

98-001

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Patrolmen's Benevolent Association,

Employee Organization,

and

Howland Township Trustees, Trumbull County,

Employer.

Case No. 96-REP-09-0187

OPINION

GILLMOR, Vice Chairman:

This representation case comes before the State Employment Relations Board ("Board" or "SERB") upon the issuance of the Hearing Officer's Recommended Determination on September 25, 1997. No exceptions were filed to the determination. For the reasons below, we find that the part-time Police Officers employed by the Howland Township Trustees, Trumbull County, are "casual employees" under Ohio Revised Code ("O.R.C.") § 4117.01(C)(13) and are excluded from the definition of "public employee" in O.R.C. § 4117.01(C).

I. BACKGROUND¹

On September 10, 1996, the Ohio Patrolmen's Benevolent Association ("OPBA") filed a Request for Recognition. On November 18, 1996, the OPBA filed an amended Request for

¹Finding of Fact Nos. 3-21 and 23-24; Exhibit A.

Recognition, supported by sufficient showing of interest, seeking to represent part-time Police Officers, but excluding Walter B. Schmitt, employed by the Howland Township Trustees, Trumbull County ("Employer") in the Howland Township Police Department. On December 9, 1996, the Employer filed an objection to the Request for Recognition in this matter. On May 22, 1997, the Board directed this matter to hearing to determine an appropriate bargaining unit and for all other relevant issues.

The Howland Township Police Department is comprised of sixteen full-time Police Officers, a Police Chief, and a varying number of part-time Police Officers. The part-time Police Officers are sworn Police Officers with identical arrest powers as full-time Police Officers. During the last three years, the number of part-time Police Officers has ranged from four to ten. The proposed bargaining-unit description included nine individuals. Since the amended request was filed, two individuals resigned, and a third individual was hired as a full-time Police Officer. Currently there are six part-time Police Officers.

The Employer posts a work schedule every twenty-eight days. The full-time Police Officers cover all shifts. No part-time Police Officers appear on the regularly posted work schedule. The Police Chief may offer the part-time Police Officers the scheduled slots left vacant by full-time Police Officers who are absent for vacation, sick leave, personal days, and holidays if part-time Police Officers are eligible to work those shifts under the collective bargaining agreement between the OPBA and the Employer. Furthermore, when the Employer needs help for special events and predictably busy times, it may offer part-time Police Officers the opportunity to work. The part-time Police Officers work with full-time Police Officers to supplement shifts that are traditionally busy or when the Police Chief determines he needs additional police personnel.

The Employer hires part-time Police Officers under a resolution that states they will be "scheduled as needed." The Employer does not require the part-time Police Officers, either individually or collectively, to work a minimum number of hours. They are not subject to any sanction for not working. The Employer usually offers the part-time Police Officers work on Halloween, the fourth of July, Christmas, during Township Park Youth Activities, and as-needed to supplement operational needs. Most work offered and accepted by part-time Police Officers is assigned on the day when the Police Officers work or the day before; on some occasions, however, work is offered and accepted up to two weeks in advance.

During the twelve months immediately before the initial Request for Recognition was filed — September 10, 1995 through September 9, 1996 — eight of the nine part-time Police Officers in the proposed bargaining unit worked a total of 2,539.51 hours. The ninth individual did not work during that time period.

Walter Schmitt, a part-time Police Officer specifically included in the full-time Police Officer bargaining unit, has worked for the Department for more than twenty years. He was included in the full-time unit when it was recognized more than twenty years ago; at that time, Police Officer Schmitt was regularly scheduled on a part-time basis.

II. DISCUSSION

O.R.C. § 4117.01(C)(13) describes a "public employee" as any person holding a position by appointment or employment in the service of a public employer except seasonal and casual employees as determined by SERB. In *In re Ohio Turnpike Comm.*, SERB 93-022, at p. 3-127 (12-21-93) ("*Turnpike Commission*"), the Board set forth its standard for determining "casual employees":

Casual employees are those employees who are assigned on an on call or as needed basis to supplement the work force and either:

- 1) averaged in the aggregate less than 500 hours over the previous year; or
- 2) among whom less than 60% who worked one year returned for the following year.

* * *

These standards are for job classifications. If a classification meets the requirements, then all members of the class are considered not to be casual or seasonal, even though specific individuals may or may not meet the requirements.

The OPBA contends that the Board's Opinion in *In re City of Tallmadge*, SERB 95-011 (6-30-95) ("*Tallmadge*") reflects a departure from the *Turnpike Commission* holding. In *Tallmadge*, the fire department consisted of five full-time and thirty-four part-time fire fighters. Under those facts, the Board concluded that the part-time fire fighters were not merely supplementing the full-time work force, but were an essential and integral part of the fire department's ability to achieve its mission. Although the fire fighters could volunteer for additional hours and extra shifts, there were a minimum number of hours and shifts they were required to accept in order to avoid discipline or discharge. Thus, in *Tallmadge* we found that the part-time fire fighters at issue were both regularly scheduled and an integral part of the fire department's work force; they did not meet the *Turnpike Commission* requirement that casual employees are those employees assigned on an on-call or as-needed basis to supplement the work force.

In this case, there are sixteen full-time Police Officers and only six part-time Police Officers. The Employer calls the part-time Police Officers only on an as-needed

basis to fill in for full-time Police Officers on sick leave or vacation or as a supplement to the full-time Police Officers for certain holidays and occasions when extra staffing was needed. There is no minimum number of hours necessary to be worked, and the part-time Police Officers are free to decline any and all assignments without fear of discipline or removal. Although the part-time Police Officers provide the Employer with added flexibility in scheduling from a pool of employees when a need arises, the police department could operate adequately without any part-time Police Officers. As a result, the part-time Police Officers are not integral to the Employer's operations; they are used to supplement the Employer's work force.

If the part-time Police Officers meet either part of the *Turnpike Commission* test, they will be determined to be "casual employees." The record does not include the hours worked by the part-time Police Officers during the twelve months before the date when the amended Request for Recognition was filed.² But the record does include the work history from September 10, 1995 through September 9, 1996, which is the twelve months immediately preceding the filing of the initial Request for Recognition. During that time period, eight part-time Police Officers (not including Police Officer Schmitt) worked a total of 2,539.51 hours and averaged 317.44 hours per part-time Police Officer. Only one of those nine individuals worked more than 500 hours during that time period. Individuals on the Employer's roster who did not work during this twelve-month period are not included in these calculations. Thus, the part-time Police Officers are "casual employees" because the total hours they worked averaged less than 500 hours per part-time Police Officer.

III. CONCLUSION

²The filing of an amended Request for Recognition starts the process over again.

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For the reasons above, we determine that the part-time Police Officers employed by the Howland Township Trustees, Trumbull County, are "casual employees" under O.R.C. § 4117.01(C)(13) and are excluded from the definition of "public employee" in O.R.C. § 4117.01(C). Therefore, the amended Request for Recognition filed by the Ohio Patrolmen's Benevolent Association is hereby dismissed.

Pohler, Chairman, concurs; Mason, Board Member, concurs in a separate opinion.