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**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 11-MED-06- 0894**

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.
and
MIAMI TOWNSHIP TRUSTEES**

FACT FINDING REPORT

**Submitted by John F. Lenehan
February 2, 2012**

TO:

VIA E-MAIL

Union Representative

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Employer Representative

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On November 10, 2011, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Fraternal Order of Police, Ohio Labor Council, Inc. and Miami Township Trustees. The parties mutually agreed to extend the filing of the fact finding report until, March 1, 2012, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on January 18, 2012, 10:00 A.M., at the Miami Township Offices, Miami Township Civic Center, 6101 Meijer Drive, Milford, Ohio 45150. Present for and on behalf of the Employer were: Laurence Fronk, Township Administrator, and R. Steven Bailey, Chief of Police. Present for and on behalf of the Union were: Ross Rader, Staff Representative, and Karen Ann Evans.

During the Fact Finding Hearing efforts were made to mediate the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on February 2, 2012.

A. Description of the Bargaining Unit

The parties are the Fraternal Order of Police, Ohio Labor Council, Inc. (Union) and Miami Township Trustees (Employer). The Bargaining Unit consists of all full-time clerks in the records department of the Miami Township Police Department (currently two (2) employees). The Employer is the Miami Township Board of Trustees.

The bargaining unit employees are under the supervision of the Chief of Police and the direct supervision of the Support Services Commander, and they perform all work necessary to complete the numbering, logging and storage of police paperwork. They perform general clerical duties including, but not limited to working with the public in person and on the telephone, data entry, filing and all other duties incidental to record keeping. Their day to day duties involve the issuing of warrants, keeping track of payroll, officers extra duty time, inventory, civil cases in the court and accounts payable, along with other matters as assigned.

The Miami Township Board of Trustees is responsible for administering the governmental affairs of Miami Township. Miami Township is primarily a bedroom community

with forty thousand (40,000) residents, located on the northeast side of Cincinnati, Ohio. The Township has a full service government with a full-time Police Department, Fire Department, Service Department, Parks and Administrative and Financial Staff. The Police Department is a twenty-four hour, seven days a week operation with forty (40) sworn officers, one (1) Part-time sworn Officer, and four (4) civilian employees [three (3) full-time and one (1) part-time]. The primary source of revenue supporting the foregoing services and operations is the property tax.

B. History of Bargaining

Since this will be the first agreement between the parties, there is no prior collective bargaining agreement or history of negotiations. The Union was certified as the exclusive representative of the employees in the bargaining unit by the State Employment Relations Board on December 10, 2010 (SERB Case NO. 2010-REP-09-0166). The parties entered into negotiations and met on several occasions. A tentative agreement has been reached on all issues, except wages and the duration of the agreement.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties (not applicable here);
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,

- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES AND RECOMMENDATIONS

Issue #1

ARTICLE 20

WAGES

UNION'S POSITION

The Union submitted the following final proposal on Article 20, Compensation:

COMPENSATION

Section 20.1. Compensation for all bargaining unit members shall be:

Effective Date	Wage Rate	Percentage
Current	17.64	-
January 1, 2012	17.99	2%
July 1, 2012	18.35	2%
January 1, 2013	18.72	2%
July 1, 2013	19.09	2%
January 1, 2014	19.47	2%
July 1, 2014	19.86	2%

Section 20.2. Any employee called in to work at a time outside of their regularly scheduled hours, and such call-out does not abut the employee's regularly scheduled hours, shall be paid a minimum of three (3) hours at the overtime rate. All time worked in excess of the three (3) hours shall be paid at the overtime rate for all time actually worked.

The Union proposes a twelve per cent (12%) increase over a three year period, or four percent (4%) per year. The increases are to be phased in by granting two percent (2%) each

January 1st and July 1st commencing in 2012. In support of its position regarding these increases the Union submitted both external and internal comparables.

The external comparables consisted of wage comparisons with other governmental entities having employees performing similar functions or duties for police agencies (Union Exhibit #5). The government entities set forth in the wage comparison (Union Exhibit #5) were Butler County, Hamilton County, Union Township and Warren County. The overall average wage paid to employees in those entities for the performance of similar functions or duties as those performed by employees of this bargaining unit was \$20.54 per hour. In contrast, according to Union Exhibit #5, the wage rate paid to members of this bargaining unit is \$17.29 per hour, or on the average \$3.25 less than the average paid to the employees performing similar duties for the entities listed above and set forth in Union Exhibit # 5. Apparently, the figures in Union Exhibit #5 did not include the two per cent (2%) increase granted to bargaining unit employees effective January 1, 2011. Considering this increase, the bargaining unit employees would be earning \$2.90 less per hour, not the \$3.25 figure set forth in the exhibit.

The Union also argues that the employees in the bargaining unit perform more duties and have more responsibilities than those employees with the entities and agencies used in its wage comparison. In support of this position, it submitted the testimony of Karen Ann Evans.

As to internal comparables, the Union submitted, the wage settlements the Employer reached with police sergeants, corporals and officers within the township's Police Department (Union Exhibits Nos. 2, 3 and 4). According to Union Exhibit # 2, the police sergeants received a three percent (3%) increase effective January 1, 2011 and a three percent (3%) effective January 1, 2012. Union Exhibit #3 indicates that corporals and police officers received an increase of two and one half percent (2.5%) effective, January 1, 2011, another increase of two and one half percent effective January 1, 2012 and an increase of two percent (2%) to be effective January 1, 2013.

EMPLOYER'S POSITION

In contrast to the Union's proposal, the Employer submitted the following as its final proposal.

Miami Township Wage Proposal

2011 – 2.0%**

2012 – 0.0%

2013 – 0.0%

****This two percent increase was given to the Record Clerks at the beginning of 2011. They were treated as non-bargaining employees even though the Bargaining Unit was certified. Negotiations had not started at the time. The Township's 2011 wage proposal reflects this increase.**

The Employer argues that the Union is asking for significant increases at a time of economic distress without providing any justification to demonstrate how such would increase efficiency or better serve the residents of the township. The current economic climate and State revenue cuts have taken a toll on most local governments. The revenue outlook for the next 2-4 years is uncertain. Since the Township relies on property taxes as its primary revenue source, the Employer submitted a copy of a desktop appraisal conducted by the Clermont County Auditor in 2011. That appraisal indicated that the property valuation for Miami Township dropped 9.7% between 2009 and 2011. This drop in property valuation will result in less revenue to the township. (Employer's Exhibit #1, Table 1)

The Employer submits Exhibit #2, Table 2, the budget projections for 2011 thru 2016, and the testimony of the Police Chief to establish that the funding for the Police Department comes from a Police levy and two Safety levies. The safety levies also provide funding for the Fire/EMS Department. Funds are transferred from the safety funds to the Police, Fire and EMS Funds as needed to cover operational costs. Beginning in 2013 the annual revenue from the Police Fire, EMS and Safety levies will no longer be sufficient to cover the operating costs of the department. Beginning in 2013 the Township will be relying on the Safety Fund reserves to cover the gap in operating cost. Given even modest increase in expenses, the reserves will be depleted by two million dollars per year. In 2016 the reserves will be completely depleted and there will be no money to fund emergency services. As a result, there will be a deficit in 2016. The foregoing projection reflects the phasing out of the Tangible Personal Property Tax and the resultant annual loss of approximately \$100,000.00 per year in revenue for the Police Department beginning in 2012.

As to the external comparables which the Union submitted during the hearing and at negotiations (see Union Exhibit #5), the Employer argues and the Chief of Police testified that comparing Miami Township to any of these government jurisdictions is comparing apples to oranges. First, the revenue sources for the counties and townships are different. The counties rely on sales taxes and the townships rely on property taxes. Also, in the current economy the

ability to pay varies greatly among local governments. In one township all clerical employees are part-time and in another the clerks are also dispatchers. (See Employer's Exhibit on External comparables)

The Employer argues the records clerks in the bargaining unit are full time employees. They perform all work necessary to complete the numbering, logging and storage of police paperwork and general clerical work, including working with the public in person and on the telephone, data entry, filing and other duties incidental to record keeping. Based upon the general description of their duties, they cannot be compared with those in other townships. (See Employer's Exhibit, Job Description).

The employer concludes that in view of the township's fiscal responsibility and current reserves layoffs are not imminent. However, the Township must remain fiscally conservative and contain costs now to avoid layoffs in the future. If operational expenses in the Police Department are not contained and collective bargaining agreements continue to push up labor costs, the reserves will be depleted at a faster rate, which will have devastating consequences on the township's ability to provide quality safety services.

FINDING AND OPINION

Based upon the prehearing position statements and the evidence submitted at the hearing, it appears that the Employer has the ability to pay some increase in wages. The projected budgets submitted by the Employer have provided for increases in payroll and benefits through 2016. There was no evidence submitted of the Employer's inability to pay or provide for wage increases during the next two to three years. The question is: what, if any, wage increase is appropriate for the employees in this bargaining unit?

Normally, considerable weight is given to both external and internal comparables in making a recommendation as to an appropriate wage increase. Both parties have offered evidence regarding external comparables of wages paid to employees performing similar work for other governmental agencies. According to the Union, the employees in the bargaining unit are almost \$3.00 per hour behind employees doing similar work for other entities. However, the Employer maintains that these comparables submitted by the Union are not valid for determining wage rates for this bargaining unit because there are too many variables.

While external comparables are to be considered and to be given some weight, the Employer's position in this case is more persuasive. That there are different funding sources,

some employees in the other entities are part-time, duties and job requirements differ, and the size and nature of the governmental structure vary, are factors that, in the opinion of this fact finder, would not support a wage adjustment or increase greater than that granted to other employees of the Employer. In this case the Union is seeking a 4% per year increase. No other bargaining unit or employees of the Employer have received this kind of increase. Thus, the Union's wage proposal must be denied.

However, in this case, considerable weight should be given to internal comparables. In view of the wage increases granted to other employees by the Employer in the same department, it is difficult to find justification for the Employer's position of zero wage increases for 2012 and 2013. Sergeants will have received a total of 6% in increases over a two year period (2011 and 2012). Police Officers and Corporals will have received a 5 % over a two year period (2011 and 2012) and a 7% over a three year period (2011-2013).

Considering the pay increases negotiated with other employees in the Police Department, the employees in this unit should receive a 3% increase commencing January 1, 2012 and a 2% increase commencing January 1, 2013. This would result in pay increases of a total of 7% for the period from January 1, 2011 through December 31, 2013 commensurate to the increases granted to the corporals and police officers. A rough estimate of the total cost of these increases for all employees in the bargaining unit would be under \$4,000.00.

Section 20.2 of Article 20 relates to call in pay. The Union submitted this proposed language in its prehearing statement. Since no issue as to this provision was raised by the Employer, the language as set forth in the Union's prehearing statement should be incorporated into the recommendation.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact Finder that the employees in the bargaining unit be granted a 3% increase on the current wage rate of \$17.64 effective January 1, 2012 and a 2% increase on the wage rate of \$18.17, effective January 1, 2013. It is also the finding and recommendation of the Fact Finder that the language proposed by the Union in its prehearing statement be adopted and incorporated into the agreement.

Article 20 should read as follows:

COMPENSATION

Section 20.1. Compensation for all bargaining unit members shall be:

Effective Date	Wage Rate	Percentage
Current	\$17.64	-
January 1, 2012	\$18.17	3%
January 1, 2013	18.53	2%

Section 20.2. Any employee called in to work at a time outside of their regularly scheduled hours, and such call-out does not abut the employee's regularly scheduled hours, shall be paid a minimum of three (3) hours at the overtime rate. All time worked in excess of the three (3) hours shall be paid at the overtime rate for all time actually worked.

Issue #2

ARTICLE 41

DURATION

UNION'S POSITION

In its prehearing statement and at the fact finding hearing the Union proposed an agreement terminating December 15, 2014. However, during negotiations, the Union was making wages proposals through 2013.

EMPLOYER'S POSITION

The Employer in its prehearing statement and throughout negotiations was making wage proposals through 2013.

FINDING AND OPINION

Since the parties in the negotiation process had been discussing wages covering a period through 2013, the contract should cover a period of two years commencing January 1, 2012 through December 31, 2013.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact Finder that the Agreement be effective January 1, 2012 and remain in full force and effect through December 31, 2013.

Article 41 should read as follows:

ARTICLE 41

DURATION

Section 41.1. The Agreement shall be effective as of **January 1, 2012** and shall remain in full force and effect until **December 31, 2013** unless otherwise terminated as provided herein.

Section 41.2. If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than one hundred and twenty (120) calendar days prior to the expiration date, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notices shall be by certified mail with return receipt requested. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent. The parties may also amend this Agreement at any other time in writing by their mutual consent and agreement.

Section 41.3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the entire understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement constitute the entire agreement between the Employer and FOP and all other prior agreements, either oral or written, are hereby canceled. Neither party can modify an existing collective bargaining agreement without the negotiation by an agreement of both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the agreement became effective that requires a change to conform to the statute.

IV
TENTATIVE AGREEMENTS

All Tentative Agreements reached by the parties are incorporated herein and are to be attached to this report.

V
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted January 18, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

February 2, 2012

VI

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 2nd day of February, 2012, to the persons named below.

Union Representative

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/S/ John F. Lenehan
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