

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUL 23 A 10:42

**BELMONT COUNTY 911 BOARD
EMPLOYER**

and

**FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.
EMPLOYEE ORGANIZATION**

In the Matter of: 911 SHIFT SUPERVISORS

04-MED-02-0120

ARBITRATOR'S AWARD

ARBITRATOR:

Philip H. Sheridan, Jr.
Attorney at Law
915 South High Street
Columbus, Ohio 43206
(614) 445-0733

FOR THE UNION:

Pat Daugherty, Staff Representative
Ohio Labor Council
222 East Town Street
Columbus, Ohio 43215

FOR THE BOARD:

Michael Kinter
Human Resources Administrator
Belmont Co. Dept. of Job and Family Services
310 Fox Shannon Place
St. Clairsville, Ohio 43950

Award:

July 17, 2004

ARBITRATOR'S AWARD

STATEMENT OF CASE: The parties, the Belmont County 911 Board, represented by Michael Kinter, Human Resources Administrator, Belmont County Department of Job and Family Services, and the bargaining unit, Fraternal Order of Police, Ohio Labor Council, Inc., including 4 supervisors employed by the Board, represented by Pat Daugherty, Senior Staff Representative, F.O.P.-O.L.C., have entered into negotiations for an initial contract between the parties.

The parties have engaged in contract negotiations leading to agreement on all but two issues. The parties attached a copy of the tentative agreement on the agreed articles and their positions on the two sections at issue.

The parties met and bargained in good faith, and were not able to agree. The parties submitted the issues to me under a mutually agreed alternate dispute resolution agreement. At the arbitration hearing on June 28, 2004, the parties outlined their position on the overtime/compensatory time issue.

The parties agreed that Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, would serve as an arbitrator without resort to the fact-finding process contained in R.C. 4117.14(E). The arbitration was to consist of an effort at mediation, and if such mediation was unsuccessful the arbitrator was to hold a hearing on the issues as presented by the parties. The arbitrator may choose the parties' offers or he may modify the offers. The arbitrator's award is binding on the parties.

The parties agreed to a hearing on June 28, 2004, and the meeting was convened at 10:00 a.m. at the Belmont County 911 Board Conference Room. In addition to the Board's representative, Cliff Sligar, Director 911, Robyn Marshall, Administrative Assistant to the Director,

and Darlene Pempek, Clerk, Belmont County Commissioners appeared. In addition to their representative, Doranne R. Lucas appeared on behalf of the bargaining unit. The matter was submitted upon statements and arguments presented to the arbitrator.

According to the provisions of R.C. Chapter 4117, the parties provided me with a copy of the tentatively agreed articles of the contract, the unresolved issues, and each party's final offer on the unresolved issues.

In issuing this award, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G)(7)(a)-(f).

Article 18 OVERTIME/COMPENSATORY TIME.

The issues for determination both were contained in this article.

In Section 1, the Board proposed that all overtime was to be paid in cash, and the bargaining unit proposed that the supervisors could select either cash payment or compensatory time.

In Section 2, the Board proposed that the supervisors could be mandated to work overtime opportunities for shift supervisors if all of the supervisors refused the opportunity, all of the full time 911 dispatchers refused the opportunity, and all of the part-time dispatchers refused the opportunity. The supervisors would be mandated in reverse order by seniority. The bargaining unit proposed that if all of the supervisors refused the overtime opportunity then it would be offered to the dispatchers in accordance with their collective bargaining agreement.

POSITION OF THE PARTIES

THE BOARD'S POSITION:

The Board's position is that the size of the bargaining unit, 4 shift supervisors, and the size of the remaining work force, 6 full-time dispatchers and 5 part-time dispatchers, plus a supervisor,

who is not a part of the bargaining units, makes scheduling a serious concern. The Board is not in favor of compensatory time off for overtime worked because the scheduling of time off for the compensatory time would in turn cause more scheduling conflicts and overtime requirements. The Board negotiated cash payment only for overtime in the dispatchers' contract.

The Board proposes requiring supervisors to work supervisory overtime opportunities in reverse order of seniority after all supervisors, dispatchers, and part-time dispatchers refuse the opportunity. The Board negotiated the same requirement with the dispatchers in their contract with reference to dispatcher overtime opportunities. The Board did not believe that it could fairly require the part-time dispatchers to work mandatory overtime because they had additional jobs.

The Board ideally would like one contract for both the bargaining units.

THE FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL POSITION:

The bargaining unit proposed compensatory time as well as overtime cash payment at the option of the supervisor for overtime worked. The bargaining unit argued that the overwhelming majority of units that performed the same duties within the contiguous counties had compensatory time as a choice of the employee for overtime compensation.

The bargaining unit proposed that if all of the shift supervisors refuse to work overtime the opportunity should be offered to the dispatchers in accordance with their collective bargaining agreement, by which the Board could require a full-time dispatcher to work after all the full and part-time dispatchers refused.

AWARD

Chapter 4117 requires me to consider the past collective bargaining agreements between the parties. Here, there is none, as the parties are negotiating their first agreement.

My comparison of the solution of these issues by other public employees from the area who perform comparable work reveals that the other bargaining unit under the Board's employ agreed to cash only for overtime and mandated overtime if necessary. Going outside the Board, it appears that compensatory time is the norm in most collective bargaining agreements. Of the parts of contracts offered by the bargaining unit as comparables on the issue of compensatory time one had mandatory overtime only when the mayor determined that an emergency existed, one I could not determine from the portion offered, and three of the contracts contained mandatory overtime.

It appears to me the ability of the Board to finance and administer the issues proposed did not stand out as a make or break consideration on either issue.

The Board has just begun 12-hour shifts with two weeks on day shift and two weeks on night shift on a rotating basis. The parties have no experience to determine the likely amount of overtime that will occur. In light of that change, I will not adopt any of the language in either the Board's or the bargaining unit's proposals for Article 18, section 1, except for the portion that deals with pay for overtime, because it appears to me that the identical language used by both parties does not reflect the true operation with 12 hour shifts.

In light of my decision on Article 18, section 2, I believe the employees should have the option of compensatory time for two reasons. The time off can be especially important to employees on 12-hour shifts, and the Board has some leeway in scheduling such time off. The potential schedule problems to accommodate compensatory time should also discourage the

scheduling of “regular” overtime for opportunities not caused by vacation, emergencies, sick time, and other unexpected absences.

I choose the bargaining unit’s language: “All overtime compensation may be cash payment, or taken as compensatory time. The selection of compensatory time or overtime pay shall be the choice of the bargaining unit member.”

The Board’s position on mandatory overtime does seem to better satisfy the interests and welfare of the public where we have a 24/7 operation dedicated to public health and safety.

I choose the Board’s language for Article 18, section 2, with one change: “The Employer shall equally distribute overtime opportunities to the Shift Supervisors. The Shift Supervisors have the right of first refusal for overtime opportunities in that classification. Should all Shift Supervisors refuse, the full-time and part-time employees will be offered to work in compliance with their collective bargaining agreement. If all full-time and part-time employees refuse then a Shift Supervisor will be mandated in the reverse order by seniority,” rotating upward after each mandated assignment.

It appears to me it would be unfair to always require the least senior shift supervisor to perform mandated overtime.

Respectfully submitted,


PHILIP H. SHERIDAN, JR.

July 17, 2004

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of this Arbitrator's Award to the parties by ordinary U.S. mail, postage prepaid, this 17th day of July, 2004.


PHILIP H. SHERIDAN, JR.

PHILIP H. SHERIDAN, JR.

ATTORNEY AT LAW
915 SOUTH HIGH STREET
COLUMBUS, OHIO 43206-2523

STATE EMPLOYMENT
RELATIONS BOARD

2004 JUL 23 A 10:42

PHILIP H. SHERIDAN, JR.

(614) 445-0733

1-800-686-2852

FAX: (614) 445-0983

July 17, 2004

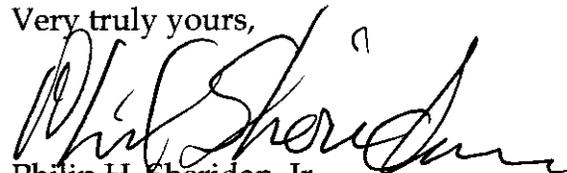
Dale Zimmer, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Re: *SERB Case No. 04-MED-02-0120
Belmont Co. 911 Bd. And Fraternal Order
of Police, Ohio Labor Council, Inc.*

Dear Mr. Zimmer:

Enclosed please find the Arbitration Award in the above referenced matter, under a Mutually Agreed Dispute Resolution Agreement. Please do not hesitate to let me know if I can be of assistance to you in any way.

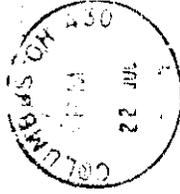
Very truly yours,



Philip H. Sheridan, Jr.

PHS/cas
Enclosure

PHILIP H. SHERIDAN, JR.
ATTORNEY AT LAW
915 SOUTH HIGH STREET,
COLUMBUS, OHIO 43215



DALE ZIMMER, ADMINISTRATOR
BUREAU OF MEDIATION
STATE EMPLOYMENT RELATIONS BOARD
65 EAST STATE STREET, 12TH FLOOR
COLUMBUS, OHIO 43215-4213