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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 4, 2003

In the Matter of:)	
)	
The Boardman Township)	
Trustees)	
)	
and)	02-MED-06-0624
)	
The Fraternal Order of Police)	
Lodge No. 43)	
)	

APPEARANCES

For Lodge 43:

Dennis Haines, Attorney for the FOP
Albert Kakascik, Bargaining Unit Representative
Donald Lamping, Bargaining Unit Representative
Glen Riddle, Bargaining Unit Representative

For the Boardman Township Trustees:

James Messenger, Attorney for the Township
William Leicht, Township Clerk
Jeff Patterson, Police Chief
Curt Seditz, Township Administrator

Fact Finder: Dennis M. Byrne

Background

The parties to this Fact Finding are the members of the Fraternal Order of Police (FOP) Lodge 43 Ranking Officers, and the Boardman Township Trustees. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions between the parties; however, they were unable to come to an agreement. Eight (8) issues remain unresolved; the issues are: 1) educational incentives, 2) tuition reimbursement, 3) insurances, 4) vacations, 5) compensatory time, 6) holidays, 7) clothing allowance, 8) and compensation. There was an extended mediation session conducted prior to the hearing, and the parties discussed each issue in detail. While they were not able to reach an agreement during the mediation, there was movement on all issues. The Mediation/Fact Finding Hearing was conducted at the Boardman Township Building on January 28, 2003. The hearing was convened at approximately 10:00 AM and adjourned at 4:00 PM.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, both parties conducted the Hearing with the greatest professionalism, and the conduct of the parties toward the Fact Finder and each other was exemplary.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria, which are set forth in Rule 4117-9-05, are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached, and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Introduction:

The major disagreement between the parties is the size of the rank differential (rank spread) paid to the sergeants. The Union's original demand was for a nineteen percent (19%) differential between all three officer ranks. During negotiations and the mediation conducted by the Fact Finder prior to the hearing, the Union reduced its demand to a thirteen percent (13%) differential between all ranks. Effectively, this is the same as a demand for a thirteen percent (13%) spread between the top patrolman's rate and the sergeants' rate because the other ranks currently have a thirteen percent (13%) differential. The Township strenuously objected to this demand.

The parties discussed this demand at great length, and the genesis of the dispute was clarified. During the round of negotiations that led to the current contract, the bargaining team for Lodge 43 contained a number of individuals who were close to retirement. Moreover, the team was dominated by officers at the rank of lieutenant and above, i.e., the sergeants did not have equal representation. The Union's demands were aimed at increasing the pay of the senior officers as a way to build their incomes and, correspondingly, their pensions. One way to achieve their goal was to increase the base wage, and the parties agreed to a wage increase of twelve percent (12%) over three years. A second way to increase the officers' pay (pensions) was to increase the rank differential, and the parties agreed to increase the differential to thirteen percent (13%) for the lieutenants and captains. As a quid pro quo, the thirteen percent (13%) differential between the top patrolman's rate and the sergeants' rate was eliminated.

Over the last few years some senior officers did retire; and consequently, the department promoted a number of individuals to replenish the sergeant, lieutenant, and captain ranks. This has led to a situation where the (new) sergeants believe that they are not being treated equitably with regard to the rank differential; and they demand that the thirteen percent (13%) differential that was in the 1996 contract be restored.

The Township argues that it is being whipsawed. That is, the Township believes that it negotiated in good faith and met the Union's demands during the last round of negotiations. Now, the Township argues that it is being asked to reinsert the same language into the contract that the Union requested that it delete from the contract three years ago. In effect, the Township believes that the "problems" with regard to the differential are of the Union's own making. Consequently, the Township rejects the Union's demand. Parenthetically it should be noted that an increase in the sergeant's differential would also increase the pay of the more senior officers because any increase given to the sergeants would automatically be passed through to the other officers because of their rank differential.

Currently, the differential between the highest paid patrolman's rate and the sergeant's rate is approximately ten percent (10%). The Union's demand is for an increase of three percent in the sergeant's differential; which will translate into a three percent raise for all officers in the department. The parties also

discussed the other items on the table. However, it is clear that the question of the rank differential is the main source of disagreement.

The preceding paragraphs give a background to the dispute and the discussion can now turn to the specific demands.

Issue: Article 7: Compensation (New Section): Educational Incentive

Union Position: The Union demands that an educational incentive be added to the contract.

Township Position: The Township rejects the Union's demand.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: None

Issue: Article 7: Compensation (New Section): Tuition Reimbursement

Union Position: The Union demands that tuition reimbursement language be added to the contract.

Township Position: The Township rejects the Union's demand.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: None

Issue: Article 10 (Section 3): Life Insurance

Union Position: The Union demand is for an increase in the life insurance benefit for retired employees from \$2,000.00 to \$8,000.00.

Township Position: The Township rejects the Union's demand because it recently raised the insurance coverage for all Township employees.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: None

Issue: Article 14 (Section New): Vacation Buyback

Union Position: The Union demand is for language that allows the membership to buy back one week of vacation.

Township Position: The Township stated that the Union bargained this language out of the contract for increased compensation during the last round of negotiations. Consequently, the Township rejects the Union's demand.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: None

Issue: Article 12 (Section 1): Compensatory Time

Union Position: The Union demands an increase in the compensatory time bank and the right to use compensatory time in one (1) hour increments.

Township Position: The Township was discussing a tradeoff whereby the overtime bank would be reduced, but compensatory time could be used in less than four (4) hour increments.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: No change to current contract language

Issue: Article 13 (Section 3): Working on Holidays

Union Position: The Union demand is that plain clothes officers have the option to work five (5) holidays.

Township Position: The Township argues that its holiday pay provision is generous. Furthermore, the Township contends that plain clothes officers bargained the option to work five (5) holidays out of the agreement in a prior negotiation. The Township does not wish to reinstate the provision.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: None

Issue: Article 7 (Section 2): Clothing Allowance

Union Position: The Union demands an increase in the clothing allowance in each year of the prospective contract.

Township Position: The Township believes that the current clothing allowance is reasonable. Therefore, it rejects that Union's demand.

Discussion: None

Finding of Fact: The Union withdrew this demand as part of a proposed tradeoff for changes in the rank differential language.

Suggested Language: No change to current contract language

Issue: Article 7 (Section 1): Compensation

Union Position: The Union demands an increase in the base wage rate of 4 percent (4%) in the first year, five percent (5%) in the second year, and six percent (6%) in the third year of the proposed contract. In addition, the Union is also demanding an increase in the rank differential paid to the sergeants.

Township Position: The Township is offering three percent (3%) per year in each year of the proposed contract. In addition, the Township rejects the Union's demand for a change in the rank differential language.

Discussion: There are two areas of disagreement on this issue. First, there is a disagreement on the size of the general wage increase. The Union is demanding fifteen percent (15%) over three years and the Township is offering nine percent (9%). An added complication arises because the patrol officers did not reach agreement on their contract. They availed themselves of the dispute resolution procedures found in ORC 4117 and elected to go to conciliation. The

hearing has already taken place and the parties are waiting for the Conciliator to issue his opinion, which will set wages for the next three years. Consequently, there is no pattern agreement within the Township. Boardman pays its police force more than most surrounding jurisdictions; and therefore, internal comparability is an important benchmark for a Neutral attempting to formulate a wage recommendation.

The Fact Finder believes that a reasonable solution to this problem is a "me too" clause. This recommendation will mean that the ranking officers will receive the same general wage increase that the patrol officers receive. This is in line with the tradition in the department and does not cause any inequities to arise because one division in the department got either a higher or lower wage increase than the other divisions.

The second compensation issue is the size of the rank differential (See the introduction to the report). The Township believes that the Union's demand is unreasonable. However, the Township is also realistic and it knows that there is a better than average chance that the Union's demand would be awarded by a Conciliator if the issue went to a conciliation hearing. In addition, the union negotiators testified that it was possible for the highest paid patrolman to earn about the same as the lowest paid sergeant. Therefore, the argument can be advanced that the rank differential should be increased because it is not maintaining a separation in pay between the ranks.

Faced with this situation, the Township attempted to negotiate the best agreement that it could. The Township held out against meeting any of the other Union demands and was successful in that effort. That is, the Union grudgingly pulled its other issues off the table because of the importance of the rank differential issue to its membership. The Township also attempted to reduce its financial liability by phasing the changes to the differential in over the life of the contract. The Township argued that the differential should be eleven percent (11%) in the first year, twelve percent (12%) in the second year, and thirteen percent (13%) in the third year of the prospective contract. The Union countered with twelve percent (12%) in the first year, and thirteen percent (13%) in the second and third years of the contract.

The Fact Finder agrees with the Township that there is an extremely high probability that a Conciliator would agree with the Union's position if the issue went to conciliation. A rank differential is a standard feature of most police contracts, and the overwhelming majority of those contracts have the same percentage differential between ranks. Therefore, the Fact Finder believes that the parties' attempts to reach an agreement on this issue represent a good faith effort to find agreement on a thorny issue. The major difference between the parties' positions is the length of the phase-in period. The Fact Finder believes that twelve (12%) in the first year, twelve and one-half percent (12 ½%) in the second year, thirteen percent (13%) in the third year is a reasonable compromise solution.

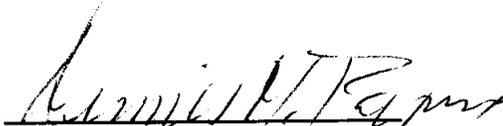
Finding of Fact: The Township has a history of having the same (similar) wage increases throughout the department. Therefore, the Fact Finder believes that

the members of Local 43 should receive the same wage increase earned by the patrol officers. In addition, rank differentials are a standard clause in police contracts throughout the nation, and most of these clauses specify the same differential between all ranks. Therefore, the rank differential should be the same for sergeants, lieutenants, and captains.

Suggested Language: The wage scale in Article 7 shall be amended to show the same general wage increase as that negotiated by patrol officers. In addition, the rank differential language in Article 7 should be amended to show that the sergeants have a rank differential of twelve percent (12%) in the first year, twelve and one-half percent (12 ½%) in the second year, and thirteen percent (13%) in the third year of the proposed contract.

Note: All other tentative agreements are incorporated into this report by reference.

Signed on this 4th day of March, 2003 at Munroe Falls


Dennis M. Byrne, Fact Finder