



STATE EMPLOYMENT  
RELATIONS BOARD

2005 DEC 15 A 11: 19

OHIO STATUTORY DISPUTE RESOLUTION PROCEDURE  
STATE EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR  
FACTFINDING OPINIONS AND RECOMMENDATIONS

FACTFINDING BETWEEN:	*	
	*	
CITY OF SHEFFIELD LAKE	*	SERB Case Numbers:
Lorain County, Ohio	*	04-MED-10-1076, 1077, & 1078
	*	
-and-	*	Issued, December 12, 2005
	*	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	*	Jonathan Dworkin, Factfinder
Patrol Officers, Sergeants & Dispatchers*	*	

Representing The City

Sandy Conley

Representing the OPBA

Kevin Powers

\* \* \*

**THE DISPUTE**

The Ohio Patrolmen's Benevolent Association (OPBA) is the recognized Bargaining Agent for three full-time Police Officers, five Sergeants, and six Dispatchers employed by the City of Sheffield Lake. Periodically, the City and Association negotiate wages, hours, benefits, and conditions of employment for new contractual terms. They tried to do the same before and after the last Agreement

axiomatic that the City cannot rely on this small tax base as the main revenue to support administrative officers. Police, a Fire Department, and municipal services. The citizens have a right to expect such services only if they accept the obligation to pay for them – only if they are willing to tax themselves for those benefits.

But the City's claim of poverty seems to be at odds with a four-page ***Sheffield Lake Newsletter*** issued by Mayor John J. Piscura in July, 2005. In that document, the Mayor expressed upbeat prospects for the community, including areas of finances and tax collections:

Steady improving income tax collections conducted by the Regional Income Tax Agency (RITA) and the city's own investment program are helping to stabilize finances. Results of the city's improving financial picture will be visible soon, as programs that had to be cut in last year's budget crisis, like the bike patrol, are gradually restored.

Despite the Mayor's hopeful projections of renewed prosperity, the Employer's comparables clearly show that this community is not functioning on an adequate tax base. I choose to use the City's statistical comparisons on this point because the Association's are different, and the City's own comparisons confirm the finding I have reached. As close equivalencies to Sheffield Lake, the Employer selected nearby Amherst (population 11,797), Avon (population 11,466), Oberlin (population 8195) and Vermilion (population 10,927). These are all neighboring Lorain County cities, except Vermilion which spans Lorain and Huron Counties. The Employer also included Girard (population 8,284) and Hubbard (population 8,284). These are bedroom communities of Warren and Youngstown, neither of which has recovered from steel mill shutdowns that occurred decades

ago. The same applies to the allegedly comparable Mahoning County Cities of Struthers (population 11,756) and Campbell (population 9,450). Lastly, the City's comparables include Willard (population 6,806) and Bellevue (population 8,193) in Huron County, which borders Lorain County. I find these comparisons striking because they show that this City falls near the bottom in per capita income tax receipts. Only Hubbard and Vermilion are lower.

I do not mean to say that failure (or refusal) of Sheffield Lake residents to tax themselves appropriately removes the City's inadequate revenue from consideration. As previously noted, Ohio law **requires** (by using the word "shall") interest arbitrators and factfinders to "take into consideration . . . the interests 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 services."

Since the Ohio Public Employee Collective Bargaining Law became effective in 1984, there has been ongoing disagreement among factfinders conciliators and labor-relations professionals over the role of ability to pay in decision making. Some believe that is the be-all-and-end-all of interest disputes. They contend that it is illogical to award a union a package that the public employer cannot finance. I am of a different opinion. The code provision sets fourth six mandates. not just one. It does not place emphasis on any of them. In my judgment that means each required element should have equal weight. . The impasse items should be balanced in equal measure with past collective bargaining agreements, internal and external comparables, stipulations, the employer 's lawful authority, and other

factors traditionally considered in, dispute settlement procedures in both the public and private sectors. This, I believe, is the proper approach and the one that will be adopted here.

**Overtime Pay: [Daily]** Three separate items on overtime pay are at issue. Two are proposed by the City; one by the OPBA. The first City proposal is to eliminate daily overtime. Currently, employees receive premium pay (time-and-one-half) for hours worked beyond eight in a twenty-four hour day. The City seeks to adopt the minimum requirements of the Fair Labor Standards Act, which would require premium wages only after an employee has worked forty hours in a week. It contends that the daily overtime provision "in conjunction with the high amount of paid time off available to bargaining unit employees (holiday leveling off time, vacation time, compensatory time, sick leave, etc.), creates a situation where an employee can actually work only one (1) day in a workweek and still receive time-and-one-half (1 ½) premium pay."

An employer that proposes cutting a union benefit without offering something new to compensate for the loss is always in a difficult position. Factfinders and conciliators who know how collective bargaining works would assume that the union relinquished a demand to obtain the gain at issue. This is especially so where the benefit spans several contractual terms and has become entrenched in the contractual relationship.

I do agree that some of the comparables support the City's position, but find that some do not. From my own public-sector experience in Ohio and other states, I know that daily overtime provisions are usual for safety forces assigned to eight-hour shifts.

Having considered the arguments from both sides of the table, it does not seem to me that granting the City's position would generate a significant reduction in overall general-fund expenditures. But it would unnecessarily cancel a benefit that has been fixed firmly in past Agreements. Therefore, the recommendation will be against the City's proposal to limit regular overtime pay to work in excess of forty hours per week.

\* \* \*

**[Court Time]** The Employer's second proposal is to reduce overtime for off-duty court appearances from four hours to three. Current contractual language provides:

Whenever approved by the immediate supervisor, employee called to work, attending a Department meeting or appearing in court on behalf of the employer when the employee is not on duty, shall be compensated not less than four (4) hours subject to the method in which compensation is to be received as set forth within section 1 of this Article.<sup>5</sup>

The OPBA strenuously resists the City's proposal, and requests that current

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<sup>5</sup> Section 1 is the provision for overtime pay at time-and-one-half.

language on court time be carried forward. I am in agreement with the Union's position, although the City produced evidence of comparables where court time is limited to three or fewer hours. Those comparables are the American Federation of State, County, and Municipal Employees (AFSCME) at Sheffield Lake, the International Association of Fire Fighters (IAFF), which is also an internal comparison, City Exhibit 2B shows what other City bargaining units have already accepted:

<b>Sheffield Lake (AFSCME)</b>	<b>3 hours</b>	<b>Applicable Rate</b>
<b>Sheffield Lake (IAFF)</b>	<b>3 hours</b>	<b>1.5 x regular rate</b>
<b>Average</b>	<b>3 hours</b>	<b>1.5 x regular</b>
<b>Sheffield Lake (OPBA)</b>	<b>4 hours</b>	<b>1.5 x regular</b>
<b>Variance</b>	<b>1 hour</b>	

It is not necessary to burden this decision with complex rationale for my recommendation on this item. While the City's evidence shows that reducing court time for this Unit would establish parity with AIFF and AFSCME, the evidence also shows that OPBA members are paid approximately 15 percent less than police receive in neighboring municipalities. As in the case of daily overtime, the Employer seeks to cut back a long standing contractual benefit without offering recompense in another economic provision.

My decision on this issue is the same as it was for daily overtime, and based on the same reasoning. The recommendation will be to carry current contractual language on this subject forward into the next Agreement.

\* \* \*

**[The OPBA Overtime Issue]:** March 31, 2003, the Chief of Police issued a memo to all Department employees, which was designed to absorb their unused court overtime for work instead of allowing some of them free time while receiving premium pay. The memo stated in pertinent part:

DUE TO THE BUDGET CUTS, LACK OF ADEQUATE MANPOWER AND OVER ABUNDANCE OF COURT SUBPOENAS, THE FOLLOWING WILL BE ADHERED TO:

**ALL UNIFORM PATROL OFFICERS OR DISPATCHERS SUBPOENAED TO COURT WILL:**

. . .

2. REPORT TO THE STATION PRIOR TO GOING TO COURT, AS PRISONERS MAY NEED TO BE TRANSPORTED OR PAPERWORK NEED BE DROPPED OFF AT COURT

. . .

4. UPON COURT APPEARANCE COMPLETION, YOU WILL RETURN TO STATION, ATTACH YOUR SUBPOENA TO YOUR PAY REQUEST CARD, THEN REPORT TO AN ADMINISTRATIVE OFFICE<sup>1</sup>

In my opinion, the OPBA's proposal to declare the memo invalid is not a suitable topic for factfinding. Assuming the parties accept the previous recommendations, the overtime provisions of the past Agreement will continue, unchanged.

That would preserve the language and negotiated intent of the contractual provision at issue.

The Chief's memorandum has influenced overtime rights for more than two years of the last Agreement's three-year term. It was either a legitimate exercise of Management Rights or a violation of employee rights. If it breached a privilege of employment, it should have been grieved. Instead, the Bargaining Unit waited until now to present its complaint to factfinding.

I have been furnished no facts or evidence to justify my interfering with any overtime language or practice, including this one. The recommendation will be to retain all overtime language that has been place before me, without amendment.

### **SICK LEAVE**

Article XXIII, Section 6 of the expired Agreement is a confusing paragraph designed to use sick leave to increase the income of a retiring employee. It states:

An employee taking a normal service retirement shall receive all benefits otherwise payable to such employee pursuant to the terms of this Agreement less the amount obtained by multiplying, the payment such retiring employee would receive for one accumulated sick day, by 135, and then multiplying that product by 3.

Since the parties agreed on the language, the Ohio Police and Fire Pension Fund Board ruled that sick leave is not subject to pension credit and contribution. The City seeks deletion of this provision, contending that it's unworkable:

1. The Step 6 program is of questionable benefit since the Ohio Police and Fire Pension Board has taken the position that such amounts are not pensionable.
2. Employees are actually required to pay out a greater amount of money than is gained under Step 6 at the conclusion of the program. However, there is no mechanism by which the City is ensured repayment.
3. The Employer's proposal does not negatively impact any bargaining unit member.
4. No other comparable jurisdiction has a provision of this nature.

\* \* \*

This Section is an oddity, because it is not truly and impasse. The OPBA agrees with the City that section 6 ought to be deleted. It contends;

Section 6 of Article XXIII, according to the City is directly tied to Step VI Pay and the conversion of sick leave to cash. Facially, it states a formula whereby one who retires from employment would owe the employer tens of thousands of dollars. Apparently, the language was taken directly from Sheffield Lake firefighter's contract back at the time that Step VI Pay came into being. Given that a fireman's "day" is three times as long as police officer's eight-hour day, the formula as written doesn't make sense. The Union proposes to keep Article XXIII Sections 1 through 5 as currently written and delete Section 6.

It appears that I have no choice but to recommend that Section 6 be removed from the Agreement. However, there are other proposals for Article 23 where the parties do not agree. All stem from changes urged by the Employer. I do not see the need to reinvent the Agreement by requiring this Unit to receive sick

leave in amounts less than provided by Sheffield Lake ordinances, or reducing the amount of unused leave available to retiring full-time employees. I do, however, agree with the City's desire to exercise greater control over those who take sick leave. It attempts to do this with a new contractual Section. It specifies the circumstances warranting sick leave and requirements for medical proof where medical attention is required. The proposal stands out as a fair and legitimate exercise of Management Rights.

The recommendations will be to delete Article 23, Section 6 and add the Employer's Sections 3 and 4 to the Article.

### **COMPENSATION**

This is the key issue in this factfinding. Both parties contemplate a three-year Agreement. Based on its claim of impoverishment, the City' offer is 2.5% commencing September 2005, 2% commencing September 2006, 2% commencing September 2007. The OPBA demands 5½% each year **commencing in January**. Obviously, the parties are far apart on wages. The Association contends that even if gets the raises it seeks – 16½ percent over the three-year contractual term, its wages will still be dead last among Lorain County municipalities. According to its calculations, Police here are paid 15 percent less than in any other comparable community.

The City counters that its offer is all it can afford. Furthermore, the other branch of its Department of Safety – the Firefighters – have executed a Contract accepting the Employer's offer. Parity was one of the City's arguments, but later it came to light that the Firefighters also received a \$1,000 signing bonus.

The City did not offer the same bonus to this Unit, nor did the OPBA ask for

it. Nevertheless, if parity is desirable, there should be a formula for granting it. In my judgment, that formula begins by assessing the Bargaining Unit's average annual wage. The evidence shows that in 2004 its twelve members earned an annual salary of \$492,505.40. Dividing that by twelve shows the average to be \$41,041.85. Dividing that average into the \$1,000 bonus, produces an addition of 2.44%. By spreading that (unevenly) over three years and allowing credit for interest, I am comfortable recommending raises of 3.5i percent for 2005, 3 percent for 2006, and 3 percent for 2007.

It must be observed that the City asks that raises for this Unit commence each September, although the last Agreement expired December 31, 2004. But the parties have executed a retroactivity compact for conciliation. In these circumstances, it would be absurd for me to recommend the City's position; it would just guarantee an appeal to the next level.

## **LONGEVITY**

This is another attempt by the City to save money by cutting employee benefits. Under the last several Agreements, longevity pay for full-time Unit members started after three years at \$125 and increased annually with no cap. The Employer's proposal would add two years to the waiting period and cap longevity at \$3,375 for all members of the Bargaining Unit (including Dispatchers). In exchange, the City offers to increase longevity by ten dollars in the third year.

My calculations show that this is a fair deal for the Union. It actually increases the maximum that a member will earn during his/her career. The City's proposal will be recommended.

## **INSURANCE**

When the last Agreement was ratified, the Union had consented to share in the cost of family-plan insurance premiums. Article XXIX, Section 1 stated:

The City shall provide employee hospitalization coverage on all employees. The employer shall pay the entire cost on the medical insurance plan the employer provides the employee. In the event the employee chooses family coverage, the employee shall pay the lesser of one-half of the amount of the cost of the family membership exceeds \$700.00, but not to exceed \$90.00 per month.

This was a generous provision, but the City improved it after the Agreement was signed. It managed to contract for a less expensive policy and waived employee premium contributions for the whole three years.

The OPBA proposes free insurance for this contractual term as well, but the City responds that it simply cannot afford it. It offers a 90%-10% split, which I find to be more than fair (I have worked with bargaining units that agreed to pay 40% and even 50%). The Union's objection is an anachronism – it does not comport with the times or the frequent increases in medical-care costs. The City's proposal will be recommended.

## **VOLUNTARY LIGHT DUTY**

The City's proposal is to provide voluntary light duty for an employee injured in the line of duty. The Union agrees in principle, but raises an important factor that neither party has resolved. If an injured employee declines the light-duty option, will he/she lose entitlement to workers compensation? Until this question is

The Sick Day year will run from December 1<sup>st</sup> to November 30<sup>th</sup>. Payment will be made by separate check at the time of the next pay following the completion of the sick day year.

**Section 3. Usage** In case of hardship or unusual need the employee may be advanced up to ten (10) days of sick leave beyond the employee's accumulated amount. Any such advance shall be chargeable against such employee's subsequent accrual of sick leave, provided, however, if upon termination of the employment of the employee on such leave, the employee has a deficit in his/her sick leave account, the employee may seek repayment of said deficit from other benefits to which the Employee may otherwise be entitled

Employees may use sick leave, upon approval of the Employer, for the following reasons:

- A. Illness, injury, or pregnancy related condition of the employee;
- B. Exposure to contagious disease that could be communicated to and jeopardize the health of other employees;
- C. Examination of the employee by an appropriate licensed practitioner which cannot be scheduled during non-work hours.
- D. Illness, injury, or pregnancy-related condition of a member of the employee's immediate family where the employee's presence is reasonably necessary for the health and welfare of the affected family member.

**Section 4. Documentation.** *Should an employee be granted sick leave under this Article and his/her scheduled vacation period occurs during such leave, such employee shall remain on sick leave and his vacation period shall be deferred until said employee returns to duty, Employees shall furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature or the illness from a licensed practitioner shall be*

required to justify the use of sick leave. The certificate must state that the employee was examined the date and time of such examination, that the employee cannot work or that the employee must take care of a member of the employee's immediate family, and the expected return date. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action, including dismissal.

Where the employee utilizes sick leave for three (3) consecutive days or more, he/she shall provide a certificate from a licensed practitioner stating the nature of the illness, the treatment, and the practitioner's opinion about the employee's ability to return to work.

**Section 5** Upon retirement under OPFPF or PERS as applicable, and with at least ten (10) years of service with the City, a full-time bargaining unit member shall be entitled to be paid for up to one hundred fifty (150) days of accumulated but unused sick leave.

## **COMPENSATION**

The following provision is recommended for the 2005-2007 Agreement:

Effective the first payday of January, 2005, each full-time member of the Bargaining Unit shall receive a pay raise of 3½%.

Effective the first payday of January, 2006, each full-time member of the Bargaining Unit shall receive a pay raise of 3%.

Effective the first payday of January, 2007, each full-time member of the Bargaining Unit shall receive a pay raise of 3%.

## **LONGEVITY**

The City's language is recommended, but not its proposal to move the top step from twenty to twenty-five years. The movement would adversely affect one Sergeant who otherwise would reach step 6 during the term of this Agreement In

the interests, of reason and fairness the steps should remain the same. But the Union's proposal to increase the stipends will not be recommended:

Effective January 1, 2005, all regular full-time employees shall receive longevity payments after the completion of continuous full-time service pursuant to the following schedule: the longevity shall be one hundred twenty-five and 00/100dollars per year for each of the first five (5) years of employment completed by a full-time bargaining unit employee commencing with the completion of the fifth year of full time employment. No longevity pay shall be paid to bargaining unit employee until such full-time bargaining unit employee has completed five years of full time employment. Thereafter, for each year of employment completed by a full-time bargaining unit employee, such full-time employee shall receive an increase of one hundred twenty-five and 00/100 dollars (\$125.00) for each additional year completed up to a maximum amount of three thousand one hundred twenty five dollars (\$3,125.00). The longevity pay for a full-time bargaining unit employee shall be paid bi-weekly, in twenty-six (26equal payments,, which shall be paid on each applicable payday.

## **STEP 6**

Currently, employees are paid five steps of longevity. The Union requests a sixth step when any of its members complete twenty years of continual employment. This is not the same sixth step related to pension, which the parties agreed to delete. It is simply a longevity bonus.. The City is not opposed to it, provided it does not become effective until completion of twenty-five years employment. That would deprive a Sergeant of the increase he would have received during this Agreement.

Equity requires that the sixth step vest during this Agreement at twenty years. Thereafter it should be moved to twenty-five years.

**INSURANCE**

The City's proposal is recommended:

Section 1. The Employer shall make available to all bargaining unit employees major medical/hospitalization health care (plan) insurance comparable to the plan in effect as of the signing of this agreement and subject to market availability. The Employer shall meet with the Union in advance of any selection of coverage that would substantially reduce the overall coverage. Should the City substantially change the levels of coverages and benefits, the Union may request to negotiate the effects of such change.

The participating employee may elect either single or family coverage.

Section 2. The Employer agrees to pay ninety percent (90%) of the monthly cost for those bargaining unit employees who elect to receive health care coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following:

<u>Calendar Year</u>	<u>Maximum Employee Contribution</u>
July 2005	\$45.00 Single coverage \$90.00 Family coverage
<u>January 2006</u>	<u>Maximum Employee Contribution</u>  \$45.00 Single coverage \$90.00 Family coverage
<u>January 2007</u>	\$52.20 Single coverage \$\$105.00 Family coverage

Section 3. If, during the life of this agreement, it becomes necessary for the Employer to change carriers, the Employer agrees to notify the Union

in advance of such action, and upon written request to meet with the Union to discuss the new carrier.

Section 4, Notwithstanding the provision(s) of Sections 1-3 of this article which provide for health care coverage, the Union agrees that the Employer may offer alternative health care coverage program(s) during the term of the agreement.

The terms and conditions of such alternative programs shall be determined by the Employer. The cost an/or the terms and conditions of said program(s) shall be at the discretion of the Employer and may be subject to change

## **VOLUNTARY LIGHT DUTY**

Neither I nor the parties can reach a meaningful conclusion on this issue until we know the standards of workers compensation for those who decline the opportunity. Therefore, my only possible recommendation is for the parties to research the issue before making it contractual.

Jonathan Dworkin, Factfinder

## **Service**

I certify that on December 12, 2005, I served these factfinding recommendations on the parties by sending two originals and my statement for services and expenses by express mail to each of their representatives – Sandy Conley, advocate for Sheffield Lake, Ohio, Suite A, 2351 South Arlington Road, Akron, Ohio 44319-1907 and Kevin Powers, Advocate for the OPBA, 10147 Royalton Road, Suite J, PO Box 338003, North Royalton, Ohio 44133, On the same date I sent copies of the same information by regular mail to SERB.

Jonathan Dworkin



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