

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FEBRUARY 6, 2011**

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.
(DISPATCHER)**

Employee Organization

and

CITY OF MIDDLETOWN

Employer

2010-MED-10-1529

CASE NO. ~~NO. MED-10-1529~~

FACT FINDER: Howard Tolley Jr.

APPEARANCES

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.
(DISPATCHERS)**

Thomas J. Fehr, Staff Representative
Diane Green, Dispatcher representative
Kathy Pierce, Dispatcher representative

CITY OF MIDDLETOWN

Sara Mills, Assistant Law Director
Greg Schwarber, Chief of Police
Mark Hoffman, Deputy Chief of Police

Introduction

FOP/OLC dispatchers unit was certified in 1999 and currently has fourteen members. The city in Butler County has a population of about 51,000 and more than 350 employees with over 60 per cent in collective bargaining units.

Police Division		Most Recent Contract
Patrol Officers/Sgt/Lt	86	11/1/09 – 10/30/12
Dispatchers	14	1/10/08 -- 12/31/10
Corrections Officers	8	1/10/08 -- 12/31/10
Records Clerk	7	1/10/08 -- 12/31/10
Other		
Firefighters	85	2009-2011
AFSCME	43	7/1/08 -- 6/30/11
Transit	4	7/1/08 -- 6/30/11
IUOE		newly recognized unit of 8 members

Prior to the December 31, 2010 conclusion of their most recent three year agreement, the parties had four bargaining sessions in October and November, reaching tentative agreement on seven articles that were reopened. They were unable to agree on economic provisions in five articles. The FOP and Middletown had recently concluded a separate fact finding for the union of eight city corrections officers and requested that this report be submitted when the other fact finder' report was expected on February 11 prior to the Middletown City Council session of February 15.

The parties exchanged and submitted pre-hearing position statements that summarized their proposals. The parties prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3) The interest and welfare of the public, and 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; and,
- 6) Such other actors, 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 the public service or in private employment.”

Fact Finding Hearing: January 25, 2011, City of Middletown

The Fact-Finder conducted a hearing from 9:15 am until 2:45 pm with presentation of evidence and argument on five articles.

ARTICLE 22 WAGES

Paragraph 1 Wages

Union Position

The FOP Proposes wage increases of 3%, 3.25% and 3.25% over the three years of the contract and argues that the city's offer of 1% in 2011 and a "me-too" with non-union Middletown employees falls well below increases to other public employees doing comparable work.

The city's 2009 – 2011 contract with the firefighters provides 3% pay raises in all three years, and the recently negotiated 2010 – 2013 agreements with the police patrol officers and supervisors includes even greater increases for a total of 150 members in the three unions. For external comparables the union provided data on increases for police dispatchers from nine Ohio cities and counties. In 2009, eight had increases ranging from 2% to 4.25% with one reopener, in 2010 available data indicate one wage freeze, one reopener and five with increases ranging from 2% to 4.25%, and available data from two in 2011 with increases of 2.83% and 3%. The SERB annual wage settlement report 2000-2009 breakdown for police indicates an increase is every year from a low of 2.43% in 2009

The union noted that the city has a cash reserve of over 20%, well in excess of the recommended minimum, and much higher than the fact finder's recent recommendations for neighboring Hamilton County. The city's long term budget forecast that the entire cash reserve would be gone by 2014 rests on the unwarranted assumption that the voters will in 2012 refuse to renew a .25% income tax levy earmarked for public safety. The city's current rainy day fund is more than sufficient to grant raises to fourteen dispatchers whose total economic proposals would cost the employer no more than an estimated \$71,000 over the life of the contract. The city's recent fiscal difficulties will soon be alleviated by job growth resulting from expansion of a medical facility, new coke production plant, and development of a Cincinnati State branch.

In negotiations the union had compromised on its initial proposal, but the city made no concessions whatever in bargaining on economic issues. Rather than budget for reasonable wage increases, the city plans to add another full time dispatcher. The employer unfairly seeks to establish a pattern of minimal wage increases with the small dispatchers' union prior to upcoming contract negotiations in 2011 with several much larger bargaining units. The worst of the recession is past, and the employer's finances are likely to improve with the ongoing recovery.

Employer Position

The city argues that as a result of declining finances it is unable to pay, especially if the union's proposals are extended to all unionized employees who make up over 60% of a workforce whose compensation constituted nearly 80% of the general fund budget in 2010. The city lost income tax revenue from 300 highly paid private sector employees when AK Steel relocated its corporate headquarters after a protracted lock out at the plant. Other business closings during the economic downturn resulted in another 1000 lost jobs. Litigation has delayed work on a new coke production facility. Median household income barely exceeds \$38,000. An extraordinary home foreclosure rate, 10.5% unemployment, and decreased property valuations contribute to projected lost revenue from property taxes. A five year .25% income tax levy earmarked for public safety will expire in 2012. Renewal is uncertain as voters twice rejected proposed income tax increases prior to the levy's approval in 2007. Ohio's large budget deficit may result in elimination of \$800,000 in estate tax revenue for the city as well as a significant loss in state local government fund revenue.

In order to reduce expenses the city laid off seven workers in 2010 and eliminated seven vacant positions in 2010 and 2011. Since 2000 the number of dispatchers has been reduced from 17 to 14 and patrol officers from 77 to 64. The police division has deferred purchase of cruisers to allow wage increases. Middletown has cut home health aid service, shifted positions from full to part time, eliminated its recreation service, closed both its pools and still run a deficit for the past two years. Despite layoffs and reduced services, the city has drawn down cash reserves by \$1,500,000 over a two-year period. The beginning year reserve has declined from over 25% of expenditures to a projected 15% in 2012 and a negative balance the following year. At a City Council retreat just prior to the fact finding hearing, members' concerns about recent threats to eliminate the state estate tax and local government fund resulted in a request that each department prepare a plan for 2012 to cut 20% in expenditures. The police division might consider consolidation with the county by closing the Middletown 50 bed jail and by shifting to a regional dispatch arrangement.

Since 2000 the dispatchers' wages have increased 34% while the city's unrepresented employee wage increases have amounted to 22.75% in a period when the computer price index increased by 24.2% in the region. The 2011 increase awarded to Middletown's police patrol officers and supervisors includes an adjustment for a health care concession that had previously been awarded as an extra 1% pay increase for the dispatchers in 2008. In November 2010 a conciliator decided in favor of the Butler County Sheriff, granting a wage freeze for 2010 and 2011 with a 2% increase 2012 to an FOP unit of deputies and supervisors. The city offered a dispatcher wage comparison that ranked Middletown's top compensation of \$44,342.40 sixth among 15 Ohio jurisdictions.

After a wage freeze in 2010, Middletown's non-union employees have been granted a 1% increase for 2011; the dispatchers have been offered that same 1% for 2011 and for the final two years of the contract whatever increases the city grants to its unrepresented workers. The city is unable to pay more without making additional cuts that further undermine core functions. National data indicate that the public sector's worst times lie ahead, lagging behind the slow economic recovery.

Analysis

The fact finder concludes that the city's prudent, conservative budgeting has provided a sufficient cash reserve to provide more than a 1% increase in 2011, but that uncertain revenue projections beyond 2011 require flexible options rather than a binding commitment to further wage increases in the following years. Despite financial problems, the employer has increased actual expenditures from 2008 to 2010 by 1.05% while maintaining an ending balance cash reserve of 23% of expenditures. Conservative budget projections for 2010 had forecast a lower year-end balance cash reserve of 20%. The budget projections for 2009 had also anticipated a lower cash reserve than the actual December 31 balance on hand.

The budget document of 1/21/11, employer exhibit Tab 2 page 10, forecasts a December 31, 2011 year-end balance of 20.1% of expenditures that may also be a conservative estimate. Neighboring Hamilton County maintains a cash reserve of slightly less than 10%, and Moody's recommends between 5% and 15%. On the one hand, the employer's budget forecast appears unduly optimistic. The city's latest budget projections through 2014 for stable revenues from property and estate taxes as well as from the state's local government fund appear unrealistic given declining property values, Ohio's likely cuts in local government funding to overcome an \$8 billion deficit and the recent proposals to end the estate tax. On the other hand, the fact finder questions the city's budgeting for 2011 based on concerns that a 0.25% levy will expire at the end of 2012. Only one member of council has expressed opposition to seeking a renewal, and

discussion about renewal with the unions begin this month. Renewal of that levy would leave the city with a 15% cash reserve in 2013 and 2014, assuming no loss of other revenues.

The employer submitted an exhibit detailing 1,425 lost private sector jobs in the city. That exhibit did not include any data on jobs added in the same period despite the addition of employees in new enterprises, including many at a regional medical facility. The city's economic development plans indicate solid prospects for additional new jobs at that regional medical center, at a new branch campus of Cincinnati State, and at a new coke production facility.

From the list of 14 Ohio jurisdictions used for comparison by the employer the fact finder selected 8 in Southwest Ohio with populations ranging from 31,000 to 65,000. Four of those comparable public employers pay dispatchers more than Middletown – West Chester, Fairborn, Huber Heights and Fairfield, and four pay less – Warren County Sheriff, Hamilton, Lima and Springfield. Other public employers have awarded reasonable increases for 2011 despite the economic downturn. While the Butler County conciliator accepted a wage freeze for 2011, those sheriff's deputies will receive a \$1,000 cash payment this year, and another \$1,000 in 2012 on top of a 2% wage increase.

Historically it appears that the patrol officers contract negotiated one year prior to the dispatchers' agreement has set the wage pattern. The most recent contract was an exception when the dispatchers received an additional 1% pay adjustment in return for accepting a health care change that the patrol officers had rejected. For their September 2009 through October 2012 contract the patrol officers received staggered increases that the fact finder has calculated result in the following calendar year wage increases: 2009 -- 3.16%, 2010 -- 3.56%, 2011 -- 3.41%, and 2.85% annualized for the first ten months of 2012. All other units previously received a 1% wage adjustment when shifting to the new city wide health care plan, and a similar adjustment was granted to the patrol officers for 2009 - 2012 after their late acceptance of that change. It appears that the patrol officers received a total of about 9% in wage increases over three years with an additional 1% adjustment in return for the health care concession.

The fact finder believes that the patrol officers contract union should continue to set the pattern for the dispatchers' agreement, in part to avoid gender related pay inequities. The fact finder recognizes the disparity suffered by unrepresented city employees whose pay increases have not kept up with the CPI. That discretionary payroll policy however, does not invalidate past increases for represented workers providing some improvement in their standard of living over many years of public service. Over the course of a successful career, whether in the public or private sector, whether unionized or unrepresented, employees ought to earn more than simple cost of living increases that merely keep them in place.

The fact finder calculated the cost of the city's proposed 2011 one per cent wage increase including roll ups and overtime for fourteen dispatchers at \$8,328.747, a total of about \$25,000 over the three year agreement. The city seeks to offset the cost of that proposed wage increase with \$26,000 in savings from the proposed elimination of longevity pay. That take back would leave the dispatchers with reduced earnings and the only employees without longevity pay.

The fact finder spent considerable time calculating the costs of several different combinations of wage increases, one time cash payments, and automatic or optional wage reopeners, as well as the additional costs and possible savings of four other economic proposals made by the parties. Ultimately there was no way at this uncertain moment to make a reasonable assessment of what the employer will have the ability to pay in 2012 and 2013. Although highly

unlikely, in a worst case scenario for possible lost income the city could lose revenues that funded 25% of 2010 expenditures:

Ohio Local government Fund	6.2%
Estate Tax	2.8%
Income Tax	15 %
10% decrease Property Tax	1.2%

The patrol officer's contract increases were negotiated before the state began considering major cuts in local government funding and repeal of the estate tax. The city's long-term ability to pay will become clearer with the forthcoming state budget for July 1, 2011-June 30 2012 and a decision on renewal of the 0.25% tax levy for public safety, presumably no later than its end date in December 2012. The city's upcoming negotiations with represented AFSCME and Transit workers for contracts beginning July 1 will be informed by a clearer understanding of future revenues from the state. The city's 2012 negotiations with the patrol officers will be informed by an even better understanding of the future revenues from the state and more importantly with a likely decision of renewal of the income tax levy.

Until income projections are clarified in the coming months, the city cannot make unsustainable long-term wage commitments. In addition to the 1% wage increase, the city can afford to pay from reserves an additional \$8,400 cash payment in 2011, a one time \$600 cash payment per member averaging 1% of dispatcher pay. The dispatchers' wage increases in 2012 and 2013 should be linked to contracts negotiated when the city's ability to pay has been clarified. The city proposed a "me too" provision linking dispatchers' wage increases in the final two years of the agreement to whatever Council approves for unrepresented workers. At the hearing the FOP representative categorically rejected that proposal, but stated that a wage reopener would be acceptable. Instead, the fact finder concludes that it makes more sense to link the dispatchers' 2012 increase to the first year increase granted to the AFSCME workers beginning July 1, 2011, and their 2013 increase to the first year increase granted to the patrol officers beginning November 1, 2012. As indicated in the city's exhibit comparing wage increases since 2000, there has been a consistent pattern that clearly links the dispatchers' wage increases to those granted other city unions rather than to non-union workers. Optional or automatic wage reopeners appear unduly burdensome given negotiations involving nine different unions with overlapping contracts and the costs of repeated fact finding..

Recommendation

The fact finder recommends

- a 1% wage increase for 2011, retroactive to January 1, and a one time \$600 cash payment per member, averaging 1% of dispatcher pay.
- an increase for 2012 equal to the first year increase granted to the AFSCME represented workers beginning July 1, 2011
- an increase for 2013 equal to the first year increase granted to the patrol officers beginning November 1, 2012

RECOMMENDED CONTRACT LANGUAGE ARTICLE 22

Wages

1. There are hereby established the following pay ranges for dispatchers:

Effective January 1, 2011 (1%)

For the contract period January 1, 2011 through December 31, 2011, the bargaining unit employees covered under this labor agreement shall receive a one time bonus of \$600 in addition to their annual salary to be paid in equal amounts during regular pay periods effective the first pay period after December 2010.

Effective January 1, 2012

For the contract period January 1, 2012 through December 31, 2012, the bargaining unit employees covered under this labor agreement shall receive the same increase paid to the Middletown AFSCME represented employees for the twelve-month period beginning July 1, 2011.

Effective January 1, 2013

For the contract period January 1, 2013 through December 31, 2013, the bargaining unit employees covered under this labor agreement shall receive the same increase paid to the Middletown Patrol Officers Bargaining Unit for the twelve month period beginning November 1, 2012.

Paragraph 4 Uniform Allowance

Union Position

The FOP proposes increases in the uniform allowance from \$600 to \$900, the same as received by the patrol officers. In nine jurisdictions offered as comparables, three provided dispatchers no allowance, one \$750, two \$600, and others less.

Employer Position

The city notes that the allowance was increased from \$500 to \$600 in the last contract. Patrol officers incur more expense for shoes and undergarments as a result of serving outdoors. Corrections officers receive \$700. Since the dispatchers are provided with wash and wear uniforms that don't require dry cleaning as well as needed replacements, the "uniform allowance" is actually additional pay hidden from the taxpayers.

Analysis

The fact finder cannot support an increase to annual compensation by misrepresenting a cash payment unrelated to any employee expense as a "uniform allowance." As noted above, the fact finder favors a one-time cash payment of \$1,400 in Section 1 on wages for 2012.

Recommendation

The fact finder recommends current contract language for Section 4.

Paragraph 6. Field Training Officer Pay

Union Position

The FOP proposes an increase in field training officer (FTO) pay from \$1.50 to \$2.50 per hour. Experienced members currently receive an extra \$1.50 for every hour they offer on the job training to a newly employed dispatcher, or half that amount if two employees are on duty for FTO. Middletown pays patrol officers \$2.50 per hour of FTO, and the dispatchers should receive the same benefit.

Employer Position

Middletown does not provide any FTO compensation to the firefighters. The patrol officers just received the increase to \$2.50 per hour and engage in more critical one-on-one training for new employees who may need to use lethal force. In 2010 there were 697.5 FTO hours and the city cannot afford the increased cost to fund the union's proposal.

Analysis

The FOP provided data on dispatcher FTO from nine other jurisdictions that does not support the proposal. Three offered no extra FTO compensation whatever, and none appear to pay close to \$2.50 per hour.

Recommendation

The fact finder recommends current contract language for Section 4.

New Paragraph 8. Minimum overtime for mandatory outside work assignments

Union Position

Based on a provision in the patrol officer's contract, the FOP proposes a new benefit for dispatchers – a minimum 2 hours paid at overtime for mandatory job assignments such as staff meetings or training outside of normal work when not scheduled at the beginning or conclusion of a regular shift.

Employer Position

The city objects to paying for time not worked and to paying time and a half when the hours are not in fact overtime. The patrol officers and detectives also have more training outside of normal work for breathalyzer equipment, canine, and SWAT preparation.

Analysis

The fact finder favors payment for a minimum two hours under the same terms provided in the patrol officers contract when a dispatcher receives a mandatory job assignment outside of normal work. Since the patrol officers are not paid time and a half for the minimum two hours under their contract, the fact finder rejects that part of the union's proposal.

Recommendation

Dispatchers should receive hourly pay for actual time worked with a minimum of two hours' pay for any mandatory job assignment outside of normal work when not scheduled at the beginning or conclusion of a regular shift.

RECOMMENDED CONTRACT LANGUAGE ARTICLE 22

8. Members will receive hourly pay at the rate for actual time worked with a minimum of two (2) hours pay for any mandatory job assignment scheduled outside the member's normal work hours including but not limited to staff meetings and training. If the assignment begins during the member's regular scheduled shift or beginning at the conclusion of the shift the members shall not be eligible for this premium pay.

ARTICLE 5 MANAGEMENT RIGHTS

Union Position

The FOP proposes to eliminate Section 6 that allows the employer to hire part time employees, a provision that the city has never used in the six years since it was added to the dispatcher agreement. The union representative argued that qualified part time employees could not be located and, if hired, might cancel their shift resulting in overtime for full time dispatchers. The city is allowed by the agreement to contract for up to 15% of the product of 40 hours times the number of full time authorized dispatchers. If the section is retained, the FOP requested a reduction to 5%.

Employer Position

The city seeks to retain the option of part time appointments as part of the quintessential management right to manage an efficient work force. In another department the city replaced three full time workers with part time employees to achieve significant savings on health care, pension and related fringe benefits. Retired dispatchers interested in working part time would be well qualified for such appointments. The employer has successfully achieved cost savings in other units with part time workers and might need to do the same in the police division.

Analysis

The budget currently authorizes fifteen dispatchers and currently the unit has fourteen full time employees. The fact finder calculates that the employer could then employ part time employees for up to 90 hours per week. Although the fact finder strongly favors full time over part time public employment, in this case limited part time appointments instead of filling a full time vacancy might enable the employer to pay greater wage increases. In response to the union's argument that the employer should "use it or lose it" the fact finder concludes that nothing is broken and so no fix is needed. The city should not lose flexibility in the possible use of part time workers to reduce overtime in a period of financial difficulty. If problems arise from excessive use, those issues can be addressed in the next round of contract negotiations.

Recommendation

The fact finder recommends current contract language for Section 6.

ARTICLE 12 PAID LEAVE

Employer Position

The city proposes to reduce from three hours to two the minimum number of overtime hours paid to a dispatcher subpoenaed to appear in court as a witness during an off duty period. The employer calculates that the average time actually spent is 1.23 hours, that cost savings are desperately needed, and that employees should not be compensated for hours not actually worked.

Union Position

The patrol officers' contract provides a three hour minimum, the same as six other comparable jurisdictions. The city unjustly seeks to reduce benefits for the dispatchers while offering them lower wage increases than those negotiated with the patrol officers.

Analysis

The employer acknowledged that the goal was to change all of the police division contracts, starting with the dispatchers. After twenty years of service, the top paid dispatcher earns less than the entry-level patrol officer. Reductions in benefits should begin with the larger units employing more highly paid workers.

Recommendation

The fact finder recommends current contract language for Paragraph 3.

ARTICLE 15 LONGEVITY

Employer Position

The city seeks to save \$26,000 over the life of the agreement by eliminating Longevity Pay in this unit and then greater savings in other units subject to the same change. Those savings are needed to offset the city's proposed 1% salary increase. The public has grown increasingly dissatisfied with government employees in cushy jobs receiving automatic pay increases unrelated to merit.

Union Position

Again the city unjustly seeks to reduce a benefit for the dispatchers while offering them lower wage increases than those negotiated with the patrol officers who will continue to receive the longevity pay taken away from lower paid workers in a smaller union. Five of nine comparable jurisdictions all offer longevity pay increases.

Analysis

The city acknowledged that other Middletown contracts include the longevity increases. After briefly taking that benefit away from non-union employees, the city restored their longevity pay. Without longevity pay, there would be unacceptable wage compression. In addition to the yearly across wage increases for all employees, newly hired dispatchers receive yearly 4.5% pay increases for their first seven years. If there are no longevity increases thereafter, the spread between more senior workers and new hires would be significantly reduced. The 1% longevity bump after 10 years, the 5% increase after fifteen years, and the 3% increase after twenty years is sound policy for maintaining an appropriate pay differential between long term public employees and more recent hires.

When the dispatchers' union led the way by going first on health care changes that saved the city money, the employer paid a one time salary adjustment. Financial times are not so difficult that the city must exact both a loss of benefits while proposing a lower wage increase.

Recommendation

The fact finder recommends current contract language for Paragraph 2 Longevity Pay.

ARTICLE 23 HOURS OF WORK AND OVERTIME

Paragraph 2.

Union Position

The FOP proposes to add language to Paragraph 2. (a) that would add vacation and compensatory time to hours such as funeral, holiday and injury leave that count toward a regular forty hour week in the computation of overtime paid at time and one half. In support the union presented contract language from other jurisdictions that offered similar though not identical provisions.

Employer Position

The city categorically rejected the proposal as an unacceptable form of pyramiding subject to employee manipulation when scheduling compensatory and vacation time in order to gain more overtime compensation. While unable to determine the exact cost, the employer noted excessive overtime costs and anticipated that a concession to the dispatchers would lead to related demands from other unions.

Analysis

On this issue, the FOP sought to establish a new pattern for Middletown contracts with new language in the dispatchers' agreement, and the city sought to maintain uniformity. The fact finder calculated from city exhibit #22 that overtime was estimated to add about 15% to the dispatcher's payroll. The fact finder sees no merit in allowing vacation and compensatory time in the calculation of a regular forty hour work week. Notwithstanding the practice of other jurisdictions, the fact finder found the city's cost concerns and rationale compelling.

Recommendation

The fact finder recommends current contract language for Paragraph 2.

New Paragraph 4.

Union Position

The FOP proposes to add a new Paragraph 4 that would allow employer approved voluntary shift trades to be made within the same two week pay period. Under current practice, not included in the contract, voluntary shift trades must be completed within the same work week. The union provided examples of union contracts from other jurisdictions that contained

comparable provisions and a Fair Labor Standards Act user's manual allowing the employer to exclude a shift trade from adding overtime to an employee's normal work schedule.

Employer Position

The city opposed the change, arguing that the shift trade proposal would create a difficult recordkeeping burden and that unless the shift was recorded in the same work-week the FLSA might obligate extra overtime payments to an employee.

Analysis

The fact finder believes the union has correctly interpreted the FLSA manual, but failed to propose appropriate language to assuage the employer's legitimate concern. The Butler County dispatchers contract, FOP Exhibit 5, tab 2 p. 2, includes the essential language: "pursuant to the provisions of the FLSA, such voluntary shift trades shall be ignored for purposes of overtime compensation." The fact finder concluded that the employer could without difficulty implement a modest change that would improve current practice.

Recommendation

The fact finder recommends an addition to the language proposed referencing the FLSA for a new Paragraph 4 allowing shift trades to be completed within the same pay cycle.

RECOMMENDED CONTRACT LANGUAGE:

4. With the prior approval of the Employer, employees shall be able to trade shifts with other employees. One day trades must be completed within the same pay cycle. Pursuant to the provisions of the FLSA, such voluntary shift trades shall be ignored for purposes of overtime compensation.

ARTICLES 9, 11, 13, 15, 17, 20, 30

The fact finder recommends that the seven articles tentatively agreed to by the parties in negotiations prior to the hearing be incorporated in the new agreement.

Respectfully submitted,
Howard Tolley, Jr.,
Professor, University of Cincinnati 2/11/11

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Corrected Fact Finding Report has been served via electronic mail to Thomas J. Fehr, Staff Representative, FOP/OLC, 5752 Cheviot Rd. Suite D, Cincinnati, OH 45247 tfehr@fopohio.org and to Sara Mills, City of Middletown, One Donham Plaza, Middletown, OH 45042 saram@cityofmiddletown.org and to the State Employment Relations Board, Columbus, Ohio Mary.Laurent@serb.state.oh.us on this 11th day of February, 2011.

Howard J. Tolley

Howard Tolley

February 11, 2011
Date