter for the issuance of this report hereunder.

### **STATUTORY CRITERIA**

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

Ohio, herein after referred to as the “Employer” and the Fraternal Order of Police, Ohio Labor Council Inc., herein after referred to as the “Employee Association” and/or the “Union”. As the record demonstrates, the Parties have engaged in negotiation sessions on January 12; January 20; February 5; February 18; and February 24, 2009 prior to the determination that impasse existed and notified the undersigned that indeed a Fact Finding Proceeding was necessary to address the unresolved issues that remained. During the course of the administrative aspects of scheduling this matter, the Fact Finder proposed to the Parties to engage in Mediation efforts with the assistance of the Fact Finder, and the Parties were amenable to do so and such was indeed engaged in prior to the presentation of evidence relative to the Fact Finding Proceeding. Unfortunately, while certain issues were resolved and will be addressed herein as such, the impasse remained and thus the issuance of this Report containing “Recommendations and Rationale” in support thereof is issued for consideration by the Parties.

The Recognition Article contained in the initial Collective Bargaining Agreement contains language, provided by the Parties in the Pre-Hearing Statements received in accordance with those timelines recognized under the Administrative Code Rules, the Bargaining Unit certified on November 20, 2008, consists of all full-time and part-time employees in the classifications of Corrections Officers and Special Police Officers. Their responsibilities consist of performing security for the Hamilton Municipal Court; Desk Officer functions; and, including Booking Officer functions within the Police Division recognized within the City of Hamilton Ohio. Inasmuch as this represents a newly certified Bargaining Unit, there is no current Collective Bargaining Agreement or predecessor Collective Bargaining Agreement between these Parties.

During the course of the aforementioned negotiation sessions conducted by and between the Parties, they were able to reach tentative agreement relative to the following Articles that are recommended for consideration herein to remain as tentative agreements reached by and between the Parties and contained in the Collective Bargaining Agreement between them as follows:

- Article 1 – Agreement
- Article 2 – Recognition
- Article 3 – Dues Deduction, Fair Share Fee
- Article 4 – City’s Rights and Limitations
- Article 5 – FOP/OLC Business
- Article 6 – Discrimination
- Article 7 – Grievance Procedure
- Article 8 – Investigations and Discipline
- Article 9 – No Strike or Lockout
- Article 10 – Labor-Management Committee
- Article 11 – Layoff Procedures
- Article 12 – Probation
- Article 13 – Seniority
- Article 14 – Personnel Files
- Article 15 – Work Rules and General Orders
- Article 16 – Drug Screening
- Article 19 – Overtime
- Article 24 – Longevity
- Article 25 – Preferential Pay
- Article 27 – Vacation
- Article 28 – Uniforms
- Article 29 – Insurances
- Article 30 – Sick Leave
- Article 31 – Funeral Leave
- Article 32 – Military Leave
- Article 33 – Family and Medical Leave
- Article 34 – Unemployment Compensation
- Article 35 – Attendance Incentive

Based on this aspect of the statutory process, the Fact Finder 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 Proceeding, have relied upon comparable jurisdictions and/or municipalities concerning what they deemed “comparable work” provided by this Bargaining Unit. 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.

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

Moreover, it is important to note, based upon the statutory criteria that the Public Employer herein has not raised any “inability to pay” or financing arguments relative to its overall economic status. What it does contend is that it must act with extreme financial prudence relative to what economic enhancements that may be recommended and implemented, and based on those items of an economic nature previously agreed to

by the Parties, will bear a significant impact on its overall ability to fund any other type of financial enhancements recommended in this Report. The Fact Finder is indeed mindful of the apparent need of any City in this economic climate to engage in prudent financial endeavors including the funding for this Collective Bargaining Agreement for the Members of this Bargaining Unit.

As was previously identified, numerous Articles were tentatively agreed to during the course of negotiation sessions that were conducted prior to the undersigned's involvement in the statutory stage of fact finding and have been identified herein above. It is also recommended that those Articles that were not opened, or those previously agreed to by and between the Parties either during the course of those negotiation sessions or during what is characterized as "informal Mediation" that occurred prior to the Fact Finding proceeding, be transferred for inclusion into the Collective Bargaining Agreement either unchanged or modified by the Parties during those discussions.

The following issues remaining at impasse between these Parties are listed as follows and are subject to the recommendation herein:

**I. Article 17 – Employee Assistance Program**

**FOP POSITION:**

The FOP proposes for inclusion in the initial Collective Bargaining Agreement this Article which pertains to an Employee Assistance Program to provide counseling and/or referral services for employees experiencing personal issues which may have an adverse impact on their work performance. It seeks language that would (1) recognize the existence of said program; and, relative to referrals, that they be maintained confidentially.

**EMPLOYER POSITION:**

The Employer provided no proposal relative to the FOP's proposal to include this Article. It contends that such would have an adverse impact financially on the City, and any problems that arise, are addressed on an ad hoc basis to provide what is necessary for its Employees. It emphasizes that it currently does not have such a program, and certain items are recognized under the Standard Operating Procedures, and the Chief is very involved with respect to those issues that do arise for these Employees. It also emphasizes that it does or can provide counseling for alcohol and/or drug-related matters, and that the City's Insurance Plan would indeed cover such items. It contends that such is simply unnecessary for inclusion in the initial Collective Bargaining Agreement for the Parties.

**RECOMMENDATION AND RATIONALE**

It is hereby recommended that the Parties do indeed include in the initial Collective Bargaining Agreement Article 17 titled Employee Assistance Plan as set forth in the Union's hearing documentation. These plans are indeed very valuable with respect to those issues that may be of such a confidential nature that Employees simply do not wish to have even the Chief of Police or any other person within the Employer's realm to learn of and/or be party to the circumstances that gave rise to the need for counseling and/or certain treatment regiments of this nature. In this regard, the confidentiality aspect is indeed compelling and such programs are indeed recognized in most jurisdictions and provide a valuable asset for those Employees in need of such services. Therefore, it is recommended to be included in the initial Collective Bargaining Agreement between the Parties.

## II. Article 18 – Work Day and Work Period

During the course of the Fact Finding Proceeding, it was indicated to the Fact Finder that the Parties apparently had reached a tentative agreement relative to Sections 18.6 and 18.7, and that the crux of the impasse relative to this Article pertained to Section 18.4, titled, “Work Schedule”. As the record indicates the majority of Bargaining Unit Employees work a Monday through Friday schedule mirroring that of the Hamilton Municipal Court. Three Employees are assigned shifts at the Police Headquarters and work a full-time rotating five (5) days on and two (2) days off schedule. These Employees provide support to the Patrol functions/duties for the Police Division via the processing functions.

The proposed language addresses a work schedule for persons assigned to this rotating shift schedule as a straight 4/2 schedule wherein an Employee would work four (4) workdays followed by two (2) pass days. Much discussion ensued relative to this Article, and those issues, Sections of this Article, which remain at impasse, involve Sections 18.4 and 18.7 as proposed by the Union.

### **FOP POSITION:**

The Union emphasizes that this is indeed a workable provision given the fact that only three (3) employees are affected or would be affected by its inclusion. The Union also emphasized that if this language were indeed recommended, it would save the City money over the three-year period in which it would be applicable. It emphasized that the Department is currently down two (2) employees and the use of another Classification is not the answer. The Union emphasizes that this is a classification position now and these Employees use as such is not justified since the City pays a Police Officer more. These

Officers are recognized as a Police Officer 24/7 and fill in on days off where staffing vacancies exist.

**EMPLOYER POSITION:**

The Employer argues that this proposal simply is not workable and that scheduling is done to put the best possible individuals based on skill and qualifications in those positions where they are needed to maximize expertise and efficiency. The current practice keeps Police Officers on the street where they are needed most. To implement this language as proposed by the FOP would require Employees to receive more days off and result in additional staffing issues that can be avoided. It, too, emphasizes that only three (3) Bargaining Unit Members would be impacted and that such would not benefit the Bargaining Unit as a whole.

Moreover, it emphasizes the historical origin of these Employees assisting in the Police Division to allow it greater staffing flexibility to keep as many Police Officers on the streets to protect and serve this Community. Such would amount to a major change that simply is unwarranted with an initial Contract and given the current hiring freeze, the Union's proposal would result in more Police Officers on the desk positions than on the streets where they are needed most.

In this regard, it opposes inclusion of this language into the initial Collective Bargaining Agreement.

**RECOMMENDATION AND RATIONALE**

It is hereby recommended that the Parties do not adopt the language concerning Sections 18.4 concerning the 4/2 schedule as proposed by the FOP. There simply exists no compelling evidence to warrant the inclusion of this scheduling issue as it pertains to

Section 18.4 of Article 18 since as the testimony of record demonstrates it only affects three (3) of the fourteen (14) Officers within the Bargaining Unit. Moreover, such would significantly impact the staffing considerations of the Department at a time when numbers are down and a hiring freeze is in place. The compelling argument to keep trained Police Officers on the streets clearly overrides the impact this language would have on the staffing issues in the Police Division and on the three (3) Employees it would affect.

It is indeed worthy to note that qualified Police Officers, trained Police Officers ready and capable to protect and serve are of much better service to the Community if they are indeed on the streets performing those duties as opposed to performing desk functions or any other types of functions that this language may adversely affect. In this regard, there is simply no compelling basis for the inclusion of this language in the initial Collective Bargaining Agreement.

### **III. Article 20 – Wages**

#### **UNION POSITION:**

The Union seeks across-the-board wage increases of 3% for each year of the initial Collective Bargaining Agreement as set forth in its initial Pre-Hearing Statement. During the course of the Fact Finding Proceeding, it was noted that despite the Employer's assertions that economic hardship existed given the national economic climate that did not warrant any type of monetary increases, a 2.5% merit increase, under the City's "Merit Process" had been received by other Employees including members of the Bargaining Unit. The Union then altered its position to seek a 2.5% increase which would equate to the merit increases discussed instead of the 3% for each of the term of

the agreement. The Union emphasizes that the merit process warrants consideration of the increases it seeks. Moreover, the use of Police Officers to perform the functions of these Bargaining Unit Employees is not cost effective. It also emphasizes that the Police Officers' Collective Bargaining Agreement recognized a 4% increase in 2009 and a 3% increase in 2008 thus warranting the increases it currently seeks. The Police Officers' and Detectives' Collective Bargaining Agreement with the Fraternal Order of Police Lodge 38 recognized that increase as previously described, and based thereon, the Union seeks compensation similar to that.

**EMPLOYER POSITION:**

The Employer takes the position that a wage freeze that has been effectuated for all other Employees based on the Financial Director's forecast for the City's General Fund recognizes that certain revenue sources of property tax, income tax, business taxes, etc., have been reduced due to the economy and simply will not be available to augment the General Fund. It currently is in negotiations with the FOP Lodge and the IAFF wherein it contends it also is seeking concessions to get through the current economic situation that it is facing. It emphasizes, through its exhibits, the escalating unemployment rate, and the decreases in the income and property tax bases, both adversely affecting the General Fund. Property taxes are down given the large number of foreclosures adversely affecting property taxes thus adversely affecting its ability to realize and/or generate revenue.

It emphasizes the lost of business within the confines of the City and that in order to maintain and get through the 2009-2010 fiscal year, the General Fund budget has been slashed by 6.4%, it foresees 4.5 million in other cuts to balance the General Fund budget,

thus necessitating the wage freeze it proposes herein. It emphasizes that it will also seek a 0% increase for the Police Officers and the Fire Department. In May of 2009, the City is seeking to cut 10% of the General Fund and unless the economy improves it will likely be bankrupt by 2010. It also emphasizes it is looking to suspend all merit increases and that layoffs are not out of the question.

Overall, based on a cost of those enhancements being sought by this Bargaining Unit, it is simply not in a position based on the adversely impacted General Fund budget from which such items are funded, simply cannot absorb that which is being sought by the Union.

#### **RECOMMENDATION AND RATIONALE**

Indeed, the economic climate of this City, as well as those on a national stage, are subject to the same considerations that affect everyone in the economic climate facing this nation. Cities, Townships and Municipalities within the State of Ohio are no exception. The City indeed must act with financial prudence in discharging its responsibilities to the members of the community for services performed by and through the Police Department. The evidence of record does not indicate that the City is in any receivership situation or does not have any type of negative General Fund balance, simply that given the unemployment rate effecting the income tax, given the property foreclosures and limited, if any, new construction effecting the property tax revenues and other revenues generated by businesses that may have closed or reduced its number of employees, it nonetheless has not gotten to the stage that certain financial gains cannot be contemplated once the economy improves. This record indicates that despite the financial status the City characterizes, certain merit increases were apparently made and it has not

raised any “inability to pay” arguments at this time. While the undersigned is indeed mindful of the economic projections that have been articulated, this record lacks compelling evidence that certain, modest economic enhancements cannot exist or be financed by the City. It is based on these considerations contained in the Parties’ Pre-Hearing documentation; the evidence provided at the Fact Finding Hearing, concerning these unresolved issues and the impact of the financial economic issues that remain at impasse that drive the recommendation contained herein.

It is hereby recommended that the Parties’ initial Collective Bargaining Agreement in Article 20, titled “Wages,” contain language that would provide for a 2% increase for each of the three (3) years of the Collective Bargaining Agreement which is not inconsistent with that contained in the Police Officer Collective Bargaining Agreement for the duration noted relative to Wages contained therein. Moreover, it does not appear that such recommendation would put undue burden or provide a significant financial hardship to the City given its General Fund budget. Based thereon, it is hereby recommended for the three (3) years of the Parties’ agreement, that the Bargaining Unit members receive a 2% per year across-the-board Wage increase.

#### **IV. Article 21 – Court Time and Call In**

##### **UNION POSITION:**

The Union is seeking comp time similar to that contained in the Police Officer Collective Bargaining Agreement. The Parties recognize that Sections 21.1 – 21.4 are subject to tentative agreement leaving 21.5 relative to Court Time Conversion and 21.6 relative to Call-In containing the same language as the Police Officer Collective Bargaining Agreement. The Union emphasizes that inasmuch as Police Officers receive

this there is no reason not to follow the internal comparables and provide it for this Bargaining Unit as well.

**EMPLOYER POSITION:**

Simply stated, the Employer recognizes that this Bargaining Unit, which seeks to track that which is contained in the Police Officer Collective Bargaining Agreement as it pertains to Sections 21.5 and 21.6, all these hours equate to additional cost and adverse impact on its ability to fund/staff that which is being sought by the Union herein. These Employees currently receive a Court time benefit under the codified ordinances and Police Division Policies of the City. It emphasizes that these Employees provide support to the Police Division and assist in keeping Police Officers on the streets. To include this benefit would impact staffing when these Employees would be permitted more time off based thereon. Based thereon, it opposes any language that would add to its additional costs to fund the endeavors being sought by the Union of an economic basis pertaining to this Article addressing Court Time and Call-in Pay.

**RECOMMENDATION AND RATIONALE**

The Fact Finder is indeed mindful of the economic status that the City described and has relied upon in its presentation of evidence, and for sake of ease relative to how such matters are to be addressed, it is recommended that the Parties adopt Sections 21.5 and 21.6 as contained in the Union's Pre-Hearing Statement and accompanying documentation for inclusion in the initial Collective Bargaining Agreement. These items, in the opinion of the Fact Finder, would not equate to a significant cost and would not adversely impact the General Fund budget in such a profound way that consistency within the Units would not be achieved and thus benefit the City in consistent application

within the Police Division. Moreover, given the nature of the duties and tasks these Employee provide, it does not seem that such would arise as often as such would for a Police Officer, thus limiting the financial and staffing impacts concerning the City.

Based thereon, it is indeed recommended that the Parties adopt that contained in the Union's Pre-Hearing materials and accompanying documentation based on the internal comparable of the Police Officers Agreement, relative to Article 21, Sections 21.5 and 21.6, respectively.

It should also be noted and recommended for inclusion herein that during the course of the Fact Finding Proceeding, the Parties apparently recognized that Sections 21.1 – 21.4 are subject to tentative agreement. Such is recommended as such herein.

#### **V. Article 22 – Officer in Charge**

##### **UNION POSITION**

The Union seeks language that would provide that in the rare event a Bargaining Unit member is placed in the position of being the Officer In Charge, that he/she receive fifty cents (.50) per hour above the normal rate of pay in the event that that individual is in that position for more than one (1) hour consistent with the Police Officers' Agreement. It seeks the additional pay for that Officer in Charge compensation for those hours worked in that position over one (1) hour.

##### **EMPLOYER POSITION**

The Employer emphasizes that these Employees currently have no language for an Officer in Charge pay and that Bargaining Unit members do not get it, it does not arise that often, and that any additional pay relative thereto would be problematic. It notes there is but one (1) Supervisor a Bargaining Unit Member may replace and that such an

occurrence does not/would not arise that often. It recognizes that currently there must be some time in excess of the one-hour timeframe proposed by the Union to trigger said benefit, and it proposes that should it be recommended, it should occur after three (3) days in that position.

### **RECOMMENDATION AND RATIONALE**

When an Employee is placed in a position of authority, whether that be supervisory or managerial relative to duties and responsibilities, those Employees are expected to rise above their normal expectations/responsibilities in the workplace and perform those duties they would not otherwise perform and only arise in the absence of someone in charge that for whatever reason cannot discharge those duties. The benefit to the Employer is that it puts into that position an individual that is obviously recognized to be able to perform those functions in a satisfactory manner; otherwise they would not be selected to so serve. That comes with some benefit that should be recognized by the Employer in the sense that given the responsibilities bestowed upon that individual such is indeed worthy of some compensation relative thereto. In this regard, it is recommended that the fifty cents (.50) per hour pay increase be recognized, but only after four (4) hours of service in an Officer in Charge position. This is deviation from that contained in the Union's position, and recognizes that, indeed, there are instances where this may occur and, if such is as rare as suggested by the Employer and the Union, it would not have a significant financial impact on the General Fund as indicated. The language as proposed would remain the same except that where it indicates one (1) hour of pay that shall be increased to be triggered after four (4) hours in said position, and the hourly amount will be fifty cents (.50) per hour for all hours worked over four (4) hours.

## **VI. Article 23 – Training Officers**

### **UNION POSITION**

The Union seeks language that would pay Officers assigned by the Employer to be Training Officers to receive an additional fifty cents (.50) per hour during all hours they are in such an assignment. It emphasizes that there are liability issues and fifty cents (.50) per hour for training Officers is modest, but provides a huge benefit for the Employer and, therefore, it is indeed justified for inclusion herein.

### **EMPLOYER POSITION**

The Employer emphasizes that there is no language and that such is not routinely paid. If such were to be recommended it would represent an additional cost item albeit not a significant one, but nonetheless would provide an additional impact on its operating budget.

### **RECOMMENDATION AND RATIONALE**

Given the beneficial nature of the Employer's ability to utilize its own Employees to provide this type of training rather than have to hire outsiders to come in and provide such or similar training, it is indeed worthy of the fifty cents (.50) per hour for all hours of such training that these individuals called upon to so act would provide. The evidence of record demonstrates that the need for Training Officers does not arise that often, and the cost associated therewith would not have an adverse impact on the overall operating budget of this department or of the General Fund described by the Employer.

## **VII. Article 26 – Holidays**

### **UNION POSITION**

The Union couched this Article with the 4/2 work schedule language wherein if the 4/2 schedule were recommended, which it were not, it would forfeit the ten (10) holidays, shift differential and premium pay it seeks. It, however, seeks to have included that language contained in its Pre-Hearing Statement for this, as well as, the aforementioned Articles, in the event that the work schedule language is not recommended by the Fact Finder.

#### **EMPLOYER POSITION**

The Employer, as emphasized in discussion concerning work schedules, particularly the 4/2 work schedule that it vehemently opposes, recognizes that in the event that the 4/2 work schedule is not recommended then it would not oppose inclusion of the Holidays Article as proposed by the Union. It notes that the *status quo* is 2.5 times the pay for “premium holidays” as the *status quo* versus three (3) times the regular rate of pay being sought by the Union.

#### **RECOMMENDATION AND RATIONALE**

Based on the aforementioned recommendation concerning the 4/2 work schedule language sought by the Union that the undersigned did not recommend based on the explanation provided herein and above, it is hereby recommended that the Parties adopt the Union’s proposals relative to Article 26, titled “Holidays” based on the similarities with the Police Officers’ Collective Bargaining Agreement, and in consideration of that referenced by the Employer relative to its position concerning the 4/2 work schedule proposal made by the Union.

### **VIII. Article 36 – Retirement Planning**

#### **UNION POSITION**

The Union is seeking inclusion of this language to allow Employees to go to Columbus, Ohio to apply for and address any and all retirement issues that may occur for the purposes of planning for retirement from the Police Division. Such would be a compensated day and the makeup of the Collective Bargaining Unit is such that this would represent a future benefit since the majority of the Bargaining Unit is not close to retirement.

#### **EMPLOYER POSITION**

The Employer, during the course of the Fact Finding Proceeding, indicated that it is not opposed to the inclusion of this language and indicated that it would stipulate to it as a tentative agreement.

#### **RECOMMENDATION AND RATIONALE**

Based on the Employer's indication that it would stipulate to the tentative agreement relative to the Union's language contained in Article 36, titled "Retirement Planning", it is hereby recommended for inclusion in the initial Collective Bargaining Agreement to be set forth in accordance with the language contained in Article 36 Section 36.1 concerning retirement planning as gleaned from the Union's Pre-hearing documentation.

#### **IX. Article 37 – Duration of Agreement**

##### **UNION POSITION**

The Union contends that retroactivity is the only issue relative to this Article in that any economic benefits be retroactive to January 1 versus the date of ratification as sought by the Employer. It insists that there is simply no evidence that would suggest that either Party has engaged in any conduct that would unduly delay the negotiations

leading up to the Fact Finding Process and as such it seeks retroactivity to January 1, 2009.

### **EMPLOYER POSITION**

The Employer emphasizes that it in no way “drug its feet” as tacitly suggested by the Union, and any delays that may have occurred were simply not intentional. It emphasizes that this is the first Collective Bargaining Agreement between the Parties, and there were indeed problems relative to scheduling and other issues concerning the language that was worked through by the Parties. Based thereon, it also contends that any recommendation making the Contract retroactive would provide extreme difficulty in administering those provisions at this juncture.

### **RECOMMENDATION AND RATIONALE**

Given the evidentiary record and the positions taken by each Party, there is no evidence to suggest that either Party engaged in any deliberate dilatory act that would result in an undue delay or hardship being placed upon either Party. Moreover, absent such, the Employees that stand to benefit from retroactivity should not be penalized. The Fact Finder recognizes that certain language issues may be somewhat problematic in their application after-the-fact, but absent some compelling evidence to suggest that either Party engaged in any activity that would unduly burden, delay or provide a hardship for the other side, a recommendation for retroactivity is appropriate. Therefore, it is recommended that the Collective Bargaining Agreement become effective January 1, 2009 and remain in effect for the duration of three (3) years and terminate at midnight December 31, 2011. The language as contained in the Union’s Pre-Hearing Statement titled Article 37, “Duration of Agreement”, Section 37.1 titled "Duration of Agreement"

shall be recommended for inclusion in the Parties' initial Collective Bargaining Agreement.

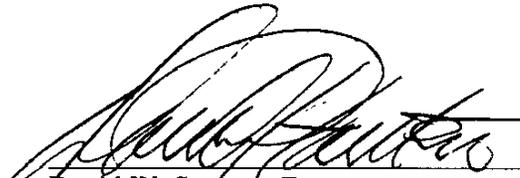
#### **ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN**

Moreover, 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, shall be subject to the recommendation that the *status quo* relative to whatever policy, practice or procedure that may exist relative to this being an initial Collective Bargaining Agreement be maintained for consideration in the Collective Bargaining Agreement ratified and implemented by these Parties.

#### **CONCLUSION**

It is hopeful that the recommendations contained herein can be deemed as reasonable in light of the data presented; the representations made by the Parties; and, as based on the common interest of both entities recognizing the painstaking efforts at the bargaining table resulting in many tentative agreements being reached. It is also hopeful that the Parties can adopt the recommendations contained herein so that this initial Collective Bargaining Agreement can be ratified and this relationship can continue to prosper and 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 this aspect of the statutory process; those tentative agreements reached by and between them; any stipulations of these Parties that occurred during the course of the Fact Finding Proceeding; the positions indicated to the Fact Finder during the course of the informal Mediation that ensued; that articulated during the course of the Fact Finding

Hearing; and, that which are made herein based on the mutual interests and concerns of each Party to this initial agreement.

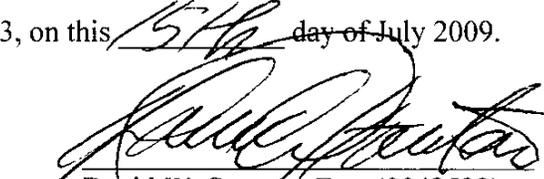


David W. Stanton, Esq.  
Factfinder

Dated: July 15, 2009  
Cincinnati, Ohio

**Certificate of Service**

The undersigned certifies that a true copy of the forgoing Fact Finding Report and Recommendations has been forwarded by overnight U.S. Mail to Timothy G. Werdmann, Esq., Assistant Law Director, City of Hamilton, 345 High Street, Suite 710, Hamilton, Ohio 45011; Tracy Rader, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215-4611; and, to Edward Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 15<sup>th</sup> day of July 2009.



David W. Stanton, Esq. (0042532)  
Factfinder

**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

July 15, 2009

Tracy Rader  
Staff Representative  
FOP, Ohio Labor Council, Inc.  
222 E. Town Street  
Columbus, OH 43215

Timothy G. Werdmann, Esq.  
Assistant Law Director  
City of Hamilton  
345 High Street, Suite 710  
Hamilton, OH 45011

Edward E. Turner, Administrator  
Bureau Of Mediation  
State Employment Relations Board  
65 East State Street, 12th Floor  
Columbus, OH 43215-4213

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RELATIONS BOARD  
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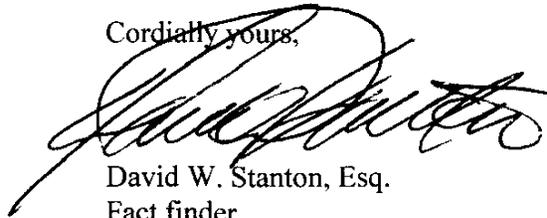
**SERB CASE NO. 09-MED-01-0024**  
**CITY OF HAMILTON -AND- FOP, OHIO LABOR COUNCIL, INC.**  
**FACTFINDING**

Ms. Rader & Gentlemen,

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

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

Cordially yours,



David W. Stanton, Esq.  
Fact finder

DWS/lp.  
Encs.

cc: Catherine Brockman (w/encs.)

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