

BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2003 DEC 31 A 10: 22

FACT FINDING PROCEEDINGS
CASE NO. 03-MED-09-0841

IN THE MATTER OF:

HAMILTON TOWNSHIP TRUSTEES

AND

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

APPEARANCES:

FOR THE TOWNSHP: Eugene Duvelius and Jeff Braley

FOR THE FOP: Guy Kauffman

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

James E. Murphy
Fact Finder

BACKGROUND:

Hamilton Township, Ohio is a growing suburban community of approximately 9,800 people located in Warren County, about 25 miles north of Cincinnati. This proceeding concerns a first contract between the parties, the Union having been certified on May 22, 2003 as the exclusive representative of all full time police officers (currently seven) employed by the Township. In a concurrent proceeding, the Union was certified as the representative of the Township's two sergeants, and the parties thereafter agreed on the terms of a three year contract covering that unit.

Following the Union's certification, the parties engaged in several collective bargaining sessions and were successful in reaching agreement on many items. However, as of the commencement of the hearing in this matter, they remained at impasse on four issues, to wit: Article 9, Seniority/Hiring/Layoff and Recall; Article 13, Holiday/Vacation/Personal Days; Article 26, Insurance; and Article 28, Wages. Accordingly, this case came on for hearing in Hamilton Township, Ohio on December 16, 2003.

Evidence and able argument in support of the parties' respective positions on the disputed issues were presented at the hearing. What follows is a summary of that evidence, the parties' positions, the Fact Finder's Recommendations and the rationale for same. In making my recommendations, I have considered and relied upon the following statutory criteria, whenever such factors were advanced by the parties: the factor of past collectively bargained contracts; comparisons 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; the interest of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted 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.

ARTICLE 9: Seniority/Hiring/Layoff and Recall

Evidence and Positions:

Under this article the parties are in basic agreement on the definition of seniority and on the procedures to be followed in layoffs, recalls and the posting of job openings. Their disagreement centers on the future role of part time officers, currently eight in number, who perform the same duties as full time officers but are not in the bargaining unit.

According to figures supplied by the Township, the eight part time officers worked a total of 6631 hours over the past year, or an average of 552.58 hours per month. As a rough comparison (rough because it omits overtime hours, holidays and vacations), if the seven full time officers all worked standard 40 hour weeks, they would have worked a total of 14, 560 hours during the same yearly period, or an average of 1213 hours per month.

Thus, part time officers account for something in the neighborhood of one third of all hours worked, a not insignificant amount.

The Union seeks to increase the percentage of hours worked by full time officers, and consequently the number of full time officers, by incorporating two provisions in the proposed contract. One would mandate the creation of a full time officer position for every 2080 hours of part time work per year; the second would mandate a ratio of no more than one part time officer for every two full time officers as of one year from the institution of the proposed contract.

In support of these proposals, the Union notes that the township is one of the fastest growing in Ohio, and argues that with such growth the police force should move from a “politically based, merit oriented organization to a dynamic and rewarding lifetime professional organization.” One way to accomplish this, the Union submits, is to move from a primarily part time to a primarily full time force.

In further support of its proposals, the Union submitted evidence from five other township police forces in Southwest Ohio, Clearcreek, Colerain, Delhi, Green and Springfield. Colerain, Delhi and Green, all larger and more urban than Hamilton, have no part time officers; Springfield, also larger and more urban, has 45 full time officers and 3 part time; and Clearcreek, whose population and character most nearly resembles Hamilton, has 12 full time and 3 part time officers.

The Township, in response, affirms a desire to eventually move to an all full time force and notes that it has recently expanded the number of full time positions, the openings so created being filled from among its part time officers. The Township notes, however, that changing part time positions to full time positions adversely effects scheduling flexibility and entails significant cost increases in a time of general budget constraint. With respect to the latter, the Township cites in particular the need to provide full time officers with expensive health care coverage not provided to part timers. Accordingly, the Township believes that it should not be held to fixed, immutable requirements with respect to the otherwise desirable goal of converting to an all full time police force.

Two other factors should also be noted: (1) converting part time to full time positions presumably would also entail increased wage costs, since part time wage rates currently average several dollars per hour less than full time wage rates, and (2) there are apparently no valid internal comparisons, since there are no part time sergeants and no evidence was introduced regarding the full time-part time situation in the Township fire department.

Rationale:

In making my recommendation here, I take particular notice of the fact that the parties are entering into a new relationship where mutual trust and confidence, or their reverse, will

grow over time if given an opportunity. The Township expresses, in agreement with the Union, a desire to move to a full time, professional force. This expressed desire is supported by the Township's recent history of creating additional full time officer positions. Accordingly, I shall recommend that the parties state their mutual intent of moving to an all full time force in contractual language, but without fixed quotas or timetables. If experience proves this goal unattainable without the aide of more rigid formulae, the kind of detailed provisions which the Union submits here can be sought in subsequent contracts, when the fact of past failure will give more force to their advocacy.

Finally, in making my recommendations, I note that the Union's bargaining rights, and my authority, are confined to the certified unit.

Recommendation:

It is recommended that Article 9, Seniority/Hiring/Layoff and Recall, of the proposed contract read as follows:

“Section 9.1 Seniority shall be computed on the basis of uninterrupted length of continuous service in the bargaining unit. Ties shall be broken by uninterrupted time served as an employee of the Hamilton Township Police Department. If a tie still exists, it shall be broken by date of application to the Police Department.

Section 9.2 If a full time employee leaves the department, regardless of reason, the position shall be filled by hiring a full time officer as soon as the mandated hiring process is completed. The full time position is not to be replaced by a part time position.

Section 9.3 All new positions in the Hamilton Township Police Department shall be posted no less than five nor more than thirty business days. The new position shall be offered to present officers and the hiring process exhausted prior to offering the position to outside applicants.

Section 9.4 In the event that a long-term layoff or job abolishment is necessary, the Township shall notify the affected employee(s) ten days in advance of the effective date of the layoff or job abolishment. The Township shall notify employees of any decision to implement any short term layoff, lasting seventy-two hours or less, as soon as possible. The Township, upon request of the FOP/OLCI, agrees to discuss, with representatives of the FOP/OLCI, the impact of the layoff on bargaining unit employee(s).

Section 9.5 Any layoff or job abolishment of bargaining unit employees shall be in inverse order of seniority within the unit, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two hours shall have five calendar days following the receipt of such notice to exercise his right to bump the least senior unit employee of a lower rank.

Section 9.6 Any employee(s) laid off under the provisions of Sections 9.4 and 9.5 above shall be placed on a recall list for a period of two years from date of layoff. While on such recall list, the Township shall keep the employee's(s') commissions active.

Section 9.7 Recalls from the recall list shall be made in the inverse order of the layoff. Notice of recall shall be sent to employees by certified mail, return receipt requested, at the last mailing address provided by the employee. Recalled employee(s) shall have ten calendar days following receipt of the recall notice to notify the Township of an intention

to return to work and shall have at least fourteen calendar days following receipt of the recall notice before being required to report for duty.

Section 9.8 In the event of a layoff of bargaining unit employees, the Township shall be responsible for providing a COBRA alternative to the laid off employee(s) for six months or until other coverage is obtained by the employee(s).

Section 9.9 It is the desire and intention of both parties to this agreement that the Hamilton Township Police Department eventually become an all full time force. The Township hereby agrees to make continuing good faith efforts to achieve this goal, consistent with budget and scheduling requirements.”

ARTICLE 13: Holiday/Vacation/Personal Days

Evidence and Positions:

The parties are in agreement with respect to those sections of this article dealing with pay for holiday work, recognized holidays, vacation carryover, procedure for making vacation requests and number of, as well as procedure for taking, personal days. They disagree only with respect to Section 13.3-Vacation.

The Union seeks language providing eighty hours of vacation after one year of service, one hundred hours after five years, one hundred sixty after eight years, two hundred hours after fifteen, two hundred forty after twenty years and an extra week for every year over twenty five. The Township offers eighty hours after one year, one hundred twenty after eight years, one hundred sixty after fifteen years, two hundred after twenty years and an extra week for every year over twenty five.

The Union’s list of comparables shows that while all five townships start with eighty hours (although one only after three years service), only one (Delhi to one hundred twenty after five years) raises that level before eight years of service. The others all rise to one hundred twenty hours after eight or nine years. Thereafter, two go to one hundred sixty after thirteen years service, two after fifteen, and one after twenty-five. One township goes no higher than one hundred twenty hours, the rest max out at two hundred hours, one after 14 years, one after twenty-four years, and two after twenty-five years.

The Township notes that its offer here is comparable to the vacation benefits enjoyed by its other employees, is as good or better than most of the Union’s comparables, and is more generous than those provided to officers of the Warren County Sheriff.

Rationale:

Considering all the circumstances here, namely the comparables cited above, the fact that this is a first contract, and the fact that the Township’s offer is consistent with that agreed upon by the Union in the recently negotiated sergeants contract, I shall recommend acceptance of the Township’s vacation proposal.

Recommendation:

It is recommended that Article 13, Section 13.3-Vacation of the proposed contract read:
“The hours of vacation per years of service are as follows:

- One year-Eighty hours
- Eight years-One Hundred twenty hours
- Fifteen years-One hundred sixty hours
- Twenty years-Two hundred hours
- Twenty-five plus- Extra week every year”

It is further recommended that the parties incorporate in the proposed contract, under Article 13, the language to which they have agreed with respect to Sections 13.1, 13.2, 13.4, 13.5, and 13.6. Finally, it is recommended that the Union’s proposed Section 13.7 be omitted.

ARTICLE 26 INSURANCE:

Evidence and Positions:

Under this Article, the parties have agreed on the provision and extent of health benefits, eligibility for same, and a method for dealing with professional liability issues. They disagree only with respect to the question of who pays what percent of the anticipated premium *increases* for health care insurance over the life of the agreement.

The Union proposes that the Township continue to pay 100% of employee health insurance premiums for the year 2004, while offering to have participating employees pay 5% of any premium increases after January 15, 2005. The Union couples this last offer with the proviso that bargaining unit employees pay no more than other Township employees.

The Township offers to pay between 88 and 95% of any premium increases occurring after ratification of the proposed contract. It is unclear how the actual percentage figure would be determined under this proposal.....or by whom.

Looking at the Union’s list of comparables in this connection, it is clear that, at least after this year, no police officers in the five cited townships will receive 100% employer paid health coverage. Delhi police officers currently pay 8% of *premium* costs, Colerain 9.8%, and Green 5%. Springfield and Clearcreek officers(like those in Hamilton Township) currently pay nothing, but both will commence doing so in 2004. Officers in Clearcreek and Colerain will start paying part of any premium increases in 2004, with the additional proviso in Clearcreek that they will not pay any more than other employees of the municipality.

Rationale:

It has become almost axiomatic that employee health care insurance premiums increase significantly on a yearly basis. The Township estimates that 2004 will see a rise of 15-20%. In these circumstances, as the above list of comparables illustrates, employees everywhere are being asked to shoulder part of the burden. Particularly in light of the wage increases I am recommending below, I shall recommend that the Township's officers do so here, but I believe the percentage amount should be fixed by contract so that everyone knows where they stand. Accordingly, I shall recommend that, commencing with contract ratification, bargaining unit employees pay 8% of any health care premium *increase*, subject to the proviso that they pay no more than other employees of the Township. In selecting the 8% figure, I note that officers in three of the townships to which I have been referred pay a percentage of their *total* premium, whereas here only a percentage of any premium *increase* is being sought.

Recommendation:

It is recommended that Article 26, Section 26.1 of the proposed contract read as follows: "Participating bargaining unit employees will pay 8% of any premium increases occurring after the effective date of this agreement for the hospital, medical, dental, vision, prescription drug card, life and disability insurance coverage provided to them and their dependents by the Township pursuant to this article. In no event will bargaining unit employees pay a higher percentage rate than any other Township employees."

It is further recommended that the parties incorporate in the proposed contract, under Article 26, the language to which they have agreed with respect to Sections 26.2, 26.3, and 26.4.

ARTICLE 28 Wages:

Evidence and Positions:

The Union seeks the establishment of a three tier or step wage system, calculated on an hourly basis, for all full time officers. Tier one would be for new hires during their first year of service; tier two would be for officers with more than one but less than two years of service; all officers would receive tier three wages after two years. In addition, the Union seeks hourly wage increase of 5% for each tier in each year of the proposed three year contract.

At the commencement of the hearing, the Township's offer was to establish a six tier wage system identical to that in the recently negotiated sergeants contract. Tier one would be for the first two years; tier two would encompass officers with 2-4 years service, tier three those with 5-9 years; tier four those with 10-14 years; tier five those with 15-19 years and tier six those with 20 or more years of service. In addition, the Township (apparently, as the available evidence is not completely clear) offered a 4% across the board raise for the first year of the proposed contract, with any raises thereafter being tied to a merit system based on annual performance reviews.

During the course of the hearing the Township offered three annual 5% across the board increases during the life of the proposed contract, while adhering to its above described six tier wage system. The Union rejected this offer at the hearing, but it is my understanding that it remained on the table.

In support of its proposals the Union cites a desire to place Hamilton Township officers on a level comparable to other townships in the area. Its accompanying list of five area townships reflects that all offer substantially higher starting wages (low \$33,000, high \$43,400, average \$39,200), substantially higher top wages (low \$45,500, high \$55,000, average \$51,500) and a more rapid progression system than that offered by the Township here. Projected across the board increases range from 3% to 5% in 2004, with the average being 4.05%. Two contracts end in 2004, so future increases are unknown. Of the other three, the average increase for 2005 is 3.5%. Only one contract runs to 2006 and that schedules a 3.25% increase in its last year.

The Township, in response, notes that its police department is funded solely by tax levy, thus restricting its fiscal freedom, and contends that the Union's comparables include townships with more business and industry and thus greater millage. It also cites the \$300,000 per year cost of its new municipal building.

Rationale:

While I am very much aware of the financial constraints under which local governments currently operate, it is nevertheless true that Hamilton Township officers presently receive substantially lower wages per year of service than those of other townships in the area. Similarly, the time to reach maximum suggested by the Township here far exceeds that in any other township to which I have been referred. At the same time, I realize that this is a first contract, and that instant parity is not a realistic nor perhaps desirable option. Moreover, the Township's officers are all relatively young, with the most senior having been employed only six years and three having started in 2001. Finally, although I recognize the theoretical advantages of a pay for performance (merit) system, I am also cognizant of the fact that such systems are rare in a collective bargaining context, and I have not been persuaded of the need to incorporate one in the proposed contract.

Accordingly, I shall recommend the adoption of a three tier or three yearly step wage system with initial rates representing (as best I can ascertain from the documents in evidence) a 5% increase over present rates for the same length of service. No other raise

is recommended for 2004, but across the board increases of 5% per step are recommended in 2005 and 2006. While the 5% increases are higher than those currently projected in most other area townships, my object is to somewhat narrow the existing wage gap while hopefully avoiding fiscal irresponsibility. I also note that the Township made substantially the same offer, probably with substantially the same object, at the hearing.

Recommendation:

It is recommended that the parties incorporate in the proposed contract, under Article 28, the language to which they have agreed with respect to Section 28.1.

It is further recommended that Article 28, Section 28.2 of the proposed contract read as follows: "Full time employees of the Hamilton Township Police Department will receive hourly wage compensation for work rendered as set forth below:

Step 1	Step 2	Step 3
0-1 year service	1-2 years service	After 2 years service
\$15.39	Commencing January 1, 2004 \$16.22	\$19.87
\$16.16	Commencing January 1, 2005 \$17.03	\$20.86
\$16.97	Commencing January 1, 2006 \$17.88	\$21.90"

It is further recommended that Article 28, Section 28.3 of the proposed contract read as follows: "At the Chief's discretion, after the probation period, an employee's hourly salary, based on previous experience and demonstrated ability, may be raised to that of the highest salary of the most senior full time employee in that classification."

It is further recommended that Article 28, Section 28.4 of the proposed contract read as follows: "Tuition Reimbursement The Township shall reimburse any Officer who is enrolled in an accredited college or university course(s) and who passes said course(s) with a minimum grade of a "C"; provided the course(s) is part of the subject institution's generally accepted curriculum leading to a degree in Criminal Justice, Public Administration or related field. The Chief must give prior written approval to Officers who enroll in courses under this Section. The employee must be able to demonstrate that said course is part of the approved curriculum for the degree major. Reimbursement will be as follows:

If the officer receives an "A" for that semester/quarter he will be reimbursed in full at 100%.

If the officer receives a "B" for that semester/quarter he will be reimbursed at 75%.

If the officer receives a "C" for that semester/quarter his will be reimbursed at 50%. Reimbursement for books shall not exceed \$1,000 per year.

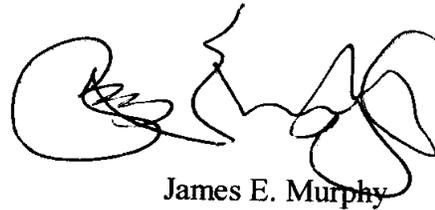
All original receipts and grade cards are to be shown in order to receive any reimbursement.

For each degree earned a 1% pay increase shall be added to the officer's annual salary."

Finally, I recommend that the Township's proposed Section 28.3 (on unilaterally setting the wage rate for new hires) and the Union's proposed Section 28.5 (on Longevity Incentive) be omitted, as well as the Union's proposal regarding 100% of PERS.

Finally, I recommend that the parties include all tentative agreements reached during negotiations in their final Agreement.

This concludes the Fact Finders Report and Recommendations. I wish to thank all parties for their helpful and cooperative approach throughout this proceeding.

A handwritten signature in black ink, appearing to read "James E. Murphy". The signature is stylized and somewhat cursive, with a large initial "J" and "M".

December 30, 2003