



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

October 21, 2009

Barry L. Gray
Staff Representative
FOP, Ohio Labor Council, Inc.
5752 Cheviot Road, Suite D
Cincinnati, OH 45247

Daniel G. Rosenthal, Esq.
Denlinger, Rosenthal & Greenberg, LPA
425 Walnut Street, Suite 2300
Cincinnati, OH 45202-3440

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

STATE EMPLOYMENT
RELATIONS BOARD
2009 OCT 22 A 11: 25

SERB CASE NO. 09-MED-03-0316
CITY OF SIDNEY -AND- FOP, OHIO LABOR COUNCIL, INC.
FACTFINDING
COMMUNICATIONS TECHNICIANS (DISPATCHERS)

Gentlemen & Ms. Brockman,

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 A. Brockman (w/encs.)
Vickie Allen (w/encs.)

7.

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

STATE EMPLOYMENT
RELATIONS BOARD

2009 OCT 22 A 11: 25

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

SERB CASE NO.: 09-MED-03-0316

BARGAINING UNIT: The Bargaining Unit consists of all full-time Communication Technicians, otherwise known as Dispatchers.

MEDIATION SESSION: September 21, 2009; Sidney, Ohio

FACT FINDING HEARING: September 28, 2009; Sidney, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER

Daniel G. Rosenthal, Attorney
Rod Austin, Captain
Vickie Allen, Human Resources Manager
Ginger Adams, Finance Officer
Mike Lundy, Captain
Kevin Gessler, Sr., Police Chief
Tom Judy, Asst. City Manager

FOR THE UNION

Barry L. Gray, Staff Representative
Lynnette K. Brown, Dispatcher
Rachel Ranley, Dispatcher
Melissa Lange, Dispatcher

ADMINISTRATION

By correspondence dated June 3, 2009 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 a successor Collective Bargaining Agreement proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties, the overall “atmosphere” relative to prior negotiation efforts by and between them and learned that overall these Parties have enjoyed, and will likely will continue to enjoy, what can be best characterized as an amicable, yet one achieved by incremental measures, collective-bargaining relationship.

On September 21, 2009, 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 unfortunately, after a lengthy session, the Parties remained at impasse.

On September 28, 2009, the Fact Finding proceeding 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, and those issues that remain at impasse are the subject matter for the issuance of this Report with recommendations based in 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 a 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 a successor Collective Bargaining Agreement between the City of Sidney, Ohio and its Police Department, hereinafter referred to the "City" and/or the "Employer," and those Employees that serve as full-time "Communication Technicians" or "Dispatchers" who are represented by the Fraternal Order of Police, Ohio Labor Council, Inc.,

hereinafter referred to as the “Employee Association” and/or the “Union”. As the record demonstrates, the Parties have engaged in negotiation sessions on April 21; April 30; May 7; May 14; and May 21, 2009 prior to the determination that impasse existed, and notified the State Employment Relations Board to initiate the process under 4117. The undersigned was appointed effective June 3, 2009 to serve as Factfinder to preside over the Finding Hearing that became 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 his assistance, and the Parties were amenable to do so, and such was engaged in prior to the presentation of evidence through the Fact Finding proceeding. Mediation efforts occurred on September 21, 2009, and after a lengthy session, it became evident that the Parties were simply unable to deviate from those positions that were ultimately presented. A Fact Finding proceeding was scheduled for September 28th and commenced forthright with the presentation of evidence. Prior thereto, the undersigned again offered to assist the Parties in continuing the Mediation efforts, and despite the positions articulated, the Parties indicated that they were indeed ready to proceed with the presentation of evidence. It is evident that the Parties made great strides without the undersigned’s participation and assistance. Numerous items remained unopened during the course of the negotiation sessions and are recommended for inclusion in the successor Agreement as such. Those issues that remain at impasse are the subject matter for the issuance of this Report containing “recommendations and rationale” in support thereof, and is issued for consideration by the Parties.

As the record demonstrates, the Communications Technicians' Bargaining Unit, or otherwise known in the public sector as "Dispatchers", was certified by the State Employment Relations Board in Case #97REP-01-0015 wherein all full-time Communication Technicians within the Sidney Police Department are represented by the Fraternal Order of Police, Ohio Labor Council, Inc., but excluded Civilian Parking Meter Attendants, Civilian Clerical Employees, Confidential Employees, management-level Employees, Police Officers below the rank of Sergeant, Sergeants and Officers of higher rank, and all other Supervisors as defined in Chapter 4117 of the Ohio Revised Code. As the record demonstrates, this Bargaining Unit consists of nine (9) full-time employees. The responsibilities of this Bargaining Unit include the receiving of 911 and other emergency-type calls and the dispatching of appropriate Police Department personnel to respective locations to address that which served as the subject matter of those communications. This represents what can be characterized as an "established" collective bargaining relationship between these Parties.

During the course of the Mediation session and Fact Finding Hearing, the Parties were able to reach tentative agreement on certain components of certain Articles and such will be recognized as such herein. The following Articles were unopened during negotiations, and as such remain unchanged for inclusion in the successor agreement between the Parties as follows:

- Article 1 – Recognition
- Article 2 – Cooperation
- Article 3 – Management Rights
- Article 4 – No Strike/No Lockout
- Article 5 – Union Business
- Article 6 – Grievance and Arbitration
- Article 7 – Effect of Laws
- Article 8 – Waiver

Article 9 – Leaves of Absence
Article 10 – Health and Safety
Article 11 – No Discrimination
Article 12 – Dues Deduction
Article 16 – Vacation
Article 18 – Personal Leave
Article 19 – Sick Leave
Article 21 – Workers’ Compensation
Article 22 – Other Benefits
Article 23 – Probationary Period
Article 25 – Shift Selection
Article 26 – Drug and Alcohol Policy
Article 27 – Labor Management Committee
Article 28 – Corrective Action

Moreover, the following Articles that were not opened and are subject to impasse are set forth as follows:

Article 13 – Wages
Article 14 – Overtime Compensation
Article 15 – Longevity Pay
Article 17 – Holidays
Article 19 – Sick Leave
Article 20 – Insurance
Article 24 – Separation from Service (Layoff and Recall)
Article 29 – Duration
New Article – Seniority

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 this statutory process; and, the supporting documentation provided at the Fact Finding Hearing, have relied upon comparable jurisdictions and/or municipalities concerning what they deem “comparable work” and/or “comparable jurisdictions” provided by this Bargaining Unit. Moreover, the Parties also

relied upon what was recognized internally with respect to the other bargaining units that are recognized by the City of Sidney. 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.

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 and recognized as such by the Parties. Based thereon, the Union, who is seeking modifications, would have the burden of proof and persuasion in regards thereto. Moreover, where the Employer is seeking changes thereto, it bears the burden of proof and persuasion to compel the Fact Finder to make the recommendation that would recognize what each respective Party may be seeking relative to the mechanics of the language of those issues that remain at impasse.

As previously indicated, the Parties simply were unable to reach any tentative agreement relative to those Articles proposed for addition, deletion, or modification during the course of the negotiation sessions engaged in by these Parties. 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 tentative agreements that may not have been reached during

the course of negotiations as previously chronicled, but were, as indicated by the Fact Finder to the Parties, would be referred to as such in this Report. Moreover, it is recommended that those Articles that remained unchanged as previously identified be transferred for inclusion into the successor Collective Bargaining Agreement as agreed to by the Parties during those discussions, and/or have remained unchanged by them.

The following issues remaining at impasse between these Parties are listed as follows and are the subject matter for the recommendations contained herein.

I. Article 13 – Wages

UNION POSITION

The Union seeks a three-year wage package recognizing a 3% increase to the base rate with an effective date of June 21, 2009, for year 1; a 3% increase effective June 20, 2010 for year 2; and, a 3% increase to the base rate effective June 19, 2011 for year 3. It emphasizes that the County jurisdictions relied upon by the City are simply invalid given their respective population and logistics. Troy and Piqua are both geographically and logistically comparable and that the proposal as presented clearly represents that which would allow these Employees the ability to bring them into a more comparable comparison with other members of the Sidney Police Department. It insists that the function this Bargaining Unit performs is both vital and important relative to law enforcement and public safety, but emphasizes that this unit has fallen behind in wages and salary and deserves compensation which would allow this unit to progress upward with those other employees recognized within the Police Department. It emphasizes that the Federal Reserve Chairman has indicated that the recession in many ways is over, and that each City, including Sidney, has felt that which the recession brought. It emphasizes

that the comparables it has relied upon are within a forty (40) mile radius within Shelby County and 911 call center employees.

It emphasizes that within the Police Department the Patrol Officers received a 3% increase in 2009; AFSCME received a 3.25% increase for 2009; and, the IAFF received a 3.25% increase for 2009. Therefore, it is certainly not out of line with that which it seeks herein to at least raise these Employees to the Records Clerk level of the City.

EMPLOYER POSITION

The City contends that this Bargaining Unit, with respect to other Cities' Dispatch Units within approximately forty (40) miles of the City of Sidney and two nearby County Dispatch Units, demonstrate that the sum of base-pay, shift differential and longevity pay for each of the survey responses places this City's Dispatchers in fair comparison. The geographical proximity and the size of the surveyed cities are nearly identical to this City's. Given Shelby County's close geographical proximity, it is also a good comparison. Miami County serves the very comparable cities of Piqua and Troy as well as Tipp City. This Bargaining Unit is compensated significantly above the average among comparable Departments. The minimum Dispatcher pay exceeds survey average by over 14%. Its maximum pay exceeds the survey average by over 10.5%. The comparison to Shelby County Sherriff's Dispatchers working approximately one mile away indicates that this unit's Dispatchers fare even better. The minimum pay exceeds Shelby County Dispatchers by 42% or approximately \$10, 600 per year. Sidney's maximum pay exceeds Shelby County's maximum by approximately 20% or \$7,500 per year. Compared to the wages paid to Piqua and Troy Dispatchers via the combined

Miami County Dispatcher comparison, this Bargaining Unit's minimum pay is about 16% or nearly \$5,000 higher and the maximum pay is 19% or over \$7,500 higher.

The City proposes a three-year Agreement with annual increases of 3%, 2%, and 1.5% respectively, recognizing these Employees received a 1.5% increase for the first six (6) months of 2009 to be on the same "cycle" as other City Employees. Such would be effective upon the signing of the successor Agreement, and the subsequent years be effective with the first payroll on or after July 1.

RECOMMENDATION AND RATIONALE

Inasmuch as each Party has proposed a 3% increase for the first year of the successor Collective Bargaining Agreement, such is hereby recommended as being tentatively agreed to by and between the Parties.

With respect to the subsequent years, it appears, based on this evidentiary record that these employees do indeed receive, relative to other Dispatcher or Communication Technician Units in close proximity, a fair wage. There simply exists no evidence that any form of catch-up is warranted. Consistent with the internal comparables of both the Patrol and Supervisor Units, Patrol agreed to an increase of 2.75% for year 2 and the Supervisors agreed to share in the economic risk of the "sliding scale" proposed by the City based on that granted to non-bargaining unit Employees and accept the same increase that City Council would grant to non-Bargaining Unit employees which may be as little as zero and as high as 2.75%. The City, throughout this proceeding, emphasized the necessity to recognize financial prudence relative to what increases it effectuates for all City employees. The fact that the City is in a position to offer any type of monetary enhancements and/or improvements suggests that indeed the financial prudence it seeks

to continue has in fact been the manner in which this City has operated to allow it to even be in a position to recommend any type of increase. The amounts in question, 3% as sought by the Union versus 2% as offered by the City for the second year, in the opinion of the Fact Finder, is close and therefore, based on the internal comparables regarding other City employees, a recommendation of 2.5% is suggested. Such, truly does represent a middle-ground approach to that realized by other City Employees as well as the favorable standing this Unit enjoys compared to the similar jurisdictions as referenced.

Moreover, with respect to the third year of the Parties' Agreement, all indicators suggest that the likelihood that this recession the country is currently enmeshed in will likely be on the downturn with positive signs of economic recovery on the horizon. It is much easier to forecast that which will occur two years from now as opposed to what the current year circumstances dictate while also recognizing the obligation to fund any increase in uncertain times. It is clear that in the midst of this recessionary economic condition, this City is able to propose and put forth a 3% increase with modest, yet positive increases suggested for years two and three, respectively. Based thereon, it is hereby recommended that the second and third year of the successor Collective Bargaining Agreement recognize a pay increase of 2.5% for year two and 2% effective for year three.

In the opinion of the Fact Finder, based on the comparables relied upon by the Parties, the budgetary concerns and emphasis being placed on financial prudence and the economic indicators as evident currently, it is more likely than not that the recessionary pattern will diminish and improve and a time for recovery will evolve. While I recognize

that indeed certain revenue sources have been adversely affected, they, too, will likely rebound with improved economic factors.

Any and all other positions relative to this Article are hereby dismissed and the *status quo* is recommended.

Moreover, despite the absence of a Waiver relative to Retroactivity, it is hereby recommended that the Parties make these financial enhancements effective retroactive to the date following the expiration date of the predecessor Collective Bargaining Agreement.

II. Article 14 – Overtime Compensation

CITY POSITION

The City emphasizes that the “hours worked” language contained in the Parties’ Agreement is not defined therein and proposes that it be defined as “compensable hours on the job plus paid vacation hours and paid personal leave hours”. Such would allow the counting of paid leave hours excluding sick leave toward the forty hour per week overtime threshold. The time worked in excess of the normal workday would not be considered for overtime unless such time is in excess of the forty-hour workweek. Such would create an overtime benefit that is in excess of the Fair Labor Standards Act requirements while still encouraging good attendance and conservation of sick leave.

UNION POSITION

The Union proposes that the *status quo* be maintained since the proposal, as suggested by the City, would place these Employees at a disadvantage when compared to the internal comparables of the Police Officers, Sergeants, Lieutenants, Firefighters, Fire Lieutenants and thirty-eight (38) other classifications covered by Collective Bargaining

Agreements which contain same or similar language to that in the current Collective Bargaining Agreement. Such it contends allows it to maintain its current stature with respect to this benefit.

RECOMMENDATION AND RATIONALE

It is hereby recommended the Parties maintain the *status quo* language relative to that recognized in the predecessor Collective Bargaining Agreement regarding this Article. The City's position as presented does not indicate any compelling basis to change that which apparently is recognized within the other divisions within the Police Department as well as other Collective Bargaining units recognized by the City. This indeed would place these Employees at a distinct disadvantage relative to the calculation and entitlement to overtime compensation by excluding sick leave within the forty-hour workweek overtime threshold consideration. As such, it is recommended that the Parties maintain the *status quo* relative thereto.

III. Article 15 – Longevity Pay

FOP POSITION

The FOP proposes to add language that would allow all Bargaining Unit members to receive Longevity Pay. It insists that this Bargaining Unit should be treated as a “unit”, and all unit members expect to be eligible for the same benefit package. Approximately half of the Bargaining Unit receives Longevity Pay as an incentive for, or in recognition of, continued service to the City while the other half has no incentive or recognition in place. It emphasizes that the Fact Finder take into consideration the internal comparables of the Firefighters and the Fire Lieutenants who receive such consideration. It insists that the current status relative to Longevity provides separation

among Bargaining Unit members. In its supporting documentation, it has relied upon internal comparables in support of this benefit. Currently, those hired after January 1, 1998 are not eligible for Longevity Pay - four (4) of the nine (9) Bargaining Unit members do not receive Longevity Pay whereas five (5) thereof do.

CITY POSITION

The City recognizes that Longevity Pay was “negotiated out” of the Parties’ Collective Bargaining Agreement more than a decade ago. Those on the payroll as of December 31, 1997 were grandfathered to receive Longevity Pay, while those hired after January 1, 1998 are not. Non-represented City employees and employees of the AFSCME *Union* no longer receive Longevity Pay either. The uniformed Police and Fire personnel still receive Longevity Pay as such is considered the “norm” for uniformed Safety forces. Less than half of the surveyed Dispatch Departments receive Longevity Pay. Of those that do, that pay is minimal compared to the Union’s proposed Longevity Pay benefit of up to 5% of Base Wages. Even if that is factored in, this Unit’s base pay still far exceeds the comparables. Reinstatement of this benefit previously bargained away is unwarranted and excessive.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties maintain the *status quo* relative to Longevity Pay. Given the small number in this Bargaining Unit - nine - four do not currently receive Longevity Pay. The Parties were unclear as to the basis for the decision to remove the consideration of Longevity Pay for all Bargaining Unit employees that occurred more than ten years prior. Nonetheless, the Parties engaged in Collective Bargaining efforts that culminated in the exclusion of Longevity Pay for those employees

hired after January 1, 1998. Given the small number that do not receive it, representing less than a majority, and no compelling evidence for its inclusion in this successor Collective Bargaining Agreement, given the current economic conditions relative to the recession that currently exists, the City's overall budgetary concerns and constraints, the loss of tax-based revenue from the General Fund, an additional cost equating to approximately 5% of the base wages for such a benefit is simply unwarranted. As such, it is hereby recommended that the Parties do not adopt the Union's proposal to revive across the board the Longevity Pay benefits for those who currently do not enjoy it.

This is not to suggest that such will never be an appropriate addition; simply given the overall current economic climate, such is not financially prudent at this juncture.

IV. Article 17 – Holiday Pay

UNION POSITION

The Union requests that all Bargaining Unit members receive Holiday Pay at a rate of 1 ½ times their base wage plus one day's wage for all Holidays granted in Article 17. It insists that these employees should receive additional compensation on those recognized Holidays when they are required to work and are unable to spend time with their families to attend organizational functions.

CITY PROPOSAL

The City proposes to maintain the *status quo* relative to this proposal by the Union, which as it argues represents a new overtime pay of time and one-half hours for all hours worked on a Holiday. Such, it contends, would be equivalent to 1.3% increase on the base wage of the average Dispatcher. It recognizes that all City employees

currently receive the same type of structure relative to payment for Holidays that are worked, and they should not be treated any differently.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties maintain the *status quo* with respect to the manner in which employees receive pay for Holidays worked. The record demonstrates that City shift workers including Patrol and Police Supervisors within the Police Department receive straight time for hours worked on a Holiday in addition to eight (8) hours of Holiday Pay, or the equivalent of two times the base rate for work on the Holiday. A Dispatcher who works a Holiday that is not part of the regular scheduled workweek is paid at the rate of two-and-one-half times the base wage plus the eight hours Holiday Pay. The addition of this new time and one-half pay type would equate to a 1.3% increase based on the calculations provided and the exhibit submitted by the City, and the lack of any compelling evidence to warrant its inclusion otherwise is simply not supported by this evidentiary record.

Additionally, it is hereby recommended, relative to the actual Holidays recognized in this Article, that the Parties remove from the list of recognized Holidays “Good Friday” and insert the “Easter Sunday” Holiday for consideration.

V. Article 19 – Sick Leave

As was discussed during the course of the Mediation Session and the Fact Finding Hearing, the City’s proposal to change “pay year” instead of “calendar year” and such beginning of the first day of the pay period covered by the first payroll of the year is not opposed by the Union. As such, it is hereby recommended that such be viewed as a

tentative agreement relative to this language since the Union does not oppose that being proposed by the City relative to this Article.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties, via the tentative agreement seemingly reached, incorporate that language contained in the City's proposal relative to this Article.

VI. Article 20 – Insurance

As indicated during the course of the Fact Finding proceeding, the initial issue relative to the Insurance Article concerns the reduction of the dependant age from 25 to 24. During the course of the Fact Finding proceeding, it was learned that the insurance carrier the City contracts with no longer wished to pursue that position and reversed back to the original age of 25 for dependent coverage. As such, the City went on record and withdrew its proposal.

RECOMMENDATION AND RATIONALE

Recognizing the City has withdrawn its proposal relative to this Article, it will not be subject to consideration in this Report.

VII. Article 24 – Separation from Service (Layoff and Recall)

UNION POSITION

The Union seeks to obtain language consistent with that in the Police Officers Collective Bargaining Agreement, the Sergeants, and Lieutenants Agreements of the City's Police Department. Those Agreements provide for layoff and recall procedures by seniority. The current Collective Bargaining Agreement calls for "service ratings" as the determining factor in consideration of layoffs, and given the nature thereof, it would be

consistent and uniform to provide the same basis for layoffs as do other members within the Police division.

CITY PROPOSAL

The City recognizes that the Parties' current Collective Bargaining Agreement, the Agreement of AFSCME and the codified ordinances for non-Union employees, base the layoff of individuals on an Employee's relative performance rating. The City emphasizes that when a layoff is necessary, it is imperative that it maintain the best qualified individuals, regardless of seniority, that would best serve the City's need to discharge its services to the community. It is imperative that those Employees remain efficient and effective, and seniority simply does not measure those qualities in some circumstances. For this reason, it requests that the *status quo* be maintained.

RECOMMENDATION AND RATIONALE

A. It is commonplace to have a layoff and recall procedure which takes into consideration certain basic factors that, in many regards, are objective in nature. One such factor is that of seniority. It is indeed objective to determine the start date of an Employee relative to when their tenure with an Employer begins. This particular Bargaining Unit consists of nine (9) individuals who perform the functions of Communication Technicians, also recognized as Dispatchers, who receive emergency calls, dispatch units to those calls in areas within the community that are in need of whatever services that are determined. There simply does not exist, in the Fact Finder's opinion, a large distinction between the abilities of an Employee to receive a call of this nature and dispatch the appropriate units to the site of whatever emergency that may exist. Performance is indeed a factor, but not necessarily the only/controlling factor.

Consideration of one's seniority must also play a role and having a procedure in place is beneficial to not only allow employees an opportunity to systematically return from a layoff, but also providing a uniform administrative means to address it.

Moreover, throughout this process the central theme is seemingly that of uniformity. It is indeed beneficial to recognize and apply a uniform contractual process that affords consideration of objective standards when issues regarding layoff and recall arise. Generally, Employees are not retained and thereby do not accrue Seniority if they experience job performance issues. In most cases more senior Employees are those who exhibit the better qualifications and skill sets to perform a certain job and are thereby retained. Dispatchers are generally aligned within the Police Department and where appropriate, should be recognized as an integral component thereof. The record indicates that the Police Officers recognize that which this Unit is seeking. To incorporate that procedure herein would afford the City the benefit of uniformity and consistency of application of this type of process when these issues arise.

In this regard, it is recommended that a procedure be implemented that is consistent with other Employees within the Police Department which would provide uniformity for the City when, in the unfortunate event, a layoff must occur. While seniority may not be the only factor, it can certainly be the factor in determining the order of layoff and recall in the event qualifications are deemed equal. In this regard, it is recommended that the Parties adopt the Union's proposal relative to incorporating a layoff and recall procedure that not only recognizes seniority, but also takes into consideration one's qualifications, skill and experience - in other words, a hybrid seniority-type provision relative to layoff and recall rights. Such as that discussed during

the course of the Fact Finding proceeding is seemingly consistent with a recommendation of this nature and is recommended that the Parties adopt that which was identified during the course of the Mediation and Fact Finding proceedings consistent with that contained in the Police contracts. Such would seemingly establish uniformity with respect to layoff and recall rights.

B. As the record demonstrates, the definition of seniority should be recommended to be consistent with those instances when seniority is applicable and regarding those instances in which a break in seniority would exist. That would include the resignation from employment, the failure to report to work upon recall from layoff or a three-day no-call, no-show as such reasons seniority would be lost. Such are generally seen in Collective Bargaining Agreements in virtually every sector of employment.

Based thereon, that language contained in the City's counter proposal should be incorporated with that the Union is seeking to gain relative to a procedure to be tied to the definition of seniority while also including those instances when seniority is broken or terminated.

VIII. Article 29 – Duration

The Parties are in agreement relative to the Agreement being of three (3) years duration. The issue relative to the effective date thereof and consequently retroactivity is in dispute.

CITY POSITION

The City, while recognizing that a three-year Agreement in essence is fundamentally acceptable, it seeks to have the economic components effective upon the signing and ratification.

UNION POSITION

The Union seeks a three-year Agreement but also requests that such be retroactive to the first day following the expiration date of the predecessor Agreement.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties' successor Agreement be of three (3) years duration effective the day following the expiration of the predecessor Agreement and that the Bargaining Unit members receive retroactivity relative to the economic issues set forth therein.

Moreover, it is also recommended that those items that remained unchanged that may have an economic impact also be subject to retroactivity relative to this Report.

There is no indication that either Party has engaged in conduct that would constitute a basis to not recommend retroactivity. Each has demonstrated good faith attempts to negotiate with the other relative to seeking agreement on those issues that remain at impasse. Consequently, absent a showing of abuse of this process that would compel, perhaps, a recommendation that retroactivity not be allowed, then a recommendation for its inclusion is indeed appropriate.

IX. Articles Not Specifically Addressed Herein

It is recommended that those issues, if any, not subject to 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, or might have existed prior to the Parties' attempts to enter a successor Collective Bargaining Agreement, be maintained for consideration in the successor 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 representations made by the Parties; and, that based on the common interests of both entities recognizing the painstaking efforts at the bargaining table. While no tentative agreements were reached during those negotiation sessions, each Party was willing to engage in bargaining to reach a successor Agreement. It is hopeful that the Parties can adopt the recommendations contained herein so that the successor Collective Bargaining Agreement can be ratified, and this relationship can continue 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 Mediation, as well as, 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 Fact Finder and during the course of the Fact Finding proceeding; the positions indicated to the Fact Finder during the course thereof; and that which were made based on the mutual interests and concerns of each Party to this successor Agreement.

David W. Stanton

David W. Stanton, Esq.
Fact Finder

Dated: October 21, 2009
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been forwarded by both e-mail transmission and overnight U.S. Mail service to Daniel G. Rosenthal, Esq., Denlinger, Rosenthal & Greenberg, 425 Walnut Street, Suite 2300, Cincinnati, Ohio 45202-3918; Barry L. Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247; and, to Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 21st day of October 2009.

David W. Stanton

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