

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the matter of Fact Finding between:)	SERB Case Nos.
)	2016-MED-07-0707
FRATERNAL ORDER OF POLICE,)	2016-MED-07-0708
LODGE 186,)	
Employee Organization,)	Hearing: November 4, 2016
)	at West Chester, Ohio
and)	
)	Date of Report: December 19, 2016
)	
WEST CHESTER TOWNSHIP,)	Before Mitchell B. Goldberg,
BUTLER COUNTY, OHIO,)	Appointed Fact Finder
Public Employer.)	

FACT FINDING REPORT

Appearances: Susan D. Jansen and Matthew Crawford, Doll, Jansen & Ford, for the Union; and Donald L. Crain and Alex Ewing, Frost Brown Todd, for the Employer.

I. Introduction and Background.

The State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on September 30, 2016 in accordance with Section 4117.14(C) (3) of the Ohio Revised Code. The parties agreed to schedule and hold a hearing on November 4, 2016 at the Township's offices. They timely filed their position statements and properly served each other.

The parties presented oral evidence and submitted documentary exhibits at the hearing. The following recommendations on each of the unresolved issues are done on an issue-by-issue basis. The recommendations take into consideration the factors outlined in Ohio Revised Code Section 4117.14(G)(7): They are summarized as follows (1) past collectively bargained agreements; (2) comparisons with other public and private employees performing comparable work, while considering factors peculiar to the area and job classifications; (3) the public interest and welfare, the ability of the public employer to finance and administer the proposed issues, and the effects of the adjustments on the normal standards of public service; (4) the public employer's lawful authority; (5) the parties'

stipulations; and (6) other factors normally or traditionally considered in determining the submitted issues to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The parties participated in three negotiation sessions in August and September 2106 to replace or succeed their collective bargaining agreement (“CBA”) that expired on September 30, 2016. There are two separate bargaining units, a unit consisting of all full-time police officers below the rank of sergeant (“officers unit”) and a unit consisting of full-time employees in the rank of sergeant and lieutenants (“supervisors unit”). West Chester is a home rule township under Ohio laws. It has collective bargaining relationships with three other labor organizations; a Fire Fighter unit with IAFF Local 3518 in a CBA that expires on December 31, 2017; a communications officers/dispatchers unit with FOP/OLC in a CBA that expires September 30, 2018; and a municipal services unit in a CBA with AFSCME, Ohio Council 8 that expires May 31, 2018.

The parties agreed that the term of the negotiated CBA with the officers and supervisors will run from October 1, 2016 through September 30, 2019, and that the economic recommendations herein will be retroactive to October 1, 2016. The following recommendations hereby incorporate the parties' tentative agreements, and any unchanged language, terms and conditions of their expired CBA. The unresolved issues are: (1) Article 19 – Wages (including rank differentials); (2) Article 19 – Wages – Section 4, Plainclothes Allowance; (3) Article 17 - Welfare (Insurance) Proposals; and (4) Article 14 – Vacations.

II. Economic Evidence.

There is little disagreement when it comes to judging the economic environment of the Township. It is one of the most vibrant and commercially successful jurisdictions in the state, considering every meaningful economic measurement. It benefits from a prime location for economic development, an increased population, more business, professional and commercial employers,

excellent community services to its residents and businesses, diversification among its employers and businesses, high employment (lower unemployment rate), excellent schools and education, high residential and commercial property values relative to its neighboring communities, and one of the highest median household incomes in the region or state.

The Funding of Township Services

The funding for the provision of police services primarily comes from a designated levy that its citizens passed in 2010. The funds were collected in 2011. The levy funds according to what was represented to the taxpayers was planned to expire in five years, but the Township has managed its funds prudently and believes now that the funds will become insufficient to meet its needs by 2017. The levy does not expire, but the funding is based upon millage produced from a snapshot of property values at the time it was passed or when funding was implemented.¹ The funds do not increase with property value increases. In order to manage its police expenditures within the levy fund receipts, the Township has kept its expenditures well below its revenue to keep a reserve amount for unexpected expenses, expected but unrealized expenditures such as for staff retirement pay-outs, capital improvements such as police cruiser replacements, and increasing medical insurance costs. The major disagreement between the parties has been and continues to be the Township's management of its reserve fund. The Union believes that it has been managed at higher than necessary levels to the detriment of the police units, who have received less than fair wages or wage increases commensurate with those paid in comparable departments in the region. The Township believes that it has been managing its revenues and expenses in a conservative, but required manner in accordance with the

¹ This fact is due to the outdated effect of HB 920, which was an attempt to help homeowners in an inflationary environment (1976). It imposed a reduction factor or cap on levy collection based upon ever increasing property values. The cost of providing services, however, would increase, thereby depleting the levy, and the governments would need to return to the taxpayers for more funding. With low inflation or deflation in property values, however, governments also must operate within the static levy funds until more funding is needed, at which time they will need to go back to the taxpayers. However, one would expect that with low inflation or deflation, governments would have additional time to operate within a levy, since its operating costs, including wages would increase at lower rates. Certain expenses, however, rise at high rates regardless of low inflation for other costs. Health insurance premium cost is the prime example of such rising costs that bear little relationship to the the inflation rate for other expenses.

demands of its citizens who are opposed to any tax increases.

The crux of the issue can be seen from the Township's updated budget figures that show the ending carry-over balances from 2010-2015 actual figures, and its projected ending balances or reserves through 2022, based upon its projected needs. The figures show increasing balances from 2010-2015, 8.2M, 9.3M, 9.8M, 10M, 10.7M. and 11.1M. The estimated ending balance for 2016 is \$11,358,514. This shows that the Township has extended its levy life by 2 years, and still has enough of a reserve to meet more than a half of its projected 2017 expenses without receiving any of its 2017 levy revenues. It projects ending balances from 2017-2022 of 8.7M, 5.4M, 1M, (4M), (10M), (15.9M). It is reasonable to conclude, based upon these facts alone, that the Township's funds have been well managed; nevertheless, a new snapshot will need to be taken of the Township's property values at some point so that a replacement levy will produce its necessary revenues to meet its increasing expenses. While property values may not have fully rebounded from the recession period, they have been increasing and there is every reason to believe they will continue to do so, particularly in this desirable economic community.²

III. Unresolved Issues.

(1) Article 19 – Wages

The FOP proposes in year-one that the Township pay all officers and supervisors a one-time equity adjustment of \$2,500 per employee, and then a 5% across-the-board increase. A 4% across-the-board increase would be paid in the second contract year, and a 4% across-the-board increase would be paid for the third contract year. The FOP's reasoning is that they were shortchanged in the 2013 contract negotiations based upon the the Township's projected finances, and the resulting actual figures that showed the Township in much better shape than it represented. The Township proposed a freeze on the base for three years with a lump sum payment the first year of \$750, \$1,000 for the second year if

² Total assessed property values show the following: 2011-1.78M; 2012-1.77M; 2013-1.77M; 2014-1.78M; 2015-1.8M.

revenues exceeded a certain amount, and \$1,000 in the third year under the same conditions. The Township's proposal was based upon its projections of deficits in the police funds and the need for concessions or even possible layoffs to meet its carry-over goal of 25% of its annual expenses.

Despite the FOP's arguments that the projections were inaccurate by overestimating Township expenses and underestimating revenues, the Fact Finder and the Conciliator accepted the Township's budget estimates and projections. However, instead of deficits the actual figures show ever increasing ending carry-over balances and reserves. Lump sum payments equal to 1.5% of base pay, but not applied to the base as ongoing, were imposed for each contract year (2014-2016). This left the officers and supervisors without a raise on the base since October 2012.

The FOP contends that this error in budgeting on the part of the Township that was approved by the neutrals has permitted its members to fall considerably behind its comparable counterparts. Top pay levels for an officer has declined from being the second highest among these comparisons to a level that is materially lower in the rankings.

The Township contends that any across-the-board increase above 2% each year is not supportable from a reasonable budget management perspective. Its funding sources, like other townships and cities, has been depleted by cuts in state local government funding and the elimination of state taxes that once provided funding.³ It receives revenue into its General Fund, and it receives funding from a Joint Economic Development District ("JEDD") that augments the General Fund. Some of the JEDD funds were in the Police, Fire and EMS funds; however, the conservative goal is to have the police funded by their designated levy funds without delving into the other funding as was the case before the levy was passed.

³ My observations from doing SERB neutral work throughout the state is that the reduction of state funding to local governments has more negatively impacted the less well-off governments, those whose taxpayers have lower incomes, more unemployment and lower property values. The have-nots have found it more difficult to replace the lost funding, and as a result have cut their services to their communities. West Chester is not in that category.

It acknowledges that it has through good management amassed a sizable and even growing

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reserve fund, but it is necessary to work within the confines of the levy funds so that it will not need to go back to the taxpayers for several more years for a replacement levy. Personnel costs represent approximately 87% of its expenditures. The levy funds will be spent down; they are not being used for anything other than for the police units. Awarding anything above 2% raises will bring a negative balance in the reserve fund sooner, rather than later. The Township was upside down from the outset when the levy went on the ballot in 2010. Soon, the property values were lowered as the result of the recession in 2008 and 2009. This caused the levy funds to be reduced by some 7.6 million over the expected term of the levy.

The Township citizens are heavily taxed and are not receptive to tax increases, which is the reason why the Township needs to extend the levy as much as possible before it re-visits the taxpayers with a new levy proposal. Its necessary expenditures for capital items and maintenance are sizable. These include periodic vehicle replacements, computer hardware, weapons, cameras and other required operating expenses.

Outside Comparisons

To the extent that there is a norm, I agree with the Township that police contracts around the state have trended around 2% per year over the past 3 years. This is supported by SERB reports and by my personal experience. The parties disagree about what is considered comparable, but for purposes of this Report the comparisons with other townships in the region, which receive funding from property values and levies, seems the most reasonable governments to look at. Miami Township (Clermont), which already pays at a higher top level is paying 2% in 2016. Springfield Township, which also pays over \$2,000 more at the top level for officers is paying 3% each year for 2016, 2017 and 2018. Miami Township (Montgomery) paid 2.5% in 2014. The average top level for officers in the group that

includes townships around Cincinnati is \$69,828.⁴ This compares to West Chester at \$70,751.55, Miami (Clermont) at \$72,664.73 and Springfield at \$72,176.

The FOP makes comparisons in hourly rates instead of annual top pay. Using a similar comparison, the Springfield top level hourly rate is \$33.69. Miami (Clermont) is \$32.92. Green is \$31.54, Colerain is 31.53, Union is \$30.72, and Miami (Montgomery) is \$29.47. The average among this group is \$31.65. West Chester's top step hourly rate is \$34.02. The exhibit shows that different departments have different ranks and steps, but Springfield, Miami (Clermont) and West Chester are the top three, with West Chester at the highest.⁵

There is an abundance of other comparative information related to supervisors pay in other jurisdictions, other wages and benefit comparisons, and comparisons that involve cities in the area. My conclusion from digesting all of this material is that while West Chester is in the top pay group of townships, it will fall further behind Springfield if pay raises are not at least 3% each year. I conclude from reading all of the information about West Chester's economy that it is among the strongest in the area, and probably is in as good or better shape than Springfield or Miami (Clermont).

The Township computes that each 1% raise will cost about \$72,000 per year when variable benefits are included, but this figure increases with compounding over the three-year period. Accordingly, the Township's proposal adds \$144,000 per year to its expenses, and a 3% raise would cost \$216,000 per year.

Internal Comparisons

4 I left out Colerain, where the top level pay is \$65,590.45 because the exhibit shows no percentage raise in 2016, only a 1% lump sum bonus, and zeros for 2017 and 2018. If these are in fact wage freezes, this is an anomaly. There may be special circumstances that are without my knowledge. The Union's exhibit shows their contract expires at the end of 2016.

5 I cannot explain the difference in the numbers between the Township's exhibit showing annual pay and the Union's exhibit showing hourly pay. For example, $\$34.02 \times 2080 \text{ hours} = \$70,761.60$, which is close to the annual number. But, the hourly posted rates of Springfield and Miami (Clermont) produce figures lower than the annual figures in the Township's exhibit. It could be because the officers in those townships work more hours or the annual pay includes overtime pay.

The Township points out that the police wages have outpaced the wage increases received by

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other bargaining units. The most appropriate internal comparison is the one with the Fire employees. They accepted a 3-year wage freeze in exchange for additional time off. It is difficult if not impossible to measure the value to the Fire employees of additional time off. Accordingly, I conclude that the most persuasive comparison evidence is the comparison between the police units and their counterparts working in nearby townships in economies that have weathered the recession and who are experiencing the slow but certain economic recovery. This is evidenced by the lowest unemployment rate in the state and country in many years. Moreover, in terms of future increased property values, it seems that each month the Federal Reserve is more concerned with inflation that may lead to increased interest rates, meaning that our deflationary economy is turning back to an inflationary one.

The Impact of the Change to a 12-hour Shift

The Township believes that the agreement of the parties to go to a 12-hour shift work schedule somehow provides an economic benefit in the sense that the officers and supervisors work 73 fewer days per year than their counterparts. The FOP responds that the officers and supervisors work the same number of hours, so the department is getting the same bang for its buck. After listening to the parties' arguments over this issue, I have no real answer to the question of whether universally, there is a material economic benefit. How is requiring another half day of work on one day that leads to an additional off-day on another day to be valued if both parties see the change as a benefit? Since the Township agreed to this change, it must serve its interests as well.

The Lump Sum Payment Issue

The FOP is proposing a one-time "equity" lump sum payment applied to the base as compensation for a Conciliator's award that was based upon erroneous projections that soon proved that the levy reserve fund was substantially increasing instead of decreasing. The Township contends that it used its best knowledge to make these estimates, and that unexpected events occur that could

cause immediate revisions depending upon revenue inputs and unexpected expenses. The Township

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believes that it would be an unusual and unwarranted approach for a present fact finder to look backwards for the purpose of recommending some type of equity payment due to later actual revenues and expenses that materially varied from the evidence before the former conciliator. I believe there is some merit to the Township's argument, based upon history where the police units received raises when other Township employees received less in terms of wages or even wage freezes. Nevertheless, I tend to believe that had the error worked in the other direction, where materially lower revenues were received or substantially higher expenses occurred compared to what was estimated, the Township would be looking for some type of relief. Moreover, I believe that the neutrals in the last contract negotiations would have recommended and awarded some percentage increases on the base instead of lump sum payments had they had before them financials more in line with the later revised actual figures that were materially different.

Lieutenants and Sergeants – Rank Differentials

The expired CBA contains a rank differential between officers and sergeants of 15%, and between sergeants and lieutenants of 15%. The Township proposes reducing the differential between sergeants and lieutenants in year-two of the CBA to 14% and to 13% in year three. The sergeants pay rate for year-three would be reduced from 15% to 14% over the officer's pay rate. The FOP opposes these decreases.

The Township believes the pay increases that have occurred in the past has caused a problematic compression. The pay of the captains has not increased at the same pace as that of the lieutenants. At some near point in time, with the pay increases awarded in the new contract, lieutenants will be earning more than captains, particularly when overtime pay is included in the comparison. The problem relates to the morale of the command staff, and a disincentive for high performing officers to accept leadership positions.

West Chester ranks differ from those in other townships who do not have the rank of captain.

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Accordingly, lieutenants in some of the other jurisdictions perform the higher level supervisory duties performed by West Chester captains. This is the case in Delhi Twp., Miami-Clermont, Springfield Twp., Colerain, and Green Twp.

The FOP opposes any change in the rank differential. It has not observed that the present differential creates any problem in morale or disincentives. The Township has complete control and discretion to determine the ranks, and to determine the differential between lieutenants and captains. It believes that the fair solution to this problem, if it exists, is to increase the pay of captains. It opposes having the bargaining unit pay reduced so that the captains pay can be increased.

While the proposed rank differentials are within reasonable ranges based upon my review of other police contracts, I would need to consider hard evidence that there is a compelling need for a reduction in the pay of lieutenants and sergeants when the members are promoted through these ranks. Moreover, I would need to consider other alternatives, such as a rearrangement of duties as between captains and lieutenants that would in the Township's mind warrant an increase in Captain's pay.

RECOMMENDATION: I recommend that effective October 1, 2016, all officers and supervisors receive a one-time lump sum payment of \$1,000 added to their base wages, and a 2.5% increase to their base wages for the first contract year. Effective October 1, 2017, they shall receive a 3% increase to their base wages for the second contract year. Effective October 1, 2018 they shall receive a 3% increase to their base wages for the third and final contract year.

RECOMMENDATION: No change of the present rank differentials.

(2) Article 19- Wages Section 4, Plainclothes Allowance

The FOP wants to increase the allowance from semi-annual payments of \$400 upon presentation of receipts to \$500 twice a year or \$1,000 per year. The rationale for the proposal is the fact that the allowance had not been increased since 2004. The Township rejects this proposal as being unnecessary

since the payment is for plainclothes, that the employees would have to wear anyway. There is no

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evidence of any excessive wear that occurs to their clothes from working this detail.

I note from the FOP's exhibit that Miami (Clermont), Miami (Montgomery), Springfield, Union, and Green Twp. have plainclothes allowances, but Colerain Twp. does not have it. However, while it still appears to be a constant in terms of an employee benefit for plainclothes officers, there is no persuasive evidence in this record that the present amount is inadequate or outdated.

RECOMMENDATION: No change.

(3) Article 17 Welfare (Insurance), Section 2

The expired CBA provides for three health insurance plan options; (1) a Basic Plan; (2) a High Deductible Plan; and (3) a High Deductible Plan with a health savings plan (“HSA”). The FOP members are in either the Elective Plan (60%) or the High Deductible Plan (“HDP”) (40%). Premium contributions between the parties are 85% to the Township and 15% to the employees for the 3-year contract period in the expired plan. The Township proposes different employee percentage contributions for the new contract depending upon the plan that is selected. Beginning January 1, 2017 the Basic plan remains at 15%, but participants in the Elective Plan or the HDP-HSA would have increased to 16%, 17% beginning January 1, 2018 and 18% beginning January 1, 2019.

The Township believes that the costs of the more expensive Elective plan and the HDP-HSA exceeds the cost for the medical services that have been utilized. In other words, over the last two years both the Township and its employees are paying higher than necessary premiums based upon the cost of the services they have been receiving. Moving employees to the Basic plan will produce savings and though called a basic plan, it is a plan that provides “sufficient health care coverage for the typical consumer.”

The Elective plan, however is becoming increasingly expensive. Its premium is higher and it has a lower point of service costs. Heavy user costs are being shifted to all of the other employees. The

Township believes the recent spikes in health care premiums reflected the increased ACA plan

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premium costs will create budgetary problems during the life the CBA. The firefighters have recognized the issue and have agreed to increase the more expensive plan premiums to 16% starting in 2017. The dispatchers and AFSCME units have agreed to pay 16% in 2017 and 17% in 2018.

The FOP opposes these increases because their members take advantage of the more expensive plans and absorb the burden of the more expensive premiums. It contends that its members, on a percentage comparison basis, have absorbed more of the premium increases over the years than the Township (31% to 18.5% from 2013-2016). It understands that the Township wants to move employees to the Basic plan for cost savings, but it believes that there are other ways to obtain savings that the Township refuses to consider. It is willing to encourage movement to the HDP which has much less costs provided that the Township consider contributing funds to employee HSA accounts, similar to what other employers have done.

While apple to apple comparisons are difficult to ascertain, the percentage allocation for premium sharing varies among townships from 80%-20% (Colerain, Miami – Butler), 81.3% (Miami-Clermont), and 100% for Springfield and Union. Moreover, it appears that these townships have managed their health insurance costs by using high deductible plans (Colerain, Miami-Clermont, Springfield and Union).

I am concerned that all of the bargaining units and non-bargaining employees are not on the same page in terms of their premium contributions. It may be that the other units and employees are more concerned with keeping their premium costs down, even if it means going over to the Basic plan. It has been my experience that police units, because of the safety aspects of their jobs, and because of their usage, prefer the better insurance even if their premium contributions are higher.

Nevertheless the possibility of very high increases in medical insurance premiums is a clear concern. This concern needs to be fleshed out by hard negotiations after all of the available options,

costs and benefits are on the table, including whatever savings could be achieved by a HDP-HSA type

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plan that includes some contribution to the HSA by the Township. While there is uncertainty about how health care cost increases will be addressed by the government, I believe the best course of action is to maintain the current 85%-15% allocation until January of 2018. A re-opener solely on the percentage issue should take place to decide what the fair percentages should be for 2018.

Plan Design Issues

The present language in Section 2(d) states that the Township is not obligated to offer or meet the current benefit level for the Basic plan or the HSA, or to even offer those plans in any subsequent year. Section 2(e) addresses the Elective Plan, or its equivalent, as offered by the carrier, but states design criteria. The Township proposes new language that would permit it to offer any health insurance plan to FOP members that it offers to non-contract employees or another bargaining unit. The parties disagree about the meaning of 2(e). The Township contends that the present language is obsolete, and was used in the past when a reimbursement system was in place. The FOP believes that its firm right to require mutual agreement on plan design changes for the Elective Plan is and has been a contractually guaranteed right.

There was some discussion at the hearing about the willingness of the FOP to accept a premium increase of 16% in the final plan year within the third contract year, if the Township accepts and re-affirms the FOP's guarantee of no changes to the Elective plan design without the FOP's mutual agreement. The parties failed to reach agreement on this issue.

I find that to the extent that there remains a dispute over this issue, their language interpretation dispute should be resolved through the grievance/arbitration process, and not in fact-finding or conciliation.

Section 5 – Opt Out Provision

The present opt-out payment is \$1,200 for employees who decline coverage when they prove

that they have secured coverage elsewhere. The FOP wants to change the amount to \$1,500 and to

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remove the language that only qualifies those employees that are not carried on the Township's plan in any form. I find that there is no compelling evidence that the present amount is unreasonable or that the exclusion provision is unfair.

RECOMMENDATION: No change in any Article 17 language not expressly changed in this Report. This includes the retention of Section 4, which the Township is concerned about, and which is not part of the FOP's proposal, and the retention of the present opt-out provision. There shall be a premium percentage allocation re-opener for the third contract year beginning on January 1, 2018.

(4) Article 14 - Vacations

The FOP proposes to add a new level of vacation accrual that provides employees who have completed 25 years of service with five and one-half weeks of vacation or 220 hours. It references the IAFF CBA that provides its members with 6 weeks of vacation after 27 years of service. The IAFF benefit has existed since at least the 2003-2005 CBA, and the vacation benefit in the expired CBA has been in place since the 2004-2007 CBA. In terms of outside comparisons, the FOP cites other cities and townships where after 25 years, employees earn 26 days, and 27 days after 30 years and above. West Chester has a cap of 25 days.

The Township opposes the increase based upon its review of comparable departments. It contends that the cost of adding the step is substantial due to the increases for the cash-out of accrued but unused vacation time. It argues that there is no need for additional paid time off for the FOP, particularly because of the new 12-hour shifts which provide 73 more days off per year. It explains the more favorable IAFF contract as an anomaly, and states that the IAFF CBA also defers the accrual of the additional week by one year at each interval.

The comparisons for nearby townships show Miami-Clermont at 240 hours after 20 years compared with West Chester at 200. Colerain is 200 hours after 25 years. Green tops out at 14 years at

200 hours. Springfield accrues 200 hours at 20 years. Delhi accrues 240 hours at 27 years. Union

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accrues 192 hours at 17 years at the top level.

I agree with the Township that the present accrual schedule is in the ballpark with nearby townships, and that there is no compelling need for a change that will have some material costs.

RECOMMENDATION: No change.

Date of Report: December 19, 2016

/s/ _____
Mitchell B. Goldberg, Appointed Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon SERB and the following party representatives on the 19th day of December, 2016 by electronic mail:

SERB Email: med@serb.oh.us
Donald Crain: dcrain@fbtlaw.com
Susan Jansen: sjansen@djflawfirm.com

/s/ _____
Mitchell B. Goldberg

