

**HAND DELIVERED**

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING : SERB Case Number: 09-MED-12-1441  
: :  
BETWEEN THE : :  
: :  
MIAMI TOWNSHIP BOARD OF TRUSTEES, :  
MONTGOMERY COUNTY, OHIO, :  
: :  
Employer : Date of Fact-Finding Hearing:  
: October 15, 2010  
: :  
AND THE : :  
: :  
FRATERNAL ORDER OF POLICE, :  
OHIO LABOR COUNCIL, INC., :  
: :  
Union : Howard D. Silver  
: Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Fraternal Order of Police, Ohio Labor Council, Inc., Union

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Fraternal Order of Police, Ohio Labor Council, Inc.  
222 East Town Street  
Columbus, Ohio 43215-4611

For: Miami Township Board of Trustees, Montgomery County,  
Ohio, Employer

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STATE EMPLOYMENT  
RELATIONS BOARD  
2010 NOV 15 A 8:31

This matter came on for fact-finding hearing at 9:00 a.m. on October 15, 2010 within the offices of the Miami Township Police Department at 2660 Lyons Road, Miamisburg, Ohio in Montgomery County. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The fact-finding hearing concluded at 8:30 p.m. on October 15, 2010.

The fact-finding hearing that occurred on October 15, 2010 was preceded by nine bargaining sessions between the parties from February 22, 2010 through June 21, 2010 during which a number of Articles were tentatively agreed for inclusion in the parties' successor Agreement. These bargaining sessions were followed by mediation sessions on September 8, 2010 and September 21, 2010 during which additional Articles were tentatively agreed for inclusion in the parties' successor Agreement.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board, including Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations in filing with the fact finder and the other party the pre-hearing information required by Ohio Revised Code section 4117.14(C)(3)(a) and Ohio Administrative Code section 4117-9-05(F). The latest collective bargaining agreement in effect between the parties was originally agreed to be in effect from March 1, 2007 through February 28, 2010.

RECOMMENDATION OF ALL UNOPENED AND TENTATIVELY AGREED ARTICLES

The fact finder recommends that the parties include in their successor collective bargaining agreement all of the Articles in the parties' most recent collective bargaining agreement that remained unopened during the parties' bargaining of their successor Agreement. The fact finder recommends that the language of these unopened Articles be included in the parties' successor Agreement unchanged. The Articles not opened by the parties during bargaining are:

Article XII - Probationary Period

Article XXXIII - Drug and Alcohol Testing

The fact finder recommends that all of the Articles tentatively agreed by the parties for inclusion in the parties' successor Agreement be included in the parties' successor collective bargaining agreement. The Articles tentatively agreed by the parties to be included in the parties' successor Agreement are:

Preamble - Page one of collective bargaining agreement,  
change of date from March 1, 2007 to March 1,  
2010.

Article I - General Provisions

Article II - Recognition and Coverage

Article III - Union Membership

Article VI - Representation

Article VIII - Grievances  
Article IX - No Strike/No Lockout  
Article X - Personnel Files  
Article XI - Performance Evaluation  
Article XV - Seniority  
Article XVII - Job Vacancies  
Article XIX - Sick Leave  
Article XX - Injury Leave  
Article XXI - Funeral Leave  
Article XXII - Military and Family Medical Leave  
Article XXIII - Health and Safety  
Article XXIV - Uniforms and Equipment  
Article XXV - Bulletin Boards  
Article XXVI - Jury Duty and Court Appearance  
Article XXIX - Non-Discrimination  
Article XXX - Separability and Savings  
Article XXXII - Transfer of Personnel  
Appendix B - Pager Language  
Appendix C - Drug and Alcohol Testing Policy  
New Article - Labor Management Meeting  
New Article - Purchase of Service Weapon

#### UNRESOLVED ARTICLES

The Articles bargained by and mediated between the parties that remain unresolved are:

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Article IV - Management Rights  
Article V - Work Rules  
Article VII - Union Representation/Discipline and Hearing  
Article XIII - Hours of Work  
Article XIV - Subcontracting and Job Content  
Article XVI - Layoffs  
Article XVIII - Holidays, Personal Leave Days, Vacations  
Article XXVII - Health and Life Insurance  
Article XXVIII - Wages  
Article XXXI - Entire Agreement  
Article XXXIV - Duration  
Article XXXVI - Mid-Term Bargaining (new Article)

#### FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Miami Township Board of Trustees, Montgomery County, Ohio, the Employer, and the Fraternal Order of Police, Ohio Labor Council, Inc., the Union, engaged in bargaining about a successor collective bargaining agreement on February 22, 2010; March 3, 2010; March 29, 2010; April 20, 2010; April 29, 2010; May 17, 2010; June 1, 2010; June 14, 2010; and June 21, 2010.
2. The parties participated in a mediation process on September 8, 2010 and September 21, 2010.

3. The most recent collective bargaining agreement between the parties was effective March 1, 2007 through February 28, 2010.
4. This fact-finding process addresses a bargaining unit comprised of thirty full-time uniformed police officers below the rank of Sergeant employed within the Miami Township Police Department.
5. Miami Township, Montgomery County, Ohio is a public employer under Ohio Revised Code Chapter 4117.
6. The Fraternal Order of Police, Ohio Labor Council, Inc. is the exclusive representative of the bargaining unit.

#### BACKGROUND

Miami Township, located in the south central portion of Montgomery County, Ohio, has a population of about 26,000. The closest metropolitan area to Miami Township is the city of Dayton, Ohio. The economy of Miami Township is affected by trends nationally, regionally, and locally. Both parties presented expert witnesses who addressed economic trends affecting the Employer and bargaining unit members, and the economic circumstances described by the Township's revenues and expenses over the past ten years and projected over the three years of the parties' successor Agreement, March 1, 2010 - February 28, 2013.

Dr. Thomas L. Traynor is a Professor in the Department of Economics at Wright State University. Dr. Traynor noted in his

testimony at the fact-finding hearing that the two strongest influences on the Dayton metropolitan area's economy have been the national economic downturn that began in 2007 and the decline in manufacturing that began in 2001. Dr. Traynor explained that these factors pushed the region's employment down and reduced the growth rate of the region's per capita income to a level that is more than ten percent below the national per capita average over the past few years.

Dr. Traynor identified economic factors that are generating strong upward pressure on future national economic growth as rising profits, rising stock prices, low interest rates, rising new orders for capital goods, rising weekly hours of work, and rising household income. Dr. Traynor identified economic factors that are generating a strong downward pressure on the nation's economic growth as the drawdown (deleveraging) of household debt, high unemployment, falling orders for consumer goods, improving supplier deliveries, and the winding down of the federal stimulus program.

Dr. Traynor identified factors that will affect future national economic growth that are uncertain at this time as federal government economic policy, when households will stop reducing debt loads and increase spending on consumer goods, how long business spending will continue to rise, and the state of the global economy.

Dr. Traynor testified that the inflation rate over the last twelve months, 1.3 percent, is expected to remain low for at

least the next year which will serve to hold down the cost of living. Dr. Traynor acknowledges that a source of inflation could be increases in the price of oil, but this seems unlikely because the world's economy remains weak, suppressing energy demand.

Dr. Traynor foresees in 2011 and beyond employment levels in the greater Dayton metropolitan area that will remain flat, within one percent of the current level of employment of this city. This projection is based on the expectation that gross domestic product (GDP) growth will be sufficient to prevent job losses but not strong enough to generate significant increased demand for more workers. Dr. Traynor expects that increases in the demand for manufacturing workers arising through increased business spending will be tempered by sluggish household spending. Dr. Traynor also noted that continuing productivity gains in manufacturing will result in sluggish increases in the demand for manufacturing workers as more capital intensive production methods are used.

The Employer presented the testimony of Frank A. Wisehart, a certified public accountant employed by Schneider Downs & Co., Inc., an accounting firm in Columbus, Ohio. Mr. Wisehart was engaged to review financial information from Miami Township, Montgomery County, Ohio to ascertain the effect of police department wage increases under the proposal submitted by the Employer and under the proposal submitted by the Union. Mr. Wisehart noted that the Employer's wage proposal over the three

years of the parties' successor Agreement totals zero (0, 0, and 0); the wage proposal from the Union over the three years of the parties' successor collective bargaining agreement totals 21.5 percent (7.25%, 7.25%, and 7.0%). Mr. Wisehart noted that the cumulative wage increases that would occur under the Union's proposal, on a compounded basis, would increase wages over three years by 23.1 percent.

Mr. Wisehart compared the Union's proposal on wage increases for the parties' successor Agreement to the consumer price index, noting that from 1998 through 2009 the annual increases in the consumer price index (CPI) totaled 26.80 percent, while Miami Township Police Department employees received wage increases during this time period amounting to 50.10 percent. Mr. Wisehart noted that the CPI as of October, 2010 was 1.6 percent and Mr. Wisehart projected a CPI for 2011 and 2012 of 1.96 percent and 1.96 percent, respectively. Mr. Wisehart noted that from 2010 to 2012, the CPI is projected to rise 5.52 percent, while the wage increases during this period proposed by the Union amount to 21.5 percent.

Mr. Wisehart noted that actual CPI increases from 1998 through 2009, totaling 26.80 percent, when added to the projected CPI increases from 2010 through 2012, 5.52 percent, amount to 32.32 percent. When wage increases for the Miami Township Police Department are totaled from 1998 through 2009, 50.10 percent, and added to the wage increases proposed by the Union for 2010 through 2012, 21.5 percent, the total wage increases amount to

71.60 percent, far outstripping the rise in the cost of living.

Mr. Wisehart compared Miami Township Police Department wages to police wages in other political subdivisions. In comparing Miami Township police officer entry and top pay to eleven other political subdivisions in the region, Miami Township placed fourth from the top.

Mr. Wisehart then examined three scenarios. The first scenario presumes no wage increase occurs; a second scenario presumes a 1.5 percent wage increase for years 2010 through 2012 for Union members, with a one percent wage increase for years 2011 through 2014 for exempt employees; a third scenario assumes wage increases of 7.25 percent, 7.25 percent, and 7.00 percent for bargaining unit members for the years 2010, 2011, and 2012, and a 1.0 percent wage increase for the years 2011 through 2014 for exempt employees. Mr. Wisehart assumes in these scenarios the hiring of three patrol officers and a lieutenant in 2011; capital expenditures of \$413,000 for vehicles and equipment to be purchased in 2011; property tax revenues remaining flat from 2010 through 2012; additional police levy revenue in the amount of \$486,000 beginning in 2011; tax base revenue increases from 2011 through 2014 to amount to zero, zero, 1.5 percent, and 1.5 percent, respectively; tax collection loss rates to be reduced from five percent to 2.5 percent for the years 2010 to 2014; grant income to remain average; other income to remain average; a two percent annual increase in operating expenses for the years 2011 through 2014; and growth in benefit expenses to be two

percent annually for the years 2012 through 2014.

Mr. Wisehart noted that under the above-cited assumptions, even with no wage increases, under scenario one the township would experience a deficit in 2011 of \$230,766 that would be reduced to a deficit of \$6,895 in 2012 and a deficit of \$16,861 in 2013.

Under the second scenario, 1.5 percent wage increases for 2010 through 2012, the deficit in 2011 is projected to be \$326,650; the deficit in 2012 is projected to be \$144,033; and the deficit in 2013 is projected to be \$168,646.

Under scenario three, the 7.25 percent, 7.25 percent, and 7.00 percent wage increases proposed by the Union, a deficit in 2011 of \$512,859 is projected; a deficit of \$454,938 in 2012 is projected; and a deficit of \$501,824 is projected for 2013.

Mr. Wisehart also compared the three scenarios and their effects on the end of year unencumbered police fund balances for the years 2009 through 2014. As explained by Mr. Wisehart, scenario one produces the largest end of year unencumbered balances, and the wage proposal from the Union produces the smallest end of year unencumbered balances.

Mr. Wisehart expressed the opinion that Miami Township Police Department bargaining unit members have received compensation in excess of the consumer price index by twenty-two percent from 1998 through 2009, and under the Union's wage proposal for the parties' successor collective bargaining agreement would receive an additional sixteen percent increase in

wages in excess of the projected consumer price index from 2010 through 2014. It is Mr. Wisehart's opinion that Miami Township police bargaining unit members are compensated at a reasonable level compared to peer groups identified in Mr. Wisehart's report, and any increase in police wages will continue to widen the gap between the township's revenues and the township's expenses.

The Union presented the testimony of Wade Steen, a certified public accountant licensed in the state of Ohio whose employment history includes service as chief fiscal officer for Franklin County, Ohio; Franklin County Treasurer; and Deputy State Auditor for the state of Ohio. Mr. Steen is currently a member of the City Council of Upper Arlington, Ohio, serving in his second term. Mr. Steen operates Steen & Company LLC, Certified Public Accountants, a licensed CPA firm located in Columbus, Ohio.

Mr. Steen looked at the total revenues and expenses of Miami Township from 2005 through 2009, using actual figures. Mr. Steen examined the 2010 budget of Miami Township and annualized this budget to project 2010 budget figures. Also analyzed in this way by Mr. Steen were property tax revenues and property tax revenues that had added to them intergovernmental revenue. Mr. Steen found total Township revenues in 2007 of \$4,957,702; in 2008, \$5,269,793; in 2009, \$5,255,170; and for 2010 an annualized figure of \$4,930,006. Actual/projected expenditures are \$5,150,753 for 2007; \$5,114,702 for 2008; \$5,042,713 for 2009; and an annualized figure for 2010 of \$5,164,889. These figures,

provided to Mr. Steen by Miami Township, present unencumbered ending balances of \$2,803,861 for 2007; \$2,958.951 for 2008; \$1,860,206 for 2009; and an annualized unencumbered ending balance for 2010 amounting to \$1,038,636. Mr. Steen stated that there is no evidence of an \$800,000 deficit in the police department's budget, a budget funded by the Miami Township Trustees.

Mr. Steen agreed that the economy in Miami Township's region is not great but Mr. Steen finds the region to be experiencing a slow economic recovery. Mr. Steen pointed out that foreclosures in the Dayton metropolitan area fell twenty-nine percent in May, 2010; foreclosed home sales were seventeen percent lower than during the second quarter of 2009; the foreclosure rate of 2.9 percent in the Dayton area is lower than the Ohio rate of 2.98 percent, and lower than the national rate of 3.13 percent.

Mr. Steen pointed out that in 2009 the nation's gross domestic product decreased by 2.4 percent, but for the first six months of 2010 the GDP increased at an annualized rate of 2.7 percent. Mr. Steen noted that it is generally agreed that corporate profits increased by \$195.9 billion in the first six months of 2010.

Mr. Steen also noted that in August, 2010, unemployment rates in the greater Dayton metropolitan area dropped to 10.3 percent from an unemployment rate of 12.3 percent in March, 2010. Mr. Steen noted that the present unemployment level in the Dayton metropolitan area is the lowest it has been since December, 2008.

Mr. Steen expressed the opinion, based on the financial figures provided to him by Miami Township and the economic trends observed in the region, that the Employer does have adequate funds to pay for a reasonable wage increase for members of the bargaining unit during the three years of the parties' successor collective bargaining agreement. While Mr. Steen is unable to recommend the full wage proposal suggested by the Union amounting to 21.5 percent over the three years of the successor Agreement, Mr. Steen does contend that a moderate wage increase, somewhere between zero percent and 21.5 percent, is affordable through the monies available to the Employer during each of the years of the successor Agreement.

#### DISCUSSION AND RECOMMENDED LANGUAGE

##### Article IV - Management Rights

The Union proposes the deletion of language in Article IV, section 1 that allows subtracting out bargaining unit work, in particular the removal of the words "subcontract and to" in the third line of the language of Article IV, section 1. The Union intends by this change the elimination of the Employer's authority to subcontract out bargaining unit work. The Union intends through the change in this language, coupled with changes to the language of Article XIV, Subcontracting and Job Content, that the Employer shall be prohibited from subcontracting out any bargaining unit work.

In support of this proposal the Union points to the loss of bargaining unit members, dispatchers, who were moved out of their bargaining unit when the work of dispatching for the Miami Township Police Department was moved to a regional consortium that provides dispatching to the Township, the County Sheriff's Department, and other regional political subdivisions. The Union argues that the changes it proposes to the language of Article IV, section 1, deleting subcontracting language therein, does nothing more than secure for the bargaining unit job protection that is commonly found among organized workers employed within the private and public sectors.

The Union also recommends that language be added to section 2 of Article IV, Personnel Manual, SOP Manual Amendments, that would entitle each bargaining unit member to a copy (paper or electronic) of the standard operating procedures of the Miami Township Police Department and a copy of the Miami Township Employee Manual. Under the language proposed by the Union, current bargaining unit members would receive these materials within ninety days of the execution of the parties' successor Agreement, and newly hired bargaining unit members would be provided copies of these materials within thirty days of their dates of hire.

The Employer opposes all of the changes proposed by the Union for Article IV, urging the fact finder to recommend the retention of current language in the parties' successor Agreement. The Employer emphasizes the need to retain sufficient

authority to manage the township effectively. The Employer understands the language that permits subcontracting out of bargaining unit work to be a safety valve, to be used only when circumstances reflect a benefit to the citizens of the township. The Employer strongly opposes the imposition of limitations not previously in effect between the parties through the unilateral imposition of the Union's proposed language for this Article.

The Employer argues that the language proposed by the Union for section 2 of Article IV, the provision of a copy of the standard operating procedures and a copy of the township's personnel manual to each current and future bargaining unit member, to be unnecessary as these materials are readily available, both within the Department and online. The Employer acknowledges the importance of all bargaining unit members having access to standard operating procedures and personnel policies and procedures but denies that such access has been limited or in any way withheld from bargaining unit members.

The fact finder does not recommend the language proposed by the Union to be deleted from Article IV, section 1. The movement of the dispatchers out of their bargaining unit was not a casual or frequent occurrence. The movement of dispatching duties to a separate entity comprised of regional political subdivisions was done with years of planning and a belief that the change in how dispatching duties are to be provided in this region will promote greater efficiency and lower costs. There is no doubt that the loss of the dispatchers' positions from their bargaining unit was

a blow that had to be absorbed but it is not a precedent that supports the language proposed by the Union for the police officers' bargaining unit.

There was an example of possible subcontracting out of work mentioned by the Chief in his testimony at the fact-finding hearing to the effect that it might be advantageous to subcontract out transportation services now required of the Miami Township Police Department in moving arrested citizens to and from court and to and from holding facilities. It did not appear to the fact finder that the implementation of such a plan was something feared or strongly opposed by the bargaining unit members who participated in the fact-finding hearing. This is not to say that the subcontracting out of bargaining unit work is not of the highest priority to the members of the bargaining unit and the bargaining unit's exclusive representative. It was noted, however, that transportation duty is time consuming, expensive, and removes uniformed officers from other duties that are important to the Department and to the Township.

The fact finder acknowledges the importance of the language that allows subcontracting out of bargaining unit work to both parties. In the absence of a compelling reason to do so, however, the fact finder declines to change this language and authority which the Employer has held in this regard for many years in its working relationship with the Union. The fact finder recommends that the parties' successor Agreement retain the current language found within section 1 of Article IV.

As to the language of Article IV, section 2, the fact finder recommends the language proposed by the Union. The fact finder does not question the honesty of the Employer's witnesses concerning the availability of these materials. The fact finder nevertheless acknowledges the Union's contention that receiving a set of rules and regulations allows both parties to possess greater confidence and certainty that when rules and regulations are raised by either party both parties are referring to the same set of rules and standard operating procedures. The fact finder finds the provision of the materials proposed by the Union to current members of the bargaining unit and to newly hired members of the bargaining unit to require minimal effort and minimal expense and the fact finder finds the provision of such materials to provide to both parties greater precision and certainty in their working relationship.

RECOMMENDED LANGUAGE - Article IV - Management Rights

Section 1. Retain current language.

Section 2. Personnel Manual, SOP Manual, Amendments. Except where specifically and expressly provided to the contrary in this Agreement, the provisions of the Miami Township Personnel Manual, and the Miami Township Police Department Standard Operating Procedures Manual (and as both may be amended from time to time) are recognized as an appropriate exercise of the Employer's reserved rights. Each current bargaining unit member shall be issued a copy (in either paper or electronic media form) of the SOP and the township employee manual within ninety (90) days of the execution of this Agreement. Any newly hired bargaining unit members shall be provided such copies within thirty (30) days of the date of hire. Except as specifically modified by this Agreement or any supplementary agreements that may hereafter be

made, all of the rights, powers and authority the Employer had prior to the signing of this Agreement are retained by the Employer and remain exclusively and without limitation within the rights of management. To the extent that the above rights are limited by the express terms of this Agreement, any exercise of these rights which are in violation of such express terms are subject to the grievance procedure.

#### Article V - Work Rules

The Union proposes what it considers to be "boiler plate" language found in many collective bargaining agreements under which the Employer is to provide work rules to bargaining unit members in advance of the enforcement of these work rules and a promise by the Employer that all work rules or departmental directives shall be applied and interpreted uniformly among all bargaining unit members.

The Employer opposes the new language proposed by the Union for Article V, arguing that this language serves to tie the hands of the Employer in managing the members of the bargaining unit. The Employer argues that the language proposed by the Union is not needed, assumes that there is some subterfuge in the Employer's agenda, and it is contended that every rule applicable to the Department cannot be codified. The Employer argues that those circumstances that are unexpected will be claimed to be permitted because no specific rule prohibits the action.

At the conclusion of the fact-finding hearing the fact finder was presented with a copy of the existing work rules of the Miami Township Police Department, a document consisting of seventeen pages presenting sixty-two rules. The rules appear to

be in existence and the arbitrator can think of no logistical reason why each bargaining unit member cannot receive these seventeen pages as well.

The Employer is correct that every future issue of conduct cannot be addressed in the rules of the Employer. There is, however, nothing that requires the rules to be all inclusive. Surely the authority of the Employer to address future instances of questionable conduct can be carried out without suppressing this authority on the basis of rules that were promulgated by the Employer. Language to this effect can be included in the rules and, if it is believed necessary, in the collective bargaining agreement. The fact finder does not find that the rules limit the Employer on what actions may be taken in carrying out its managerial and administrative powers over the Miami Township Police Department.

The fact finder finds no good reason to deny the provision of these rules to bargaining unit members and can think of no reason to exclude language that confirms an understanding by both parties that the rules will be interpreted and applied uniformly among all bargaining unit members. Such uniformity presumes the same circumstances of different employees and deviations between the circumstances of employees would be relevant to any lack of uniformity in the application of the Employer's rules. The confirmation, however, of a lack of a discriminatory intent does no damage to the working relationship between the parties. The fact finder recommends the language proposed by the Union to

be added to Article V, section 1.

RECOMMENDED LANGUAGE - Article V - Work Rules

Section 1. Creation of Rules. The Employer shall have the right to, in connection with its function of maintaining discipline and directing the work force, publish, and from time to time amend, reasonable rules of employee conduct in addition to those set forth in the Personnel Manual or Standard Operating Procedures Manual. The Employer agrees that, to the extent possible, any work rules which may be promulgated shall be reduced to writing and a copy provided to each of the covered members in advance of their enforcement. All work rules or Department Directives shall be applied and interpreted uniformly to all members. Said rules and their application shall be subject to the grievance procedure set forth herein.

Section 2. - Retain current language.

Article VII - Union Representation/Discipline and Hearing

The Union proposes adding language to section 1 of Article VII that would make plain that in the event an employee is investigated and the employee becomes entitled to a Union representative, the employee determines who the representative will be. The Union argues that this is a matter of fundamental fairness and due process, and the Union also recommends the deletion of language in section 1 of Article VII that permits the Employer to make on-the-spot inquiries.

The Employer opposes the changes proposed by the Union to section 1 of Article VII pointing out that expanding an employee's rights in this area delays investigative procedures, and the current language already provides for Union

representation.

The fact finder recommends the addition of the language proposed by the Union that would safeguard an employee's right to determine his Union representative. It is the fact finder's view that such a right will not unreasonably delay investigative processes and the determination of one's representative is better vested in the person being represented rather than with an adverse or third party. The fact finder does not recommend the deletion of language at the conclusion of section 1 of Article VII that permits the Employer to make on-the-spot inquiries. If an inquiry becomes accusatory, the employee retains the right to Union representation.

The parties have agreed to change time limits expressed in Article VII, section 4. The fact finder recommends these changed timelines.

The Union recommends that language be added to section 5 of Article VII that would make explicit considerations regarding a complaint filed about a bargaining unit member's conduct. The language proposed by the Union would require the Employer to take into account the length of time that had elapsed between the date of the alleged incident and the date the complaint is received, and this consideration is to be used in determining the credibility of a complaining party. The language proposed by the Union to be added to Article VII, section 5 would require the Employer to request that a complaining party write a sworn affidavit to assure the validity of the complaint, and in the

event a complaint is received from an anonymous source, the Employer is prohibited from taking action unless the complaint is supported by other corroborative evidence.

The Employer opposes the language proposed by the Union for inclusion in section 5 of Article VII.

The fact finder does not recommend the language proposed by the Union for section 5 of Article VII. The investigation of complaints against members of the bargaining unit is a matter of both public and departmental concern. How a uniformed officer is investigated based on a citizen's complaint and how the complaint is to be received by the Employer is a matter the fact finder prefers to leave with the Employer rather than impose obligations in this regard upon the Employer in the absence of an agreement by the Employer to be so bound. Citizen complaints against police officers are matters of great sensitivity and an employer is rightfully held to account in how the accusation is received, how it is investigated, and how it is resolved. The fact finder finds that this is an area better left to the Employer in the absence of an agreement between the parties and therefore the fact finder recommends that the current language of Article VII, section 5 be retained in the parties' successor Agreement.

The parties have agreed to certain changes in the language of section 7 in Article VII, including the addition of the words ``or Deputy Chief'' after the words ``the Chief of Police'' that begins the third sentence of the language found within section 7. The fact finder recommends the addition of this language.

The Employer has recommended the deletion of the sentence appearing within Article VII, section 7 that reads: ``The Board of Trustees will chair all pre-disciplinary hearings where the potential sanction is more than a seven (7) day suspension or dismissal.'' The Union opposes the deletion of this language. The fact finder recommends the deletion of this language as the Employer should have the right to determine who will preside over a pre-disciplinary hearing on the Employer's behalf. Just as the fact finder finds it to be important that an employee choose his representative, the fact finder thinks it is also important that the Employer be permitted to choose its representative at a pre-disciplinary hearing.

The Union proposes adding the language: ``Pre-disciplinary hearings shall be conducted in private and not be open to the public, to the extent permitted by law.'' The fact finder recommends this language as a proper limitation on what can be a sensitive proceeding to both employee and employer.

The Union has proposed language in section 8 of Article VII that addresses investigative questioning of bargaining unit members. All of this language proposed by the Union is opposed by the Employer.

The fact finder recommends the additional language proposed by the Union for Article VII, section 8, paragraph B that currently requires that an employee be informed of the nature of the investigation before any questioning commences of the employee, and would add, under the Union's proposal, that the

employee be told whether he is the focus of the investigation or a witness in the investigation, and if the employee is the focus, the employee shall be informed in writing of the nature of the investigation and the allegation. The fact finder finds such language to be consistent with the right of employees generally to understand whether they are facing disciplinary or criminal charges, or both. Distinguishing between whether an employee is being questioned as the focus of an investigation or as a witness in an investigation appears to the fact finder to be a matter of fairness, and to enhance rather than detract from the legitimacy of the investigation.

As to the remaining proposals by the Union within section 8 of Article VII, paragraphs (E), (F), and (G), the fact finder finds no fault with what is suggested but does not recommend the inclusion of this language. The language proposed by the Union for inclusion in Article VII, section 8 in paragraphs (E), (F), and (G) affect discretionary investigative decisions by the Employer that, in an absence of an agreement from the Employer, are best left out of the parties' successor Agreement.

Finally, as to additional language proposed for section 10 of Article VII, language proposed by the Union that reads: "Furthermore, no documentation pertaining to complaints that have been determined as unfounded by the Chief or Deputy Chief shall be maintained in the employee's personnel file," the fact finder recommends the inclusion of this language as it retains the determination of "unfounded" with the Chief or his Deputy

Chief but requires the removal of only that documentation which arose from a complaint determined unfounded by the Chief or his Deputy Chief.

RECOMMENDED LANGUAGE - Article VII - Union Representation/  
Discipline and Hearing

Section 1. Union Representation. In the event the Employer intends to conduct an interview with an employee to discipline, investigate, or take any other action which may affect the employee's job security or any other term or condition of employment, the Employer shall notify the employee in writing of his right to be accompanied by a Union representative of his choice during the interview or hearing and of the specific nature of the interview or hearing. Provided a Union representative is readily available, no employee shall be required to attend any interview without Union representation once such representation has been requested. In the event representation is not readily available, said interview may be delayed for a reasonable period of time. The availability of the Union representative or attorney, time of day, etc. will be taken into consideration when defining "unreasonable delay." Nothing herein restricts the right of the Employer to make on-the-spot inquiries in an effort to acquire knowledge of the facts relating to the incident. If the inquiry becomes accusatory, the employee shall have the right to a Union representative. The Police Chief may relieve an employee of duty for just cause.

Section 2. Retain current language.

Section 3. Retain current language.

Section 4. Time Limits. Any investigation of a potential disciplinary matter will be completed within forty-five (45) calendar days after the matter first comes to the attention of a supervisor. Workday is defined as a day that falls between Monday and Friday; Saturdays and Sundays are not considered workdays.

In cases where a lengthier investigation is required, the time period may be extended for additional increments of thirty (30) calendar days by advising the Union President or Vice President of the need for additional investigative time. The request must come from the Chief of Police or the Acting Chief of Police if the Chief of Police is away from the department for an extended period of time. Given the facts surrounding the investigation, it will be the decision of the Chief of Police

whether to disclose the nature of the investigation or the name of the officer being investigated.

Any discipline imposed by the Chief of Police or recommendation of discipline by the Chief of Police to the Board of Trustees shall be reduced to writing and served on the employee within fifteen (15) calendar days after completion of the investigation.

In the event of a criminal investigation against an employee, the disciplinary time limits do not commence until thirty (30) days after the criminal investigation is submitted to the prosecutor. Upon a written request of the prosecutor, the time limit shall be extended by an additional thirty (30) days.

Section 5. Retain current language.

Section 6. Retain current language.

Section 7. Pre-disciplinary Hearing. Whenever the Employer or its designee determines that an employee's conduct may warrant a suspension or termination, a pre-disciplinary hearing shall be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct or evidence to refute the allegation of misconduct. Evidence may also be presented by the Employer to support the alleged misconduct at the pre-disciplinary hearing. The Chief of Police or Deputy Chief will be the hearing officer for all pre-disciplinary hearings where the potential sanction will be a suspension of seven (7) days or less. An employee may be represented at the pre-disciplinary hearing by a Union Representative if he so chooses. Pre-disciplinary hearings shall be conducted in private and not be open to the public, to the extent permitted by law.

The provision of a pre-disciplinary hearing shall not prevent the Chief of Police from relieving an employee of duty with pay for just cause.

If the employee is placed on paid leave for more than three calendar days, the employee will be given written notice for the reason of such action.

Section 8. Investigative Questioning. Any investigative questioning regarding charges of employee misconduct shall be made under the following conditions:

- (A) The questioning shall take place at the Police Department or other mutually agreeable site.
- (B) The employee shall be informed of the nature of the investigation before any questioning commences including whether the employee is a focus or witness in the investigation. If the employee is the focus, he shall be informed in writing of the nature of the

investigations and the allegations.

- (C) All questioning shall be undertaken in a proper and businesslike manner.
- (D) If an employee is the subject of a criminal investigation he shall be so advised and afforded the same constitutional rights to which any other individuals are entitled.

Section 9. Retain current language.

Section 10. Unfounded Complaint. If no disciplinary action is taken against an employee and the complaint is deemed Unfounded, it shall not be used against the employee in future disciplinary or promotion actions. Furthermore, no documentation pertaining to complaints that have been determined as unfounded by the Chief or Deputy Chief shall be maintained in the employee's personnel file.

#### Article XIII - Hours of Work

Sections 1-5 and 7-14, inclusive, of Article XIII, Hours of Work, have been tentatively agreed by the parties and the fact finder recommends the language tentatively agreed by the parties for these sections be included in the parties' successor Agreement.

The Employer proposes a change in the language of section 5 of Article XIII that would delete the words ``time and one-half'' and replace these words with ``their regular rate of pay.'' These words, both in current language and in the words proposed by the Employer, describe how employees are to be paid for work on a holiday, in addition to receiving holiday pay. The current language calls for one and one-half times regular pay for hours worked on a holiday; the new language proposed by the Employer would pay employees their regular rate of pay in addition to holiday pay when an employee works on a holiday.

The Union opposes the change proposed by the Employer to the language of Article XIII, section 5.

The Employer's proposal would save money but would impose a holiday pay decrease in the compensation traditionally paid for work provided on a holiday. It appears that paying time and one-half for hours actually worked on a holiday is a longstanding practice, and while there are legitimate reasons to reduce costs, the fact finder can find no other ground upon which to support a decrease in this regard. The fact finder understands that a holiday is intended to be a break from work, and when necessity requires an employee to work during what otherwise would be a day off, paying the equivalent of an overtime rate appears to the fact finder to be reasonable. The straight time holiday pay is received whether an employee works on the holiday or not. Working a holiday means a lack of free time away from work, less time with one's family members, and less freedom to do on a holiday what an employee wishes to do. These circumstances support premium pay and the fact finder recommends the retention of current language in Article XIII, section 5.

The Union has recommended changes to the language of Article XIII, section 6, Compensatory Time. The language proposed would permit all time worked outside of normally scheduled hours during a twenty-eight day work period to be subject to compensatory time accrual rather than "every hour" and would eliminate the two-hour minimum required under current language to submit hours worked outside of normally scheduled hours for compensatory time.

The Employer had no strong opposition to the changes proposed in Article XIII, section 6 and the fact finder recommends the language proposed to be added to and deleted from Article XIII, section 6 by the Union.

Both parties have proposed changes to the language of Article XIII, section 15, Specialty Compensation. This language addresses bargaining unit members who have acquired training to function in one of eight specialty areas and who may be called upon when needed to provide duties in these specialty areas. Compensation for the increased training needed in these areas and the valuable expertise secured through the additional training amounts to eight hours of pay or compensatory time, at the employee's discretion.

The parties' proposed changes to section 15 of Article XIII (denominated section 14 in the Employer's proposal) differ in the number of specialty areas to be employed, eight by the Employer and four by the Union, as well as the compensation to be provided for the extra training and expertise in these specialty areas, none under the Employer's proposal and sixteen hours (seventeen hours for personnel working 8.5 hr. work days) under the Union's proposal.

The fact finder recommends a mixture of the proposed changes by the parties. The fact finder favors an approach whereby the Employer determines what specialty areas are to be used and employees determine whether they wish to commit to the training and duties demanded of a specialty area. Increased training is

valuable to the Employer in providing township citizens with better services; increased training (at the Employer's expense) secured by an employee is valuable to the employee as a means of enhancing the value of an employee's job skills.

The fact finder recommends that the language proposed by the Employer for Article XIII, section 15 be used in its entirety and that the Employer's language be supplemented by the compensation language currently in effect. Considering the extra training that is required; considering that certification in a specialty area affects call back circumstances; and considering that the compensation is intended for an entire year, the fact finder finds the eight hours (or 8.5 hours in the case of an employee working an 8.5-hr. day) to be commensurate with the benefit to the township and the changed work consequences affecting employees who are qualified and responsible for a specialty area.

The fact finder also recommends the language proposed by the Union to be added to Article XIII, section 16, Yearly Time Change, a new section. The language proposed by the Union in this regard is not opposed by the Employer and would simply ensure that during the time changes in the fall and in the spring, if an extra hour or one less hour is worked because of the time change, this reality will be reflected in an employee's pay, depending on whether that employee worked an extra hour or worked one hour less.

RECOMMENDED LANGUAGE - Article XIII - Hours of Work

Sections 1-5. Retain current language.

Section 6. Compensatory Time. Compensatory time shall be applied so as to permit the employee to utilize any of the following methods of receiving compensation for hours worked outside of their normally scheduled hours during a twenty-eight (28) day work period:

- (A) Payment for overtime hours actually worked at time and one-half or,
- (B) Allowing an employee to accumulate up to eighty (80) hours of compensatory time which shall be accrued on the basis of one and one-half hours of compensatory time for all time worked outside of their normally scheduled hours during a twenty-eight (28) day work period.
- (C) Any combination of A and B.

Sections 7-14. - Retain current language.

Section 15. Specialty Compensation. Employees who acquire the training required by the Employer to function in one of the eight following specialty areas will be compensated for their efforts with one day of compensation (8 hours for personnel on 8 hour work days and 8.5 hours for personnel on 8.5 hour work days) per specialty with the compensation being paid either in pay or compensatory time (Union member's choice). The Chief of Police will determine the number of positions needed for each specialty area and determine the training needed to perform the functions associated with a specialty area. When a vacancy exists in a specialty area, the Chief of Police will post a notice identifying the vacancy and seeking candidates to fill the vacancy. The specialty areas include: Evidence Technician, Technical Accident Investigator, Intoxilyzer Operator, Field Training Officer, Accident Reconstructionist, K-9 Officer, Bike Patrol Officer, and Armorer.

Employees who request to be trained for a specialty area must perform the specialty functions for at least three years after completion of their specialty training or recertification training/advanced training in such a specialty provided that if the employee gives written notice of his intent to terminate specialty certification before the employee attends recertification training/advanced training, the recertification training/advanced training after such notice will not obligate the employee to perform the specialty for another three years. Employees who decide they no longer want to perform the skills

associated with a specialty area, must submit a written report to the Employer at least one year in advance of the date the employee wishes to discontinue performing the work assigned to a specialty area. This will allow the Employer the opportunity to identify another employee who is interested in the specialty area being vacated and train the employee to perform the tasks associated with the specialty.

Section 16. - Yearly Time Change. A member shall be paid at overtime rate for the one extra hour actually worked on the hour of the fall time change to Eastern Standard Time. The officer shall have one hour of straight time pay or other accumulated time subtracted, at the member's choice, from his/her leave balance if scheduled to work on the hour in spring when Daylight Savings Time takes effect.

#### Article XIV - Subcontracting and Job Content

The Union has proposed the deletion of section 2 of Article XIV, the section on subcontracting. The Employer strongly opposes the deletion of this language, arguing that under appropriate circumstances the powers described by this language are essential to efficient and effective management of the Township. The Union emphasizes the importance of protecting bargaining unit work and argues that the removal of this language provides to the bargaining unit nothing more than that which is normally found within a collective bargaining agreement.

The Union also proposes the addition of the words: "Except as otherwise provided by law," to begin the second sentence within section 3 of Article XIV, Job Descriptions. The Union contends that this language does nothing more than bring both parties under the purview of Ohio Revised Code Chapter 4117., a circumstance that neither favors nor disadvantages either party.

The Employer strongly opposes the additional language

proposed by the Union for section 3 in Article XIV, claiming that the language as it appears currently is representative of the parties' longstanding agreement and the addition of the language proposed by the Union would significantly and substantively change a practice that had been agreed and followed by the parties for years.

The fact finder does not recommend the Union's proposals for section 2 and section 3 of Article XIV. As stated earlier in this report in reference to Article IV, Management Rights, subcontracting is a power possessed by the Employer that has been available to the Employer for years and is not a power that the fact finder is prepared to recommend be removed from the Employer upon a unilateral proposal.

As to the additional language proposed by the Union for Article XIV, section 3, although this proposed language denotes no prejudice to the Employer it would change that which had been agreed by the parties over the years and such a change, under these circumstances, would be imposed unilaterally. The fact finder does not quarrel with the logic of the Union's proposal; the fact finder finds the change that would occur under the Union's proposal to be significant and better left to the parties rather than a fact finder's recommendation.

RECOMMENDED LANGUAGE - Article XIV, Subcontracting and Job Content Sections 1-5. - Retain current language.

### Article XVI - Layoffs

Both parties have proposed changes to the language of Article XVI, Layoffs. The Employer seeks the deletion of language within Article XVI, section 1 that requires laying off all part-time and probationary employees prior to laying off full-time employees. The Employer stresses the flexibility and cost savings that such discretion would allow. The Union strongly opposes the elimination of this protection to bargaining unit members currently found within the language of the parties' most recent collective bargaining agreement, a longstanding guarantee secured to the benefit of the bargaining unit.

The fact finder does not recommend the changes to Article XVI, section 1 proposed by the Employer. The language to be removed under the Employer's proposal is a substantive guarantee to full-time bargaining unit members affording greater job security than would be the case if this language were not in effect. While the Employer is correct that having this increased power to lay off full-time employees would be advantageous to the management of the Township, the fact finder is not persuaded that the loss of such a guarantee, unilaterally, would benefit the working relationship between the parties, and the change proposed is not found to be supported by a sufficiently compelling reason to eliminate this guarantee in the absence of an agreement between the parties to do so.

The remainder of the changes to Article XVI, sections 1, 2, and 3 are proposals from the Union that the fact finder favors,

with the addition of language suggested by the Employer at the conclusion of the language of Article XVI, section 3.

Section 2 of Article XVI, No Bumping/Retainment of Seniority, would add language that would prohibit employees from other bargaining units bumping into the bargaining unit of uniformed full-time police officers. Current language within this section prohibits bargaining unit members from bumping into other bargaining units. The fact finder finds no reason to deny this protection, extended to other bargaining units, to the members of the bargaining unit at issue in this proceeding.

The Union also proposes that employees retain their seniority for two years rather than the current eighteen months. Considering the premium of recalling officers with experience, local knowledge, and skills necessary to a position within the bargaining unit, the fact finder recommends the changes proposed by the Union for Article XVI, section 2 in the retention of seniority following a layoff.

As to section 3 of Article XVI, the fact finder recommends the Union's proposed additional language: ``. . . and retain their OPOTA commission during the term of any layoff," and also recommends at the end of this language the following language proposed by the Employer: ``. . . if such a reserve program exists." This language is intended to ensure that both parties understand that the language of section 3 of Article XVI does not obligate the Chief of Police to maintain a reserve officer program, but if such a reserve officer program exists the

language of Article XVI, section 3 would apply.

#### RECOMMENDED LANGUAGE - Article XVI - Layoffs

Section 1. Layoff Procedure. Whenever it is determined that a layoff or job abolishment is necessary, the following procedures will apply:

All part-time, employees and employees in an initial probationary period working in positions affected by the layoff will be assigned to other appropriate positions if available, or, if no other positions are available, shall be laid off prior to displacing any full-time regular employees. No seasonal or casual employee shall be hired while any full-time employee is on layoff, unless any and all laid off full-time employees have been given the opportunity to fill the position.

When it is determined by the Employer that regular full-time employees must be laid off from a bargaining unit of the Department, the employees in the work unit affected will be laid off according to seniority with the lowest seniority person laid off first. The Employer will notify the affected employee(s) at least thirty (30) calendar days before the effective date of the layoff or job abolishment. After the township takes formal action to lay off a full time employee, the township will not implement that action for at least thirty (30) calendar days.

Section 2. No Bumping/Retainment of Seniority. Employees laid off do not have the right to bump into another bargaining unit and no employees of another bargaining unit shall have the right to bump into this bargaining unit. Employees will retain their seniority for a period of two (2) years and may be reinstated for up to two (2) years after being laid off. Employees will be recalled in reverse order of their layoff.

Section 3. OPOTA Certification. Sworn officers who are laid off, in the interest of keeping their OPOTA Certification current, will be given the opportunity to participate in the Reserve Officer Program. Any laid off sworn officer who chooses not to participate in the Reserve Officer Program, shall be responsible for any costs associated with OPOTA Recertification, if such a reserve program exists.

#### Article XVIII - Holidays, Personal Leave Days, and Vacations

Both parties have agreed to change section 1 of Article XVIII such that Columbus Day, the second Monday in October, is

deleted from this listing of holidays, and Veterans' Day, November 11th, is added. The fact finder recommends this change to Article XVIII, section 1.

The Employer recommends that the remainder of this Article remain unchanged, with the exception of an additional sentence added to section 4, Hours Earned, that reads as follows: ``If work schedules are altered, the following benefits will be pro-rated accordingly.''

The Union proposes an accelerated vacation accrual that would, for example, require twenty years rather than twenty-two years to attain the highest vacation accrual rate. Also accelerated would be the accrual rates from one to five years (formerly one to seven); six to ten years (formerly eight to thirteen); eleven to twenty years (formerly fourteen to twenty-one). The Union also recommends adding language to section 5 of Article XVIII that would require the Employer to pay an employee for any vacation time earned that exceeds the maximum cap.

The fact finder recommends the additional sentence proposed by the Employer to be added to Article XVIII, section 4, but does not recommend the changes proposed by the Union to sections 4 and 5 of Article XVIII. The fact finder does not find the present economic circumstances faced by the Township to support an acceleration of vacation accrual at this time, nor does the fact finder find the current vacation accrual rates to be out of proportion with the vacation accrual rates among public safety forces in the region and among state of Ohio employees.

The fact finder declines to recommend adding the language proposed by the Union for Article XVIII, section 5 as it would diminish the imperative currently in effect for an employee to use vacation time during the calendar year. Vacation time, scheduled time away from work that is paid, accrued through providing work during the year, is an important break in daily work, psychologically and physically. The Employer has an interest in employees using vacation time rather than converting it to pay. The additional language proposed by the Union for Article XVIII, section 5 would remove the incentive for an employee to use accrued vacation time rather than to convert it to cash. The fact finder respects the Employer's wishes in this regard and sees no diminishment of a benefit available to a bargaining unit member if current language is maintained as to a vacation accrual cap.

RECOMMENDED LANGUAGE - Article XVIII - Holidays - Personal  
Leave Day, and Vacations

Section 1. Holidays. Subject to scheduling requirements and consistent with the observance by Miami Township of holidays for its full-time personnel, all full-time employees covered herein shall be entitled to the following paid holidays:

- |                                  |                          |
|----------------------------------|--------------------------|
| 1. New Years Day                 | January 1st              |
| 2. Martin Luther King Day        | 3rd Monday in January    |
| 3. Good Friday                   | Friday before Easter     |
| 4. Memorial Day                  | Last Monday in May       |
| 5. Independence Day              | July 4                   |
| 6. Labor Day                     | 1st Monday in September  |
| 7. Veterans' Day                 | November 11th            |
| 8. Thanksgiving Day              | 4th Thursday in November |
| 9. Friday after Thanksgiving Day | 4th Friday in November   |
| 10. Christmas Eve Day            | December 24th            |
| 11. Christmas Day                | December 25th            |

Except for purposes of Article XIII-Section 3, holidays which fall on Saturday will be observed on the preceding Friday. Holidays which fall on Sunday will be observed on the following Monday. Employees who are scheduled to work on a holiday shall receive holiday pay or a substitute day off in addition to their regular pay.

Employees who are scheduled to work a holiday may request to take the holiday off and only receive "holiday pay" for compensation. Requests to take a holiday in this manner must be submitted at least twenty-four hours in advance of the holiday (preferably longer). All requests are subject to the written approval of the Chief of Police, or his designee, and are contingent upon levels of manpower needed for a particular holiday, not just the standard minimum manpower level.

Sections 2-3. - Retain current language.

Section 4. Hours Earned. Regular full-time employees will accrue vacation as follows. If work schedules are altered, the following benefits will be pro-rated accordingly.

	<u>5-2/5-3--6/3</u> <u>WORK SCHEDULE</u>	<u>40 HRS/WEEK</u> <u>WORK SCHEDULE</u>
<u>Years 1 thru 7</u>	<u>3.269 Vac Hrs/Pay Period</u> 85 Vacation Hrs/Year	<u>3.076 Vac Hrs/Pay Period</u> 80 Vacation Hrs/Year
<u>Years 8 thru 13</u>	<u>4.903 Vac Hrs/Pay Period</u> 127.5 Vacation Hrs/Year	<u>4.615 Vac Hrs/Pay Period</u> 120 Vacation/Hrs/Year
<u>Years 14 thru 21</u>	<u>6.54 Vac Hrs/Pay Period</u> 170 Vacation Hrs/Year	<u>6.154 Vac Hrs/Pay Period</u> 160 Vacation Hrs/Year
<u>Years 22 plus</u>	<u>8.173 Vac Hrs/Pay Period</u> 212.5 Vacation Hrs/Year	<u>7.692 Vac Hrs/Pay Period</u> 200 Vacation Hrs/Year

A change in Article XIII, Hours of Work, will result in a corresponding change in Article XVIII, sections dealing with Vacation Leave.

Sections 5-10. - Retain current language.

Article XXVII - Health and Life Insurance

The Employer provides health and life insurance coverage to all employees of Miami Township, organized and non-organized. Also participating in this coverage pool are the Miami Township

Trustees and their families. The health care coverage now in effect is a health savings account, a plan that in prior years had been one option among more traditional coverage plans. The present coverage plan, at the time it was presented to the Union, was the only coverage plan made available by the Employer.

The Union presented a detailed history of health care coverage among Miami Township employees in general, and bargaining unit members employed within the Miami Township Police Department in particular. The Union presented extensive information about the health care coverage provided by other political subdivisions in the region. The Union emphasizes the disparity between the coverage and costs among other political subdivisions in the region and the coverage and costs made available to bargaining unit members by the Miami Township Trustees.

The Union points to differences within the coverage pool for Miami Township, noting that bargaining unit members were required to contribute twenty percent of the costs of this coverage while non-organized employees were required to contribute ten percent, and until recently the Township Trustees contributed ten percent for their coverage as well.

The Employer has presented information about the options available to it in securing health care coverage for Township employees and the Township Trustees. The Employer emphasizes that the medical histories of some of those in the Miami Township coverage pool have prompted substantial increases in the cost of

coverage. The Employer states that a health savings account is employed because the higher cost of more traditional health care coverage is beyond the Township's resources. The Employer argues that exempt employees are required to contribute ten percent of the cost of coverage because of lower wage increases provided to exempt employees, at times requiring exempt employees to work without an annual wage increase. The Employer points out that Township Trustees have also stopped having their health service accounts funded "upfront" while requiring bargaining unit members to fund their deductible contributions "upfront" before Township funds are contributed.

The Union requests language in the parties' successor Agreement that would require the Employer to contribute ninety percent of the total cost of the health savings account, with these payments to be made quarterly.

The fact finder is of the opinion that group health care coverage intends to spread risks among participants in a coverage pool, and treating participants in a uniform manner provides a fairer and more efficient delivery of benefits. Differences in contributions among participants in the same coverage pool, among those receiving the same coverage, is not recommended by the fact finder. The Employer is fully authorized to determine the pay of its exempt employees. What is less evident is the connection between the salaries set by the Employer for exempt employees and the amount of monthly premium contributions required of the bargaining unit members. The fact finder recommends the 90/10

contribution proposed by the Union. This would bring these bargaining unit members into parity with other participants in the coverage pool and would diminish distinctions that favor one group of coverage pool participants over another.

The fact finder does not recommend the other language proposed by the Union for Article XXVII, the new paragraph intended for section 1 and the new paragraph intended for section 3. The fact finder is not prepared to recommend such a drastic change to the coverage plan in the absence of an agreement between the parties. It is the fact finder's view that by standardizing how all participants in the coverage pool are treated, both as to employee and employer contributions, the protections sought by the Union will be achieved through uniformity of treatment within the coverage pool.

#### RECOMMENDED LANGUAGE - ARTICLE XXVII - HEALTH AND LIFE INSURANCE

Section 1. Health Insurance. The Employer shall continue to provide hospitalization and medical insurance to all full-time employees covered herein in such amounts and benefits as are in effect on the date of this Agreement.

The Employer shall pay 90% and the employee shall pay 10% of the applicable monthly premium for the hospitalization insurance.

The Employer agrees to a joint review in conjunction with representatives of all other Township employee bargaining units, of existing health insurance coverage prior to the date of program renewal. The Employer agrees to consider Union and employee representative recommendations, suggestions and criticisms in its selection of health insurance coverage and carriers.

Section 2. - Retain current language.

Article XXVIII- Wages

The Union recommends changes to the language of section 2 of Article XXVIII that would increase the pay provided to employees required to work as shift supervisors who do not fill a position with the classification of a shift supervisor (sergeant). Under current language an additional \$1.50 per hour is paid to serve as Officer-in-Charge. The language proposed by the Union would change the compensation to that of a sergeant's top pay.

The Employer opposes the change in compensation for an Officer-in-Charge, pointing out that all of the duties required of a shift supervisor are not required of an Officer-in-Charge. The Employer describes an Officer-in-Charge as a lead worker, responsible for task-oriented activities on the shift and not responsible for administrative duties.

The fact finder does not recommend the changes proposed by the Union for section 2 of Article XXVIII. The fact finder is not persuaded that the need for additional compensation is supported by the evidence.

The Employer recommends wage increases of zero, zero, and zero for the years of the parties' successor Agreement. The Union proposes wage increases of 7.5%, 7.5%, and 7.0%, as presented in the Union's proposed Appendix A.

The Union proposes an extension of the longevity pay schedule to pay to those employees with twenty to twenty-five years of service and twenty-six and more years of service additional longevity pay. The longevity pay schedule found in

the parties' most recent collective bargaining agreement provides for payments to employees with one or more years of service. Rates of longevity payments rise with additional years of service, with the highest rate attained at fifteen years of service. Smaller increments of longevity pay for employees with less than fifteen years of service are provided.

The Employer recommends the deletion of the longevity pay schedule, citing the lack of resources to fund this benefit program and the lack of a need for this program.

The Union proposes the addition of a cost of living increase for bargaining unit members, a revenue stream not previously available to bargaining unit members.

The Employer opposes the addition of a cost of living increase for bargaining unit members.

Among the eleven and one-half hours that comprised the fact finding hearing in this case, the first five hours were devoted to the ability of the public employer to fund the wages and benefits provided to the bargaining unit members and the ability to fund proposed increases in these wages and benefits. Dr. Traynor examined national trends; Mr. Wisehart examined regional trends; Mr. Steen focused on the particular revenues and expenses of Miami Township in Montgomery County. Each of these expert witnesses expressed opinions that were not in conflict with one another. Broad general economic trends nationally reflect a recession that began in 2007 from which the nation is emerging but at a very gradual rate. The region where Miami Township is

located shows a loss of a large number of high paying manufacturing jobs beginning in 2001, exacerbated by the recession that began in 2007. The loss of these high paying jobs and the sluggishness in the region's economic growth shows the region to be lagging behind the state of Ohio and the nation in average wages by about ten percent. Also observed is a political subdivision that has been managed conservatively, such that annual unencumbered carryover reserves continue, although at declining levels.

The fact finder finds the 7.5%, 7.5%, and 7.0% wage increases proposed by the Union to be excessive. Public safety forces are not securing wage increases at these levels at this time and there is nothing within the relative ranking of the Township's entry and top pay rates among other public safety forces in the region to support such increases.

The fact finder understands the testimony of the three expert witnesses to suggest that the flat economic growth experienced over the past year will not continue over the second and third years of the parties' successor Agreement. Households paying down debt (deleveraging), increased consumer demand, high corporate profits, and already high productivity levels tend to suggest that in the near future demand for workers will increase and economic growth will accelerate. While no one can predict with precision when these increased economic activities will occur and in what size they will occur, the fact finder is persuaded based on the expert testimony provided that there is no

reason to believe that economic growth in the Township, the region, the state, and the nation will remain flat over the three years of the parties' successor Agreement.

The fact finder recommends wage increases for the bargaining unit for the three years of the parties' successor collective bargaining agreement of zero percent for the first year, 2.0 percent for the second year, and 2.0 percent for the third year. Because inflation has been so low, these projected wage increases will allow bargaining unit members to keep pace with the cost of living and will allow the Township zero wage increase pressure from the bargaining unit during the first year of the parties' successor Agreement. A zero percent wage increase during the first year of the parties' successor Agreement, coupled with expected economic growth of at least two percent during each of the latter two years of the parties' successor Agreement, moves the fact finder to recommend these wage increases as fiscally sound and affordable by the public employer, allowing bargaining unit members a relatively small wage increase in comparison to what the bargaining unit has proposed, but a wage increase nonetheless in the face of uncertainties about the economies of the region, state, nation, and world.

The fact finder does not find the present to be an appropriate time to expand the longevity pay schedule within the parties' collective bargaining agreement. The fact finder however is not persuaded to recommend a deletion of the longevity

program as proposed by the Employer. The longevity pay program contained in section 4 of Article XXVIII represents a promise made under prior contracts and the fact finder finds insufficient reason to nullify this promise.

The fact finder recommends that the language of section 4, Longevity Pay, within Article XXVIII, be retained unchanged in the parties' successor Agreement.

The fact finder does not recommend the new language proposed by the Union for Article XXVIII involving a cost of living increase. The fact finder has recommended wage increases during the latter two years of the parties' successor Agreement and does not recommend additional wage increases in the form of cost of living increases.

#### RECOMMENDED LANGUAGE - ARTICLE XVIII - WAGES

Sections 1-4. Retain current language.

#### APPENDIX A - WAGES

March 1, 2010 through February 28, 2010 - Zero percent

March 1, 2011 through February 28, 2012 - 2.0 percent increase

March 1, 2012 through February 28, 2013 - 2.0 percent increase

The Union also recommends in Appendix A that the pension pickup paid by the Employer to PERS on behalf of bargaining unit members be raised from 10.1 percent to 100 percent of the employee's contribution. The Employer opposes this change and

strongly opposes any increased contribution to the PERS pension by the Employer on behalf of these bargaining unit members.

The fact finder recommends the retention of pension pickup language contained in Appendix A, section A at 10.1 percent. This is a substantial, tax-free benefit to bargaining unit members and the fact finder recommends the retention of current language in this regard.

RECOMMENDED LANGUAGE - APPENDIX A - WAGE RATES

March 1, 2010 through February 28, 2011

	Hire-in	A(1 year)	B(2 years)	C(3 years)	D(4 years)
Police Officer	\$22.28	\$23.10	\$24.07	\$25.00	\$25.73
Corporal					\$27.02

March 1, 2011 through February 28, 2012

	Hire-in	A(1 year)	B(2 years)	C(3 years)	D(4 years)
Police Officer	\$22.73	\$23.56	\$24.55	\$25.50	\$26.24
Corporal					\$27.56

March 1, 2012 through February 28, 2013

	Hire-in	A(1 year)	B(2 years)	C(3 years)	D(4 years)
Police Officer	\$23.18	\$24.03	\$25.04	\$26.01	\$26.77
Corporal					\$28.11

Section A. Retain current language.

Section B. Retain current language.

ARTICLE XXXI - ENTIRE AGREEMENT

The Union proposes language that would bring the parties under the operation of Ohio statutory law as it relates to requiring the other party to bargain collectively changes to terms and conditions of employment expressed within the parties' collective bargaining agreement. The Union points out that a prior exclusive representative of the bargaining unit waived these statutory rights to bargaining during the course of bargaining a prior Agreement, thereby diminishing rights that would otherwise be enjoyed by the bargaining unit members under Ohio law.

The Employer opposes the change to the language proposed by the Union under Article XXXI as an intrusion into what has been a longstanding agreement between the parties concerning the finality of terms and conditions of employment contained within the parties' collective bargaining agreement. The Employer does not dispute that the language of this Article limits rights that would otherwise be enjoyed by the bargaining unit members but points out that that was the intent of this language and this language should be retained.

The fact finder recommends the changes proposed by the Union for Article XXXI, Entire Agreement. The language proposed by the Union would restore to the bargaining unit those statutory rights

otherwise available to these employees under Ohio Revised Code Chapter 4117. The change in this language would facilitate the ability of the parties to address the kinds of disputes contemplated by this Ohio statutory chapter.

RECOMMENDED LANGUAGE - ARTICLE XXXI - ENTIRE AGREEMENT

During the negotiations resulting in this Agreement, the Employer and the Union each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter as to which the State Employment Relations Act imposes an obligation to bargain.

Except as required by law, the Union and Employer expressly waive their right to require the other to bargain collectively whether or not:

- A) Such matters are specifically referred to in this Agreement.

This Agreement contains the entire understanding, undertaking, and agreement of the Employer and the Union, after exercise of the right and opportunity referred to in the first sentence of this Article, and finally determines all matters of collective bargaining for its term.

Changes in this Agreement, whether by addition, waiver, deletion, amendment, or modification, must be reduced to writing and executed by both the Employer and the Union.

Article XXXVI - Mid-Term Bargaining (New Article)

The Union proposes a new Article that would require mid-term bargaining in the event the Employer is contemplating changes to wages, hours, or conditions of employment for bargaining unit members. This language would allow the Union to move these issues to arbitration and avoid the longer timelines associated with pursuing an unfair labor practice before the State Employment Relations Board.

The Employer strongly opposes the addition of this new Article, arguing that there is no need for this language and that

it would unnecessarily interfere in the working relationship of the parties.

The fact finder bows to the Employer's wishes in this regard and does not recommend the Union's proposed language for Article XXXVI.

RECOMMENDED LANGUAGE - ARTICLE XXXVI - MID-TERM BARGAINING

Not recommended for inclusion in the parties' successor Agreement.

Article XXXIV - Duration

It has been tentatively agreed by the parties that the duration of the parties' successor Agreement shall be from March 1, 2010 through 11:59 p.m. on February 28, 2013, and the Agreement shall be retroactive to March 1, 2010.

The fact finder recommends the language tentatively agreed by the parties for Article XXXIV, Duration.

RECOMMENDED LANGUAGE - ARTICLE XXXIV - DURATION

This Agreement shall be effective from March 1, 2010 through 11:59 p.m., February 28, 2013. If a new agreement has not been entered into prior to that time, this Agreement shall continue in effect thereafter until replaced or until notice of not less than sixty (60) calendar days is given by either party to the other in writing.

Agreement shall be retroactive to March 1, 2010.

The fact finder incorporates by reference, as if fully rewritten herein, all Articles that were unopened by the parties or tentatively agreed by the parties, and recommends these

Articles be included in the parties' successor Agreement.

In making the recommendations presented in this report, the fact finder has considered the criteria presented by Ohio Revised Code Chapter 4117., and section 4117-9-05(K) of the Ohio Administrative Code.

  
Howard D. Silver  
Fact Finder

Columbus, Ohio  
November 15, 2010

CERTIFICATE OF SERVICE AND FILING

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Miami Township Trustees, Montgomery County, Ohio and the Fraternal Order of Police, Ohio Labor Council, Inc. was filed with the Ohio State Employment Relations Board via hand-delivery and mailed, certified mail, return receipt requested, postage prepaid to the following this 15<sup>th</sup> day of November, 2010:

Mark E. Drum  
Designated Representative  
Fraternal Order of Police, Ohio Labor Council, Inc.  
222 East Town Street  
Columbus, Ohio 43215-4611

and

W. Joseph Scholler, Esquire  
FROST BROWN TODD LLC  
Attorneys at Law  
9277 Centre Pointe Drive, Suite 300  
West Chester, Ohio 45069.

  
Howard D. Silver  
Fact Finder

Columbus, Ohio  
November 15, 2010

**Howard D. Silver**

Attorney at Law

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

500 City Park Avenue  
Columbus, Ohio 43215  
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hsilver@columbus.rr.com

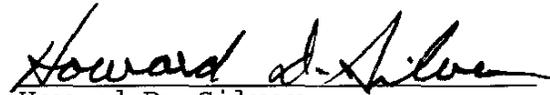
IN THE MATTER OF FACT-FINDING	:	SERB Case Number: 09-MED-12-1441
	:	
BETWEEN THE	:	
	:	
MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	
MONTGOMERY COUNTY, OHIO,	:	
	:	
Employer	:	Date of Fact-Finding Hearing:
	:	October 15, 2010
AND THE	:	
	:	
	:	
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	
Union	:	Howard D. Silver Fact Finder

Fee Statement of the Fact Finder:

September 8, 2010 - Mediation - 8.25 hrs. @ \$118.75/hr. -	\$	979.68
September 8, 2010 - Travel - 3.0 hrs. @ \$118.75/hr. -	\$	356.25
September 8, 2010 - Mileage - 174 miles @ \$ .58/mi. -	\$	100.92
September 21, 2010 - Mediation - 9.0 hrs. @ \$118.75/hr. -	\$	1068.75
September 21, 2010 - Travel - 3.0 hrs. @ \$118.75 -	\$	356.25
September 21, 2010 - Mileage - 174 miles @ .58/mi. -	\$	100.92
October 15, 2010 - Hearing - 11.5 hrs. @ \$118.75/hr. -	\$	1365.62
October 15, 2010 - Travel - 3.0 hrs. @ \$118.75/hr. -	\$	356.25
October 15, 2010 - Mileage - 174 miles @ \$ .58/mi. -	\$	100.92
October 22, 2010 - November 15, 2010 - Review record, prepare Report and Recommended Language, file with SERB, mail to parties - 3.0 days @ \$950/day -	\$	2850.00
	Total	\$ 7635.56

Payable by Miami Township, Montgomery County, Ohio - \$ 3817.78

Payable by FOP, Ohio Labor Council, Inc. - \$ 3817.78

  
Howard D. Silver  
Fact Finder

November 15, 2010  
Columbus, Ohio