

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between

The Fraternal Order of Police,  
Ohio Labor Council, Inc.  
Patrol Officers Bargaining Unit and  
Sergeants/Chief Detective Bargaining Unit

Employee Organization

Case Nos. 10-MED-09-1141  
10-MED-09-1142

And

The City of Wilmington, Ohio

Fact-finder: Jerry B. Sellman  
Date of Report: April 25, 2011

The Employer

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**FACT-FINDER'S REPORT AND RECOMMENDATION**

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APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Mr. Mark A. Scranton - Staff Representative FOP/OLC Inc., representing the Union

FOR THE EMPLOYER:

David S. Blaugrund, Esq. – Attorney with Blaugrund, Herbert, Kessler, Miller, Myers &  
Postalakis, Inc., representing the City of Wilmington, Ohio  
Mary Kay Vance – Deputy Auditor for the City of Wilmington, Ohio, Witness  
Rich Bourgault – Dublin Management Group, Witness  
Danny Mongold – Director of Human Relations for the City of Wilmington, Ohio, Witness

## INTRODUCTION

This matter concerns a Fact-finding proceeding between the City of Wilmington, Ohio (hereinafter referred to as the “Employer” or the “City”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on April 5, 2011 to consider a wage re-opener authorized by the parties' collective bargaining agreements. A Collective Bargaining Agreement for the Patrol Officers Unit and a Collective Bargaining Agreement for the Sergeants and Chief Detective Unit became effective on January 1, 2010 and will remain in effect through December 31, 2012. Both of these collective bargaining agreements have wage articles providing zero percent (0%) annual wage increases in each of the three contract years. Under the contracts, steps are frozen, absent agreement during the wage reopeners to implement step increases. The contracts further provide that negotiations for wage reopeners were to commence in November, 2010 for contract year 2011 and November, 2011 for contract year 2012.

The sole issue identified and discussed by both parties is as follows:

### ARTICLE 18 – WAGES (Re-Opener)

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-Finder's consideration. The parties waived the taking of a transcript.

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

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

## **I. BACKGROUND**

The Fraternal Order of Police, Ohio Labor Council, Inc., (“the Union”) is the exclusive representative of the Patrol Officers’ bargaining unit and the Sergeants and Chief Detective bargaining unit. The bargaining units currently consist of fifteen (15) patrol officers (including one (1) undercover officer and one regular detective), four (4) sergeants and one (1) chief detective. The Patrol Officer Bargaining Unit was certified by SERB in May, 1986 in case number 85-RC-12-4850. The Sergeant and Chief Detective Bargaining Unit was certified in Case Number 09-05-0050 on September 8, 2009.

The City of Wilmington, with a population of approximately 12, 000 residents, is located in Clinton County, Ohio off Interstate Route 71 between Columbus and Cincinnati, Ohio.

Over the last several years, the City found itself in the throes of an unanticipated financial crisis brought on, in large part, by the unexpected closure of the DHL Company's operations at the Wilmington Airport. Several years before, DHL, an international package delivery enterprise, had taken over the UPS facility at the Wilmington Airport and made it a hub for air transport operations. The DHL expansion fueled growth in numerous other local businesses. Local job opportunities expanded and the City's tax base appeared to be healthy. With the expansion of the local economy, the City also expanded, annexing land embracing the airport and opening a new fire station to serve the City's new areas of responsibility. Unfortunately, DHL closed its operations in 2008, resulting in the loss of at least 3,000 DHL jobs in Wilmington and surrounding areas of Clinton County. Thousands of other jobs were also lost due to the ripple effect created by the DHL closure, as well as the financial condition facing the nation, state and region at large.

These events have had a dramatic effect on the City of Wilmington. Wilmington's tax revenue has declined substantially in the wake of the DHL closing. The events were so dramatic that the City's plight aired on a segment of the television show *60 Minutes*. While the City has made inroads in trimming its expenditures in light of decreased revenues, the City is now paying for City operations through deficit spending, eating into its surplus account, which reached its peak during the DHL employment years.

The City and the Union responded to the City's dire financial condition when reaching agreement on the 2010-2012 contracts for the police bargaining units. Both of the contracts have wage articles providing zero percent (0%) annual wage increases in each of the three contract years. Under both contracts, steps are frozen, absent agreement during the wage reopeners to implement step increases. As stated above, the contracts provide for wage reopeners to

commence in November 1, 2010 for contract year 2011 and November 1, 2011 for contract year 2012.

The City and Union bargaining teams met to review their positions concerning the wage reopener on November 17, 2010. The parties followed up this bargaining session with subsequent telephone communications as well. The negotiations have solely entailed bargaining over the Union's proposal for step increases for the members of both units. The City opposes these increases for contract year 2011. The Union believes the step increases are modest and should be granted.

## **II. UNRESOLVED ISSUE**

### **1. ARTICLE 18 – WAGES**

#### **The Union's Position**

The Union proposes that both bargaining units receive step advancement in the current contract year (2011). The Union is requesting that the City follow the pay scales (time in service steps) that are in each of the current collective bargaining agreements; it is not requesting a COLA to the scale. The Union agrees to leave the SCALE at the same level it has been since January 1, 2008.

The Union believes its proposal represents a very modest wage adjustment in light of the freezes that its members have encountered over the last several years. While the bargaining unit members currently are fairly paid in comparison to other jurisdictions, they should be permitted these step increases to remain competitive. Moreover, the Union believes that the language contained in the agreements anticipated at least a step increase in 2011, even if no additional wage increases were negotiated in the reopener. It argues that the City has the ability to pay the step increases to the bargaining unit members, because it maintains a surplus.

To support its argument that the parties intended to provide a step increase for the Sergeants and Chief Detective in 2011, the Union cites the language contained in Article 18, Wages, Section 18.1 of the Sergeants and Chief Detective Collective Bargaining Agreement. Section 18.1 states:

"The employee will progress to the next step on the scale as indicated, except for 2010, unless any other bargaining unit or non-bargaining unit employee receives a step increase."

From this the Union argues that the expectation of a step increase was implied for years following 2010. That increase is only \$22,812. While similar language does not exist in the Patrol Officers' Agreement, the Union bargained with the same intention. The increase for the Patrol Officers would only be \$39, 583. The total increase sought is \$61,812.

The Union argues that the City can afford to pay the increases sought. It had a \$1.7M carryover for the year 2011, which was the largest carry-over for the budget since the years prior to the commencement of the DHL operations. On January 22, 2010, the Mayor was quoted in the *Wilmington New Journal* that the City of Wilmington was "safe, secure and financially strong." In 2011 the City reported that its projected deficit of \$2,000,000 to its carryover was only \$900,000. The City predicted that it will begin 2012 with the largest carryover since 2005, without any Airpark revenue. With these surpluses, it can afford to pay the increases sought.

Revenues from income taxes are down from the DHL years, but in 2010 income taxes collected were close to the same levels that existed before DHL commenced operations. In 2010, the City collected \$4,173,030 in income taxes and in 2007 the City had collected \$4,519,648. The General Fund carry-over from 2008 to 2009 was \$2, 654,777, but it was \$3,721,001 from 2010 to 2011. With the additional carry-over, the City cannot say it lacks the ability to pay the step increases sought.

The Union further argues that the City could pay the increases sought if it chose not to pay or obligate itself to other expenditures. As an example, it could pay its in-house counsel to represent it in labor negotiations and proceedings instead of hiring outside counsel; it could eliminate or reduce the amount of incidentals paid to the Mayor and other city employees; and/or it could use the \$80,000 in savings from last year's budget. The City has the ability to pay the increases sought. Based upon the City's ability to pay, the step increases should be granted.

### The City's Position

The City proposes that no step increases be paid in 2011.

The Employer submits that it is premature to declare an end to the City's financial emergency and to devote extremely limited resources to step increases for the police bargaining units.

While the Union proposal might be worthy of consideration by a financially vigorous agency, the City is certainly not yet "out of the woods" and cannot reasonably hope to rebound sufficiently to justify any increased personnel costs in contract year 2011.

These reopener negotiations have taken place against the back-drop of a persistent local, regional and national economic recession -- the longest in seven decades.<sup>1</sup> The prolonged recession has hit local government agencies particularly hard, as federal and state funding sources dwindle and tax-payers -- themselves pushed to the limit -- grow increasingly inclined to oppose social service levies. Under these circumstances, many local government agencies have been compelled to impose wage freezes and layoffs. Indeed, the U.S. Department of Labor's October 8, 2010 jobs report revealed "[t]he most rampant layoffs of teachers and other local government workers in nearly three decades."<sup>2</sup>

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<sup>1</sup> See <http://www.businessweek.com/news/2010-02-23/-great-recession-gets-recognition-as-entry-in-ap-stylebook.html>.

<sup>2</sup> See <http://www.cleveland.com/business/index.ssf/2010/10/>

Regardless of the timing of the long-hoped-for national and regional financial recovery, the City is likely to face on-going financial constraints for the remaining years of the current police contracts. As a result of the closure of the DHL facility, the City's tax revenue is no longer adequate to support the City's existing financial obligations. While the Union insists that income collected is near pre-DHL levels, 2010 revenue was \$346,616 less than 2007 and \$652,779 less than 2006. That is not insubstantial. The City has resorted to deficit spending, eating into the City's carry-over in order to maintain City operations. Even if the regional and national economies improve in the short term, it will take some time for the City to overcome the lingering hardships resulting from the DHL departure. Under the circumstances, the City cannot assume additional burdens for 2011 and the Union proposal must be rejected.

The City has been deficit spending since the departure of DHL. Fortunately, the increased revenues from DHL enabled the City to establish a surplus to absorb the deficit spending. At the end of 2010 the City had a \$3,712,001 surplus. Due to reductions in force and other cost cutting, the loss in 2010 was \$900,000 and not the projected \$2,000,000 loss. The City projects General Fund Revenues of \$8,000,000 in 2011 and expenses in the amount of \$9,500,000. This projected \$1,500,000 deficit will further reduce the surplus to \$2,212,000, which will result in a less than 25% expense surplus. Because a significant amount of decreases were achieved in 2010 through reductions in force and cuts in expenses, it is unlikely those same decreases in spending can continue. Further, revenues are expected to be flat.

The City has attempted to retain jobs and provide affordable health care and wages, while recognizing that dwindling revenues necessitate the spending of the City's savings account to do

so. The City has traded job security in the police bargaining units, along with the maintenance of existing wages and benefits, at no additional cost to police department employees. Section 15.5 of the Patrol Officer contract specifically provides that the bargaining unit will not be subject to layoffs in 2010 or 2011. In return, the City has not provided a wage increase or offered step advancement for 2011.

If the police bargaining unit received the step increases sought by the Union, the City would incur an additional expense of \$24,172.73 (including step and associated pension, Medicare and Workers Compensation costs) just to cover the direct cost of those increases. Moreover, step increases for the police bargaining units would also have attendant impact on the compensation of the City's firefighter bargaining unit members. Like the police unit contracts, the firefighter contract includes a "me too" wage provision. The City is obligated to provide firefighter step increases automatically if the police bargaining units receive the union proposed step increases as a result of this Fact-finding. The City estimates that the cost of step increases for the firefighter unit would be approximately \$7,089.34.

In addition to contractual "me too" language, the City has promised its non-management non-bargaining unit employees that they will be treated the same as the bargaining units. The cost of providing step increases to the rest of the City's non-management employees would be approximately \$117,942.55. Thus, the real cost to the City of the Union's proposal at fact-finding amounts to approximately \$149,204.62, for all of its non-management, bargaining unit and non-bargaining unit employees.

In times of deficit spending, increased employee costs often translate into job losses. Throughout the last several years, the City administration has sought to contain personnel expenses in order to preserve as many City jobs as possible. The City has laid off some workers,

but has struggled to retain as many employees as possible. The City has recalled laid off fire personnel last year when openings occurred due to attrition. If additional expenses are generated by the police bargaining units, the City's ability to retain current employees will be jeopardized.

In addition, for the past two years, the City of Wilmington has elected to not pass along to City employees any of the increased cost of health insurance. This decision was made despite contractual language which provides that employees will pay ten percent (10%) of the health insurance premium.

The City believes that it is preferable to hold the line on step increases and provide relief on health insurance increases rather than further reduce the number of employees providing city services. As Joseph Gardner observed in his report in *City of Warren and OPBA*, SERB Case No. 06-MED-10-1267 at 9-10 (Nov. 8, 2007), "increases in pay that causes [sic] a reduction in work force, either through attrition or layoffs, endanger not only the public, but also endangers [sic] the remaining workforce. Pay increases that lead to attrition or layoffs must be avoided."

The most important comparison of compensation is that between the parties' proposals for the Patrol Officers and Sergeants/Chief Detective bargaining units and the City's treatment of its Firefighter bargaining unit and non-bargaining unit employees. While the Union relies on recent contract settlements from other, relatively healthy jurisdictions, for the most part, such data is misleading and inappropriate because those jurisdictions have not experienced similar cataclysmic reversals of financial fortune as experienced by Wilmington.

One notable exception arises in the case of the City of Moraine, Ohio, a municipality hard hit by a GM plant closure. After the GM plant closed its doors on December 23, 2008, the City of Moraine faced a long-term loss of tax revenue that impacted its ability to fund safety forces. Moraine has negotiated collective bargaining agreements for Patrol Officers, Dispatchers

and Sergeants providing for a 10% wage reduction with steps frozen at 2010 levels. In addition, Moraine has lost two police officers and one police lieutenant who will not be replaced. While many demographic factors in Moraine are not similar to Wilmington, these changes in economic realities do suggest that at least one other city in a financial crisis has taken steps to maintain jobs by not increasing (and in this case reducing) future wage obligations.

The City of Wilmington has so far managed to avoid wage *reductions* as a solution to its financial crisis. The City's ability to maintain its present staffing levels and level of service to the community is dependent on its ability to control personnel costs in collective bargaining. The City has not provided annual wage increases or step increases to its firefighter bargaining unit or to its non-bargaining unit employees for 2011. The City submits that it is essential to keep its police units on even footing with other City employees in this regard. The City has traditionally maintained strong internal consistency among its police and fire bargaining units, as well as its non-bargaining unit employees

The most important of the statutory factors to be considered is the interest and well-being of the citizens of Wilmington, Ohio, and the City's ability to provide the services to those citizens traditionally provided by the personnel of the Patrol Officers bargaining unit.

The Union suggests that the City has spent freely on legal defense fees and non-union employee compensation, while at the same time scrimping on compensation for its police employees. This characterization of the City is distorted and unwarranted. The Union conveniently ignores substantial, offsetting compensation provided by the City.

While the trend on a national basis is for workers with employer-sponsored insurance to contribute on average 16% for single coverage and 28% for family coverage,<sup>3</sup> and many

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<sup>3</sup> See *AFSCME, Ohio Council 8, Local 1992 v. Trumbull County Bd. of Developmental Disabilities*, SERB Case No.

contracts provide for an 80%-20% split, the story is much different in Wilmington. At present, the cost of group health insurance premiums for the City's employees is \$1,565.71 for family coverage and \$602.06 for single coverage. Despite its modest resources, the City currently collects only 4.66% (\$28.04/mo) for single coverage and 5.02% (\$78.54/mo) for family coverage of the group health insurance premium cost from its bargaining unit employees, notwithstanding the fact that the police contracts include provisions permitting the City to require a 10% employee contribution toward those premiums. The City has borne the remainder of the employees' contribution and hopes to continue to do so barring future increases in other personnel costs that might swallow up the City's scarce resources. Many other similar jurisdictions require their bargaining unit employees to contribute at a much higher rate than does the City. When the City's posture regarding insurance is viewed together with its treatment of salary issues, the overall compensation package compares favorably to the compensation provided by other public employers.

The City agreed to wage and step freezes in its police and fire fighter contracts that went into effect on January 1, 2010. The City has also applied a wage freeze to its non-bargaining unit employees. The latter employees receive no step increases. The City and the Union reasonably agreed to revisit the issue of wages in reopeners during the life of the current police contracts on the chance that economic conditions would improve sufficiently to warrant an alteration in wages. Economic conditions have not improved in Wilmington. To the contrary, the City is still in a deficit-spending mode and will certainly continue to be throughout the coming contract year. Despite this fact, the City has managed to provide its police employees with competitive wages, particularly when viewed in light of the City's payment of a portion of the police bargaining unit

members' insurance contributions. The City urges the Fact-Finder to maintain the status quo for the calendar year and reject the Union's proposal for step advancement in calendar year 2011.

#### Discussion, Findings and Recommendation

In assessing what is a fair recommendation on the issue of step increase for the two bargaining units in this case, the Fact-Finder considered the language in the parties' agreements concerning the reopener provisions, the wages of public employees doing comparable work, the level of any wage increases over the past several years given to the bargaining unit, the Employer's ability to pay and the City's current economic situation, among other factors.

The Union avers that the parties intended, and their collective bargaining agreements provide for, a step increase in 2011. After reviewing the collective bargaining agreement, the Fact-Finder does not agree with this position. The Union drew the essence of its position from the language contained in Article 18, Section 18.1 of the Agreement with the Sergeants and Chief Detective. While Section 18.1 does provide that "...The employee will progress to the next step on the scale as indicated, except for 2010, unless any other bargaining unit or non-bargaining unit employee receives a step increase," this provision, when read in light of the entire first paragraph of Section 18.1 and all of the sections in Article 18, does not mean that the employee(s) are entitled to a step increase pursuant to the Agreement.

The full text of Article 18, Section 18.1 reads as follows:

Section 18.1 Effective on January 1 of 2010, the pay ranges to which bargaining unit employees are assigned shall be in accordance with Appendix A of this Agreement, although this scale shall not affect the wages of bargaining unit members until the parties agree to such implementation as the result of future reopener negotiations. After being promoted to Sergeant or Chief Detective, the employee will be placed on Step 1 of the pay range schedule in Appendix A. The employee will progress to the next step on the scale as indicated, except for 2010, unless any other bargaining unit or non-bargaining unit employee receives a step

increase. The parties agree to reopen this Agreement for Article 18 - Wages effective November 1, 2010 for 2011 and November 1, 2011 for 2012. The parties acknowledge that the Dispute Resolution Procedures under 4117.14 are available to the parties if impasse is reached in either 2011 or 2012 re-opener negotiations.”

This provision is not clear and unambiguous. To state that any employee will progress to the next step unless other bargaining unit or non-bargaining unit employees receive a step increase makes no sense. The Union would not have negotiated a provision that would *prevent* an employee from getting a step increase if another employee did receive a step increase. It appears that the word “not” was left out. If “not” were inserted between “will” and “progress”, it would make more sense, thus giving the Sergeant or Detective a step increase if another bargaining unit or non-bargaining unit employee received a step increase.

The intent of the parties is nonetheless made clearer by reading the specific language in Section 18.2. Therein it states:

“Except in 2010, each bargaining unit employee who has not reached the top step in his salary range in the Employer's pay plan shall be granted the appropriate step level increase on his anniversary date within the classification as provided for in such pay plan. The parties shall address whether or not such step increases shall be awarded as part of the reopener negotiations for the 2011 and 2012 contracts.”

It is clear from this section that a level increase is awarded as provided in the pay plan. The pay plan provides for a re-opener in 2011. Further, the section specifically states that the parties will address step increases in the re-opener negotiations.

Section 18.2 is identical in the Patrol Officers’ Agreement and the Sergeants and Chief Detective Agreement, but Section 18.1 is not. There is no mention of any step increases past 2009 in Section 18.1 of the Patrol Officers Agreement. Reading both of these Agreements in light of the text contained in Sections 18.1 and 18.2, the Fact-Finder must conclude that the parties intended to make step increases the subject of negotiation in the re-opener.

Having determined that the step increases are subject to negotiation in this re-opener, the sole issue is whether step increases should be authorized in 2011. For the reason set forth below, the Fact-Finder must conclude that they should not be authorized.

When the parties negotiated the current collective bargaining agreements, they were in the throes of an economic reversal. Faced with the loss of 25% of the employment base for the community and more than 25% of expected revenues, the Union agreed to freeze wages in the first year to revisit the issue of wages in the remaining two years of the Agreement.

The Union argues that the economics of the region are improving and it points to statements made by Wilmington's Mayor in several newspapers. The evidence shows that the economic climate is improving in Wilmington, Ohio and that encouraging steps have been taken to offset the loss of jobs and revenues from DHL's departure. The evidence likewise shows that notwithstanding reductions in force and a paring back of expenses, projected expenses for 2011 exceeds projected revenues for 2012.

The Union suggested that the cost savings from 2010 and the "more than expected" year-end surplus in the general fund could be used to pay for the step increases sought. This is a valid argument, but must be considered in light of other factors, such as comparable wage comparisons with other public and private employees doing comparable work and the interest and welfare of the public. Here the evidence supports a finding that the bargaining unit employees are being paid wages comparable with other public and private employees, both internally and externally. The real issue is the impact of step increases on the welfare of the City of Wilmington.

While the City has a carry-over surplus in its general fund, that surplus is rapidly eroding. It is projected to be depleted in 2012 if current spending limits are maintained and income

remains flat. The Union concluded that if a surplus in the general fund exists, then the City has the ability to pay wage increases (in this case step increases), if those increases are shown to be in the public interest. As a general conclusion, that is not tenable. A municipality must maintain a minimum level of carry-over at the end of each year in order to pay first quarter obligations of the entity. If it maintained a zero carry-over balance, it would be unable to pay its expenses as they became due, thus ending up either bankrupt or placed on fiscal emergency by the state. Where a projected surplus is projected to be depleted within a foreseeable period of time, which is the case with Wilmington, the problem of cash flow becomes even worse. Here, the City of Wilmington cannot be characterized as having the ability to pay.

When a governmental entity is currently operating in the red and forecasts depletion of all reserves in the next few years, it is unwise to imprudently increase wages and benefits while action is taken to increase revenues and cut expenses. When such actions are being taken, it is not reasonable for a bargaining unit to expect increases for itself, to the exclusion of all others, and close its eyes to public perception of increases in a down economy.

The Union has cooperated with the City and has recognized that a wage increase is beyond the means of the City, for it agreed to a 0% increase in wages for 2011 in the re-opener negotiations. While it argues that the request for step increases in 2011 is modest and would not have a significant impact on the city, the evidence supports a different conclusion. If step increases were recommended and approved, the City would be required to increase the wages of other union and city employees under currently "me too" agreements. That results in a significantly higher obligation of the city to pay increases wages to all groups and even further reductions in the carry-over surplus of the City.

The Employer points out that it is doing its best to offset the impact of no wage increases by picking up more of the bargaining unit employees' health insurance premiums. While the bargaining unit is obligated to pay up to 10% of its health insurance premium, the City has only required the employees to pay an amount equal to approximately 3% of the premium. In light of the evidence that the bargaining unit employees are paid a fair and comparable wage, that the City is already providing a benefit to them by deducting less from their pay for health care premiums and that the City's carry-over surplus is rapidly eroding, the recommendation of the Fact-Finder must be to deny the Union's request for payment of step increases.

The Fact-finder recommends that the step increases sought by the Union be denied.

### **RECOMMENDATION**

**It is recommended that under Article 18, Wages, Sections, 18.1 and 18.2, no step increases be authorized for the year 2011.**

### **CONCLUSION**

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

April 25, 2011

  
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JERRY B. SELLMAN, FACT- FINDER

## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail on April 25, 2011 to:

SERB

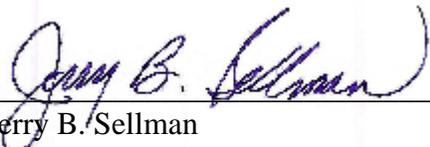
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