

FACTFINDING TRIBUNAL  
STATE EMPLOYMENT RELATIONS BOARD  
COLUMBUS, OHIO

STATE EMPLOYMENT  
RELATIONS BOARD

2011 OCT -3 P 1: 0.

IN THE MATTER OF :  
FACTFINDING BETWEEN :  
 :  
CITY OF MONROE, :  
PUBLIC EMPLOYER : **REPORT OF THE**  
 : **FACTFINDER**  
-AND- :  
 :  
OHIO PATROLMEN'S BENEVOLENT :  
ASSOCIATION, :  
EMPLOYEE ORGANIZATION :

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**SERB CASE NUMBER(S):** 11-MED-03-0504; and,  
11-MED-03-0505

**BARGAINING UNITS:**

- I. All full-time Police Officers (Patrol Officers) excluding the Chief of Police, Sergeants, and all other employees;
- II. All full-time Police Sergeants (Sergeants) excluding the Chief of Police and all other Employees.

**MEDIATION / FACT-**  
**FINDING SESSION:** August 22, 2011; Monroe, Ohio

**FACTFINDER:** David W. Stanton, Esq.

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**APPEARANCES**

**FOR THE EMPLOYER:**

Donald L. Crain, Special Labor Counsel  
Julie E. Byrne, Attorney  
William J. Brock, City Manager  
Gregory C. Homer, Chief of Police  
Frank K. Robinson, Lieutenant  
Casey Sparks, Planning and Zoning  
Specialist  
Kacey Waggaman, Finance Director

**FOR THE OPBA:**

Joseph M. Hegedus, Attorney  
Eddie Myers, Representative  
Doug Leist, Representative

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STATE EMPLOYMENT  
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## ADMINISTRATION

By E-mail correspondence dated July 13, 2011, from Donald L. Crain, Esq., Special Labor Counsel for the City of Monroe, with copy to Joseph M. Hegedus, Esq., Attorney for the Ohio Patrolmen's Benevolent Association, the undersigned was notified of his mutual selection to serve as Factfinder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-09-05 (J) in an effort to facilitate resolution of those issues that remain at an impasse between these Parties. The impasse resulted after numerous attempts to negotiate a Successor Collective Bargaining Agreement proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Factfinder discussed with these Parties the overall Collective Bargaining atmosphere relative to the negotiations efforts engaged in by and between them and learned that overall these Parties have enjoyed, and likely will continue to enjoy, what can best be characterized as a mature and amicable, yet achieved by incremental measures, Collective Bargaining relationship.

On August 22, 2011, at the Administrative Offices of the City of Monroe, the Parties engaged in mediation facilitated by the Factfinder wherein the remaining unresolved issues were ultimately resolved. The Parties have stipulated that those Tentative Agreements that will be identified herein be included in the successor Collective Bargaining Agreement upon its ratification and approval. The Parties have agreed that the mediated fact-finding positions of the Parties be set forth in the Fact-Finding Report as agreed to by and between them during the course of the hearing session that occurred on August 22, 2011. During the course thereof, each Party was

afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. The evidentiary record of this proceeding was subsequently closed upon the conclusion of the mediation session/fact-finding hearing. Those issues that were at impasse were ultimately resolved during the course of mediation efforts engaged in by the Parties. Such are the subject matter for the issuance of this Report.

### **STATUTORY CRITERIA**

The following findings and recommendations are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Factfinding component of the statutory dispute –resolution process as follows:

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

**THE BARGAINING UNIT(S) DEFINED:  
THEIR DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND,  
GENERAL BACKGROUND CONSIDERATIONS**

The City of Monroe, Ohio, hereinafter referred to as the “Public Employer” and/or the “Employer” is Party to a Collective Bargaining Agreement with the Ohio Patrolmen’s Benevolent Association, hereinafter referred to as the “Employee Organization” and/or the “Union”. Two separate and distinct Collective Bargaining Agreements exist with the City each being certified on July 29, 2008. The Patrol Officers Collective Bargaining Agreement addresses full-time positions otherwise known as “Police Officers” numbering approximately nineteen (19) members. The other Collective Bargaining Agreement involves the Sergeants’ Bargaining Unit which includes approximately three (3) full-time Employees. Each predecessor Collective Bargaining Agreement expired on May 31, 2011.

The Public Employer is a municipal corporation operating under a City Charter per the Home Rule Provisions of the Ohio Constitution, Article XVIII, Section 7. The Employees in the Bargaining Units perform general law enforcement services to the citizens of the City of Monroe. The Parties have met in pursuit of negotiating a successor Collective Bargaining Agreement on May 5, June 2, and June 16, 2011. The City of Monroe is located off Interstate 75 in the northeast corner of Butler County with part of the City in the western section of Warren County. In 1995 when Monroe’s population surpassed 5,000 citizens it became a City and adopted the Council/Manager form of government with Council Members and a Mayor elected on a non-partisan basis.

By calendar year 2000, the population had grown over 7,000 and was estimated over 12,000 in 2010. With the national economic downturn in 2001 the City of Monroe

was forced the City into fiscal emergency status in 2004 as declared by the Auditor of the State of Ohio. In addition, the economic downturn in September 2008 resulted in the collapse of the financial sector leading to sharp economic decline on local, national, and global levels. The leading stock indices, gross domestic product, employment, home prices, consumer confidence, and the Consumer Price Index fell to record and near-record lows resulting in an unprecedented governmental intervention of nearly \$8 billion stimulus plan. The City's 2010 General Fund revenues were, at the time, high based on a large estate tax settlement; however, the Governor's budget cuts the Estate tax and Local Government Funding. The City's property tax revenue has decreased due to larger delinquencies and decreased property values resulting from the financial crisis. Inter-governmental revenue decreased in all levy funds based on the phase-out of House Bill 66 reimbursement. As the evidence of record demonstrates, the City is forecasting total revenue losses of approximately \$2.173 million over the next four (4) years, and by the 2011-2014 the City's expenditures will exceed revenues. The City forecasts the General Fund balance will be depleted by 2014.

The City's Police Department is funded by three (3) sources: the local property tax levy estimated to generate \$355,000 in 2011; charges for services for Lemon Township are estimated to generate approximately \$100,000 in 2011; and, transfers from the General Fund of approximately \$2.5 million for 2011. Effective August 22, 2011, the School Resource Officer contract worth approximate \$50,000 which paid for approximately 71% of one Officer's salary will not be renewed; thereby the City will seek funding to pay for the difference of the Officer's salary. The Police Department also provides services including Patrol, DUI/OVI, Canine, Bicycle Patrol, SWAT, School

Resource Officer / DARE, Detective Division, traffic accident reconstruction, and community outreach (Citizen Patrol and training).

Dispatch calls and Officer initiated incidents continue to increase each year in the City of Monroe which saw a response total of 24,310 calls for service in calendar year 2010. The Police Department wages, pension, and Medicare costs have increased by nearly 73% from 2006. Based on the growth of the City and the need for additional Police services, the current Police Department facilities may need to be expanded based on the growing population.

Following the negative economic conditions of post-2001, the City faced a \$1.2 million deficit under its 2003 and projected 2004 General and Special Revenue fund projections totaling 2.4 million. This deficit resulted in the depletion of all positive fund balances, borrowing from the Water and Sewer Fund, a halt to capital improvements and cuts in all Departments. The City cut approximately \$610,000 out of its 2003 appropriations budget and an additional \$750,000 after that budget was approved. Approximately \$340,000 in property taxes remained outstanding due to mortgage loan defaults and property foreclosures.

On August 12, 2004, State Auditor Betty Montgomery, as set forth in City Exhibit-20, declared a fiscal emergency at the City of Monroe. As a result thereof the City was unable to increase Police pay. There were two plus years of no wage adjustments during the fiscal emergency. The City, while anticipating a period of economic growth, addressed the two (2) years of no wage adjustments wherein it increased Police Wages that resulted in some Officers receiving increases of 28 – 33%.

According to the evidence of record, the 2010 revenues of the City of Monroe were high due to large estate tax settlements and based on its need to have a Carry-Over Fund balance of at least \$4 million, it anticipates that despite the unusually high estate tax settlements the trend will not continue and the City will not have the necessary Carry-Over Fund balance it requires. It forecasts a 2% annual increase in personal service costs, a 3% annual increase in operating expenses, and no capital expenses other than for Police cruisers. The City forecasts that its expenditures will increase by \$1.7 million while revenues will increase by approximately \$200,000. Based on the current status at the state level, the State's Local Government Fund will be decreased wherein the City anticipates losing \$2.173 million over the next few years from the Local Government Funding.

Additionally, based on the current state of the national economy, the Gross Domestic Product has been faltering, consumer confidence is at an all-time low, and unemployment has increased significantly even on a local, state, and national level. The Consumer Price Index shows indications reflecting inflationary trends; home prices are in a decrease, with mortgages being defaulted upon, and thereby reducing the amount of property tax revenue the City has relied upon previously. Recently the downgrading of the United States status by Standard and Poor's of its coveted AAA rating reflects a higher risk of default on its loans. At the same time public sector wages and benefits outpaced those of the private sector to the tune of approximately 45% more on average than private sector workers. The nation's economic indicators reflect recovery is not clearly on the horizon based on all economic trends and opinions based on the absence of real economic growth and recovery.

Since March 2006, Ohio has lost approximately 457,000 jobs or 8.4% of its employment base; and, as of July 2011, the unemployment rate for the state is 9.2%. The rate for unemployment in Butler and Warren Counties is 9.5% and 8.1% respectively; while the City of Monroe has an unemployment rate of 11.6%. The Ohio State Auditor projected deficits of \$3.8 billion and \$4 billion in fiscal years 2012 and 2013 respectively; and, the State is facing nearly an \$8 billion budget deficit in the next fiscal cycle. House Bill 153 eliminated this potential deficit through privatization initiatives and cuts to local governments and schools. The impact on the City of Monroe is realized with the end to Ohio's estate tax and the eventual elimination of the Local Government Fund which will further decrease the amount of revenue Ohio's local jurisdiction will receive. The Governor's budget reduces the Local Government Fund by 41% and phases out of state reimbursements for tangible personal property taxes adding to this decreased revenue source. The Governor's budget also eliminates the estate tax which was a significant source of revenue for municipalities wherein local governments are facing a \$1 billion reduction in funding statewide. Lower revenues have led to serious changes for many Ohio public entities with no real projected improvement in sight.

The decline in revenue sources, the rising costs of health care benefits, employee pensions, infrastructure needs, and public safety needs have resulted in an increase in municipal budgets that require prudent fiscal spending and responsibility, while also recognizing the impact the dismal economy has had on the American employee. The City of Monroe is forecasting a depleted General Fund Reserve as previously indicated,

thereby requiring it to exercise prudence with respect to the successor Collective Bargaining Agreements and the attendant issues contained herein.

As requested by the Parties, the following Articles of the Patrol Officers Bargaining Unit are recognized as Tentative Agreements and are to be included as such in the successor Collective Bargaining Agreements:

**PATROL OFFICERS:**

- Article 1: Agreement and Purpose
- Article 2: Recognition, Meetings, Bulletin Board
- Article 3: Associates / Union Business
- Article 4: Management Rights
- Article 5: No Strikes / No Lock-Out
- Article 6: Probationary Period
- Article 7: Dues Deduction
- Article 8: No Discrimination
- Article 9: Discipline
- Article 10: Personnel Files
- Article 11: Grievance Procedure
- Article 12: Arbitration
- Article 13: Miscellaneous

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- Article 15: Promotions

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- Article 17: Clothing and Equipment Allowance
- Article 18: Holidays

\*\*\*\*\*

- Article 20: Sick Leave
- Article 21: Injury Leave
- Article 22: Bereavement Leave, Military Leave, Jury Leave, and Other Leave

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- Article 24: Safety and Health
- Article 25: Residency
- Article 26: Drug Free Workplace

Article 27: Modification, Separability and Conflict of Laws  
Article 28: Outside Employment

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Article 30: Waiver in Case of Emergency

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Appendix A:

Additionally, those provisions of the Sergeants Collective

Bargaining Agreement identified as Tentative Agreements by and between the Parties are recommended for inclusion into the successor Collective Bargaining Agreement as

follows:

**SERGEANTS:**

Article 1: Agreement and Purpose  
Article 2: Recognition, Meetings, Bulletin Board  
Article 3: Associates / Union Business  
Article 4: Management Rights  
Article 5: No Strike / No Lock-Out  
Article 6: Probationary Period  
Article 7: Dues Deduction  
Article 8: No Discrimination  
Article 9: Discipline  
Article 10: Personnel Files  
Article 11: Grievance Procedure  
Article 12: Arbitration  
Article 13: Miscellaneous

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Article 16: Clothing and Equipment Allowance  
Article 17: Holidays

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Article 19: Sick Leave  
Article 20: Injury Leave  
Article 21: Bereavement, Military Leave, Jury Leave, and Other Leave

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Article 23: Safety and Health  
Article 24: Residency  
Article 25: Drug Free Workplace  
Article 26: Modifications, Separability, and Conflict of Laws  
Article 27: Outside Employment  
Article 28: Seniority  
Article 29: Waiver in Case of Emergency

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Appendix A:

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The Factfinder is required to consider comparable Employee units with regard to their overall make-up and services provided to the members of their respective communities. As is typical and as is required by statute, the Parties in their respective Pre-hearing Position Statements, filed in accordance with procedural requirements of the statutory process and the supporting documentation provided at the Fact-finding / Mediation session, each have relied upon comparable jurisdictions and / or municipalities concerning what they deem “comparable work/jurisdictions” provided by these Bargaining Units. While there are indeed certain similarities among the jurisdictions cited there are no “on-point comparisons” relative to this Bargaining Unit concerning the statutory criteria. In other words, while their duties and responsibilities as law enforcement Officers may be exact to other jurisdictions relied upon, the overall makeup of the public entity will differ with respect to geography, infrastructure, staffing and the makeup of the employees performing these and other functions.

It has been and remains the position of this Factfinder / Mediator that the Party proposing any addition, deletion, or modification of either current contract language; or, a *status quo* practice wherein an initial collective bargaining unit may exist, bears the burden of proof and persuasion to compel the addition, deletion, or modification as

proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that is a previous policy, collective bargaining provision or a practice that is previously engaged in by the Parties.

Moreover given the issues in dispute herein, certain aspects relative to the Employer's ability to finance and administer these recommendations have not been met with any compelling inability to pay arguments. Given the financial status as previously elaborated upon, the emphasis is obviously placed upon financial prudence to remain fiscally sustainable during economic recovery. Based thereon, the Parties seeking the modifications to the unresolved issues will have the burden of proof and persuasion to compel the Factfinder to make a recommendation that would recognize what that particular Party is seeking relative to the mechanics of the language at issue. Absent compelling evidence to support an inability to pay position the data presented must be viewed in the context of comparable jurisdictions performing essentially similar job duties and functions.

Additionally the extensive evidentiary record provided to the Factfinder during the course of the Fact-finding / Mediation session has been analyzed and reviewed in its most favorable light and will be relied upon in the consideration of the recommendations contained herein as agreed to by these Parties.

As previously indicated numerous Articles were tentatively agreed to during the course of the negotiations sessions engaged in by the Parties and are included in the evidentiary binders provided to the Factfinder at the evidentiary hearing. It is recommended that those Articles that were not opened, as well as, though subject to Tentative Agreements reached by and between the Parties either during the course of

previous negotiation sessions or during the mediation session engaged in with the assistance of the Factfinder be included in the successor Collective Bargaining Agreements.

Based on the information provided by the Parties, the mediated Factfinding positions of the Parties are set forth herein and are recommended for acceptance by the City and ratification by the respective Bargaining Units as follows:

- I. All Tentative Agreements signed off by both Parties, except as modified herein, shall remain in force and become an amendment to the previous Collective Bargaining Agreement;
- II. All current contract provisions not specifically amended by virtue of a Tentative Agreement set forth in Paragraph 1 herein and above or set forth specifically below shall remain in effect for Parties' new Agreement.
- III. **Appendix B: WAGES**

That Appendix shall be amended recognizing a 2% lump sum in the first year of the successor Collective Bargaining Agreement payable thirty (30) days after the City Council's approval of the contract; a 0% wage increase in the second year of the successor Collective Bargaining Agreement; and a re-opener for wages only in the third year of the successor Collective Bargaining Agreement. Additionally a footnote to Appendix B shall be added which states, "The above wage schedule will increase by an amount equivalent to any wage increase by City Council during the duration of this Agreement; this provision expressly excludes any wage increase imposed upon the City by a Conciliator."

The remainder of the Appendix B: Wages Article is current contract language.

IV. **INSURANCE** - Article 23 of the Patrol Officers Agreement and Article 22 of the Sergeants Agreement shall be amended such that the Employee's premium share will be increased from 14% currently, to 15% effective June 1, 2012, and 17% effective June 1 2013, - the effective dates to coincide with the effective dates of each year of the successor Collective Bargaining Agreement. The remainder of the Article is to contain current contract language.

V. **HOURS OF WORK AND OVERTIME** - Article 16 of the Patrol Officers Collective Bargaining Agreement and Article 15 of the Sergeants Collective Bargaining Agreement shall include the "Compensatory Time" language provision, a new Section 16.10 of "Hours of Work and Overtime" the following contractual language:

- A. All overtime work shall be compensated, at the Employee's election, either at the rate of one and one-half (1 ½) the Employee's regular rate of pay or in compensatory time accrued at the same rate which may be accrued and used up to a maximum of fifty (50) hours per calendar year.
- B. Compensatory time pursuant to the minimum standards of the Fair Labor Standards Act ("FLSA") shall be granted according to law, provided forty-eight (48) hours advance notice is given by the Employee. Compensatory time earned in excess of the minimum standards of the FLSA shall be granted, provided forty-eight (48) hours advance notice is given by the Employee, and provided that the City will not incur overtime liability as a result of honoring the compensatory time request. The notice provisions of this section may be waived upon mutual agreement of the Parties.

C. Employees may choose to receive pay for any and all accumulated compensatory time once annually, by notifying the Employer of his or her desire to be paid for a designated amount of compensatory time prior to November 1 of each calendar year. The payment will be made to the Employee in the first pay period in December.

VI. **CANINE** - Article 31 Patrol Officers Collective Bargaining Agreement:

*Status quo* will remain for ninety (90) calendar days following the acceptance by the City and ratification by the Bargaining Unit. The Parties shall attempt to reach a Memorandum of Understanding by January 1 regarding this issue.

VII. **VACATIONS** - Article 19 of the Patrol Officers Collective Bargaining Agreement and Article 18 of the Sergeants Collective Bargaining Agreement: The Memorandum of Understanding between the Parties shall be adopted for Section 19.2.

VIII. **DURATION** - Article 32 of the Patrol Officers Collective Bargaining Agreement; and Article 30 of the Sergeants Collective Bargaining Agreement. The successor Collective Bargaining Agreement terms shall be for three (3) years effective as of midnight on the first (1<sup>st</sup>) day of June 2011 and remaining in full force and effect until midnight on the thirty-first (31<sup>st</sup>) day of May 2014.

As indicated by and between the Parties the aforementioned represents the mediated Factfinding positions of the Parties that are to be subject for the inclusion in this Factfinding Report. Such takes into consideration the data presented, the evidence of record, and the positions articulated to the Factfinder / Mediator during the course of the session that occurred on August 22, 2011.

### **Articles Not Specifically Addressed Herein**

It is recommended that those issues/Articles, if any, not subject to the presentation of evidence in the Factfinding Hearing, or during the course of the Mediation session, or those not referenced by either Party, shall be subject to the recommendation of the *Status Quo* relative to whatever policy, practice, contractual provision, or procedure that may have existed, relative to the predecessor Collective Bargaining Agreement, be maintained for consideration in the successor Collective Bargaining Agreement ratified and implemented by these Parties.

### **Conclusion**

The recommendations contained herein and those stipulated by the Parties as set forth in the mediated Factfinding positions of these Parties are indeed deemed reasonable in light of the economic and contractual data presented; the presentations made by the Parties; and, are based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in the many Tentative Agreements being reaching during these difficult economic times. Such are supported by the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; those Tentative Agreements reached by and between them during the course of mediation and the negotiations efforts endeavored prior to facilitation by the undersigned; the stipulations of the Parties as set forth in the mediated Factfinding positions of the Parties; and, are made based on the mutual interests and concerns of each Party to this successor Collective Bargaining Agreement.

David W. Stanton

David W. Stanton, Esq.,  
Factfinder

October 1, 2011  
Cincinnati, Ohio

**Certificate of Service**

The undersigned certifies that a true copy of the foregoing Factfinding Report Recommendations and the mediated Factfinding Positions of the Parties hereto has been forwarded by electronic mail and overnight U.S. Mail service to Donald L. Crain, Esq., Special Labor Counsel for the Employer, Julie E. Byrne, Special Labor Counsel for the Employer, Frost, Brown Todd, 9277 Centre Pointe Drive Suite 300, Westchester, Ohio 45069; Joseph M. Hegedus, Esq., Attorney for the Ohio Patrolmen's Benevolent Association, 92 Northwoods Blvd. Suite B-2, Columbus, Ohio 43235; and to the State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 42315 on this 1st day October, 2011.

David W. Stanton

David W. Stanton, Esq. (0042532)  
Factfinder / Mediator

**DAVID W. STANTON**  
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October 1, 2011

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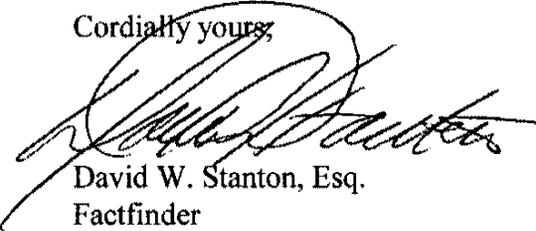
**SERB Case Nos. 11-MED-03-0504; and, 11-MED-03-0505**  
**City of Monroe -and- Ohio Patrolmen's Benevolent Association**  
**Factfinding - Patrol Officers & Sergeants**

Gentlemen,

In accordance with Chapter 4117 of the Ohio Revised Code, enclosed herewith please find the Factfinder's Report with Recommendations; and, the Statement for Professional Services. Please forward this Statement to your respective Client and/or Local to insure payment thereof within the time frame noted thereon. Continued success with your collective-bargaining relationship.

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

Cordially yours,



David W. Stanton, Esq.  
Factfinder

DWS/lp.  
Encs.

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