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IN THE MATTER

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OF

FACTFINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE/  
OHIO LABOR COUNCIL, INC.

AND

THE CITY OF MIAMISBURG, OHIO

Hearing: October 26, 1998  
SERB Case Nos.: 98-MED-04-0385 & 0386  
Date of Report: November 12, 1998  
Issue: Factfinding

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REPORT AND RECOMMENDATIONS

Michael Paolucci  
Factfinder

### Administration

By letter dated May 29, 1998, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On October 26, 1998, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on October 29, 1996, and is now ready for a factfinding report.

### Factual Background

The City of Miamisburg is located just south of Dayton, Ohio, in southern Montgomery County, and is responsible for providing certain services to its citizens, including police protection; the Union represents approximately twenty eight (28) Patrol Officers and six (6) Communications Officers. Both Agreements with the patrol and communications officers were at issue in this case. The current collective bargaining agreement is dated July 1, 1995, and expired on June 30, 1998.

Prior the hearing, the Parties engaged in extensive negotiations and reached a tentative agreement. However, the Union members unanimously voted down the tentative agreement. The Parties were unable to reach agreement following the rejection of the tentative agreement and the matter proceeded to factfinding.

Prior to the beginning of the hearing, mediation was inquired into by the factfinder, and a short mediation session was conducted. Following the unsuccessful mediation efforts, a factfinding hearing was held. During the factfinding hearing on October 26, 1998, eleven (11) Articles were at issue and are as follows:

1. Article X - Wages, Rates of Pay & Retroactivity;

2. Article X, Section 9 - Wages, OIC and FTO Pay;
3. Article X, Section 10 - Wages, Shift Preference;
4. Article XIII - Sick Leave and Injury Leave;
5. Article XIV - Insurance;
6. Article XV - Uniform Allowance;
7. Article XVI, Section 3 - Call-Back Pay and Call-In Pay, Court Appearance;
8. Article XVI, Section 6 - Call-Back Pay and Call-In Pay, Pagers;
9. New Article - Shift Differential;
10. New Article - Activity, Performance Standards;
11. Article XXII - Duration.

Each issue will be handled below.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment. (emphasis added)

The issues will be addressed separately giving consideration to all of the required factors.

It is necessary to note that the Parties reached agreement on certain issues prior to the factfinding hearing beginning. The first issue, Wage Schedules, was settled by the Parties.

## **1. ARTICLE X - WAGES, RATES OF PAY & RETROACTIVITY**

### **CITY POSITION**

The City proposes that the base wage be increased 3.5% in each step of the wage scale during the first year, 3.25% during the second year, and 3.25% during the third year of a three (3) year contract. It argued that this amount was previously agreed to by the Union negotiating team, but it was done without the additional benefits proposed by the Union during factfinding that would result in additional cost to the City. It contends that the traditionally used external comparables place this unit in the middle of the group of seven (7) municipalities and its offer maintains that status. It contends that since the undersigned awarded 9.5% three (3) years ago for the full three (3) year period, and since the costs of living has risen little since then, then it is reasonable to make a similar increase during this three (3) year period. It additionally points out that federal funds it has previously received to pay the salaries of three (3) of the City's Patrol Officers dries up at the end of 1998.

## UNION POSITION

The Union proposes wage increases of 4% in each year of a three (3) year contract with the first year being made retroactive to July 1, 1998. Additionally, the Union proposes to increase the base rate of pay for Dispatchers by \$1,000.00. It makes this offer because, it contends, that the Dispatchers have been historically underpaid in relation to comparable cities. Further it contends that the City has not made the ability to pay part of its case and asks that the police be compensated in line with the profitability of the city.

## RECOMMENDATION

It is recommended that the City's proposal be adopted. It is difficult to grant more money now than that recommended following the factfinding hearing during the previous contract. There has been no real change in circumstances; the economy and cost of living have remained relatively unchanged; and the maintenance of the member's status as compared to employees in similar cities all justify an increase similar to the previous Agreement. Therefore, since the City's proposal is in line with that previously recommended, then that proposal must be adopted as it regards the general wage increase.

With regard to the Union's proposal for a one time pay increase for Dispatchers, it was proven that they are underpaid in relation to the Patrol Officers' standing among comparables versus their standing among those same comparables. Thus, a small increase in the Dispatchers' base wage is justified. However, the \$1,000 request is excessive. It is recommended that to bring the Dispatchers more in line with the remaining police unit and in line with the external comparables, they be given a \$500.00 one-time base wage increase along with the general wage increase recommended above.

## **ARTICLE X - WAGES, RETROACTIVITY**

### **CITY POSITION**

The City proposes that the wage increase not be made effective until the Agreement is signed. It bases this proposal on the high cost of the Union's other proposals. It complains that it can not agree to retroactivity if the Union continues to push for increases in other costly benefits.

### **UNION POSITION**

The Union proposes that the wage increase be made retroactive. It contends that since the Parties have been engaged in good faith negotiations, then the members should not be prejudiced by losing their wage raises.

### **RECOMMENDATION**

It is recommended that the wage raise be made retroactive. Only in rare cases will a Party's conduct justify not paying a wage raise retroactively. Nothing in this case was presented that would justify not paying a retroactive wage increase. Therefore, it is recommended that the wage raise be made retroactive.

## **2. ARTICLE X, SECTION 9 - WAGES, OIC AND FTO PAY**

The Parties agreed to include OIC pay in the Agreement. Although OIC pay has been given to employees as part of the City's practice, it was not a benefit specifically mandated by the Agreement. During these negotiations, the Parties agreed to include it in the Agreement. Thus, the only issue on this article is FTO Pay.

### UNION POSITION

The Union proposes paying officers who act as Field Training Officers an extra \$1.00 per hour. Since the City already pays employees when they act as Officer in Charge, hereinafter "OIC," then it is reasonable to give an officer more pay when they act as a FTO. It argues that there is extra work; that the job is an important one; and that the extra responsibility justifies the extra pay.

### CITY POSITION

The City contends that this is another cost item that will affect its budget. It contends that since the Union is unreasonably asking for 4% wages, it can not agree to this type of increased cost.

### RECOMMENDATION

It is recommended that the FTO pay be adopted. The FTO undoubtedly takes on more responsibility than another comparably situated officer. Generally speaking, wages are payment based on the amount of work that must be done. Since FTO's have more work, and since OIC officers are already paid an additional stipend, then it is reasonable to similarly compensate FTO's. Therefore, it is recommended that the Union's proposal be adopted.

## **3. ARTICLE X, SECTION 10 - WAGES, SHIFT PREFERENCE**

### UNION POSITION

The Union proposes allowing employees to select their work schedules by seniority once the Evidence Technician shift is selected. This article caused a great amount of concern among union members and was one of the sticking points that prevented an agreement from being reached. The

Union contends that the current practice is to allow officers to choose their shift based on seniority, and it wants the practice reduced to writing.

### CITY POSITION

The City argues that Union's are trying to get this benefit more and more, and it is being met with strong resistance wherever it is proposed. It contends that the result would be more junior employees working nights when there is less supervision and a maximum challenge. Therefore, it argues that the proposal, if adopted, would create a dangerous situation, and would not be in the best interests of the citizens it is responsible for protecting. In addition, it points out that currently most employees get the shift they want. Since management is reasonable in scheduling employees in the manner requested by the proposed language, but only want to reserve the right to be able to assign employees in a manner that best protects its citizens, then it argues that the language should not be included in the Agreement.

### RECOMMENDATION

It is recommended that the Union's proposal not be adopted. Regardless of the benefits gained for more senior employees, the City has a legitimate concern about too many junior employees working the most demanding shifts. Experience is too important a factor in dangerous situations. It is commonly understood that the most dangerous situations happen at night and on the weekends, the same period that presumably a more senior officer would not want to work. The experienced officers are simply too important to allow their seniority to permit them from being used during the period in which they are most needed. Therefore, it is recommended that the Union's

proposal not be adopted.

#### 4. **ARTICLE XIII - SICK LEAVE AND INJURY LEAVE**

##### CITY POSITION

The City proposes re-writing the entire sick and injury leave provision. It argues that there has been a marked increase in the use of sick leave in recent years and its language is intended to help with the problem. It contends that since increased sick leave results in increased cost and reduced service on the street, then it has an important interest in taking necessary steps to stop the abuse.

##### UNION POSITION

The Union opposes changing the entire provision since it deletes important sections dealing with how sick leave is earned; the rate sick leave is earned; and includes language that is harmful to the bargaining unit. It points out that although the City withdrew its proposal during negotiations, it brought it back just prior to factfinding.

##### RECOMMENDATION

Total re-writes of existing language are rarely justified and must be supported by serious problems that require immediate attention. Lacking such important facts, a complete re-write is difficult, if not impossible, to justify. This language is no exception. Although problems exist, they were not shown to be serious enough to justify the complete modification of the language. Therefore, it is recommended that the City's proposal not be adopted.

5.

## ARTICLE XIV - INSURANCE

### CITY POSITION

The City proposes changing the Health Insurance language so that union members are given the same health care as management employees; such that the union employees pay a 10% contribution to the health care premium through payroll deduction; and such that the Union shall be given a thirty (30) day notice before any changes are made to the health plan.

The City argues that the current language has no application to what is currently provided since “major medical” coverage is no longer provided by Anthem Blue Cross/Blue Shield and has not been provided for over six (6) years. It proposes this language to give it the flexibility in selecting a new plan. Since the language ties whatever the bargaining unit employees receive to that received by management, then it argues that the union will be protected because management employees are not going to negotiate a bad health insurance plan for themselves.

The City also contends that the current set up, with the employees paying 25% of the amount in excess of the premium caps is no longer reasonable and is not common among the comparable cities. It contends that the 10% premium contribution is reasonable, is becoming more and more common, and is present in three (3) of the comparable cities. It contends that the health care costs are about to rise and that it is better to have employees participate in the cost of health care to have them more aware of the costs involved. It argues that it is time for the shared premium since the cooperative purchasing arrangement the City organized has worked and proved its worth.

### UNION POSITION

The Union argues that the City has recently changed health care plans with its blessing based

on the promise that the current language would remain unchanged. It argues that the City's proposal would increase the current payment made by employees by 347%, from \$8.37 a month to \$39.00 per month. The Union proposes that the Article remain the same. The Union is concerned with the formulary of the health care provider; with the increase in prescription costs; with the issue of out-of-state care; with the increase in the co-pay; with the restriction in the number of visits to physical therapy; and with the drug dependency coverage. It likes the current cap and is concerned about losing control of its members' contribution if the City is given authority to unilaterally change the provider.

### RECOMMENDATION

This is the most volatile issue in all negotiations. Only wages rivals the importance of health care. Of the concerns of both parties, the one common to both is the unknown costs of health care that either may have to incur in the future. The trick is to balance the interest of employees in providing for the health care of their families with the interest of the City to maintain its financial stability.

It is against this backdrop that the following recommendations are made:

1. The Employer's proposal for 10% premium contribution is too high. However, since 5% is reasonable, and since some contribution from employees is becoming the standard, then it is recommended that the employees contribute 5% toward the cost of premiums.
2. The Employer's tying of the union members health care provider to that given to management employees is reasonable with the following restrictions:

- a. During the first two years of the Agreement, thirty days notice must be given before a change to either the provider or the premium is made;
- b. During the third year of the Agreement, if the increase in premium (regardless of whether such is due to a new provider or from the same provider) exceeds 1.5 times the current premium, in real dollars, the City must negotiate for the increase. As an example, if the current 5% premium is \$10.00, and in the third year the premium grows to more than \$15.00, or 1.5 times the \$10.00, then the City must re-open on the issue of health care and negotiate for the change.

This recommendation is intended to provide the City with a reasonable contribution, to allow the City to have control of the benefit and thereby negotiate for the best deal for all of its employees, while at the same time give protection to the union members from unreasonable increases in the premiums.

**6. ARTICLE XV - UNIFORM ALLOWANCE**

The Parties agreed at the hearing to include Section 2 as proposed by the City.

CITY POSITION

The City proposes changing the current method to a quartermaster system. It believes it is a good system; it allows for the City to bargain for cheaper prices; and allows it to control the costs of maintenance of uniforms.

## UNION POSITION

The Union argues that there is no evidence that the current method is being abused; it worries that the definition of “demonstrated need” as contained in the City’s proposal could leave bargaining unit employees without good uniforms; that the City’s proposal is silent on several key issues; and that the language does not specifically identify what items are part of the uniform provided by the City.

## RECOMMENDATION

It is recommended that current language be maintained. Each police department has its own system of providing uniforms to officers, some on quartermaster, some with compensation directly to the officers. Both systems work and the preference of either system varies based on the individuals who must use each system. In this case, no claim has been made that there is a problem with the current method. Lacking such a claim, it is recommended that the current system be maintained.

## **7. ARTICLE XVI, SECTION 3 - CALL-BACK PAY AND CALL-IN PAY, COURT APPEARANCE**

### UNION POSITION

The Union proposes changing the call-in pay from straight time pay, to overtime pay at 1.5 times the regular rate. The Union argues that being called in is an inconvenience and justifies an increase in pay.

### CITY POSITION

The City argues that the benefit is another cost item and when added to the other requests of the Union, makes the Union's proposal too expensive.

### RECOMMENDATION

It is recommended that the status quo be maintained. The evidence failed to show that the increase is necessary or that there is an abuse with the current method of call-in and call-backs.

## **8. ARTICLE XVI, SECTION 6 - CALL-BACK PAY AND CALL-IN PAY, PAGERS**

### UNION POSITION

The Union wants the bargaining unit members to either be able to return their pagers, or be compensated for having to carry them (Detectives excepted). It argues that the use of pagers, and the policy that follows their use, is an unnecessary intrusion into the private lives of police officers.

### CITY POSITION

The City contends that the use of pagers make the police officers more effective, more efficient, and better able to respond to emergencies. It contends that the Union's wage payment for the pagers is absurd and contends that the requirement that police carry pagers in their off-duty time is not any more unreasonable than requiring that they be within telephone contact during the same period.

## RECOMMENDATION

While the City makes a reasonable argument in justification of the use of pagers, such was not sufficient to justify the intrusion into the private lives of the officers. Officers' day to day activity includes being in the public eye constantly; having to always be aware of the image being projected; and being responsible for representing the City in the best image possible. Everybody needs a break from this duty and the officers' private lives serve that need. The use of pagers while off duty is a constant reminder that the off-duty private life of an officer could end at a moments notice and interferes with each officers' ability to live a private life. As such, it is an unreasonable intrusion into the officers' private life. Based on this analysis, it is recommended that the officers be permitted to return the pagers to the City and that they not be forced to carry the pagers during their off duty hours. The Memorandum of Understanding is recommended as the best method to achieve this goal.

## **9. NEW ARTICLE - SHIFT DIFFERENTIAL**

### UNION POSITION

The Union proposes a shift differential of .75 per hour for the third shift and .5 per hour for the second shift. It contends that the problems associated with working these shifts should be compensated and that the only way to recognize the problems is through the payment of a shift differential.

### CITY POSITION

The City argues that these employees knew that as police officers they would have to work

unusual hours from time to time and they accepted that requirement when they became police officers. It contends that with this additional cost item, the Union's proposal is too expensive. It points out that this is a brand new benefit that would cost more than 1% of an increase in the base wage rate.

#### RECOMMENDATION

It is recommended that the *status quo* be maintained. Based on previous recommendations that favor increasing the wage rates of the employees, this additional cost item is not justified.

#### **10. NEW ARTICLE - ACTIVITY, PERFORMANCE STANDARDS**

##### UNION POSITION

The Union proposes language that would require that Union members perform at reasonable activity levels, but that the City shall not impose "minimum standard number of required activities." This is related to the problem discussed at Issue #4.

##### CITY POSITION

The City recognizes that the policy instituted was flawed and it withdrew the policy. It argues that such should not be the justification to forever forbid it from imposing reasonable work rules regarding activities. It contends that it needs performance standards and must have the ability to impose such on its employees.

## RECOMMENDATION

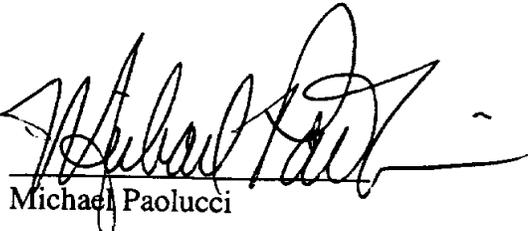
The *status quo* is recommended. Although the Union has a reasonable concern over the imposition of unreasonable work rules, the City has conceded that the previous policy was flawed and claims that it will not impose such rules again. An error that was once done does not justify prohibiting similar conduct forever. Instead, if the City acts again in this manner, the resolution is through the grievance procedure. The Union's claim that it should not have to go through the grievance procedure every time management imposes unreasonable work rules ignores the fact that that is exactly what the grievance procedure is intended to do. Providing protection through this sort of language is not appropriate since it robs management of the ability to manage because it, at one time, instituted an unreasonable work rule. Such does not justify future use of reasonable rules and it is better to leave the issue open and allow the Parties to resolve future disputes through the grievance procedure than to forever prohibit any similar activity through negotiated language. Therefore, it is recommended that the Union's proposal not be adopted.

11.

### **ARTICLE XXII - DURATION.**

It is recommended that the Agreement be made effective from July 1, 1998, through June 30, 2001.

November 12, 1998  
Cincinnati, Ohio

  
Michael Paolucci