

2005 SEP 30 A 11: 26

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of]
Fact-finding Between:]
]
]
Bowling Green State University,]
EMPLOYER]
]
and]
]
International Union of Police]
Associations (IUPA), Local No.103,]
Employee Organization.]
]

SERB Case No. 05-MED-01-0040

Raymond J. Navarre,
Fact finder

FACT-FINDING REPORT
and
RECOMMENDATIONS

Date of Issuance: September 28, 2005

Date of Hearings: September 14, 2005

Location of Hearing: College Park Office Building
Bowling Green State University
Bowling Green, Ohio

Present for the Fact-finding: William A. Dunn
International Union of Police Associations

Representing the Union:

Jeremy L. Davies

Mark T. Reef

Robert M. Ankey

Larry Bateson

Angela Slade

Timothy C. McCarthy

Shumaker, Loop & Kendrick, LLP

Representing the Employer:

James W. Wiegand

Bryan Benner

Larry Y. Chan

Martis Seno

Rebecca C. Ferguson

J. Christopher Dalton

Note that for purposes of identification in this document, the Bowling Green State University and its representative, Timothy C. McCarthy and the other representatives will be referred to as the Employer and William J. Dunn, IUPA, Business Agent, and the other representatives will be referred to as the Union.

Due to an issue which arose, and which will be addressed in the following material, the actual Fact-finding started about 12:45 PM and concluded at approximately at 2:45 PM. However, the total process started at 10:00 AM.

THE ISSUE

Before the hearing was to start, about 10:00 AM, Mr. Dunn, the Union Representative, came to the Fact finder and said that he had not received the Position Statements from the Employer, as was required. The Fact finder asked Mr. McCarthy, the Employer Representative, to join them. He did so and Mr. Dunn said he did not receive

the Position Statements as required by the O.A.C.. Mr. McCarthy said he had e-mailed them to Mr. Dunn on September 13, 2005. Mr. Dunn said that he did not think that was an acceptable manner of sending the material. This was discussed. Mr. Dunn maintained that according to O.A.C. Rule 4114-9-05, failure to provide the Position Statements in a timely manner shall cause the Fact finder to take evidence only in support of matters raised in the written statements provided prior to the day of the hearing. The issue came down to whether e-mail was an acceptable way of sending the material.

The Fact finder asked that the SERB Office be called and consulted about the situation. Mr. Dunn called the office but had to leave a message on the voice mail. After some time, the Fact finder called the office and explained the situation to the person who answered. She said she would try to find someone to answer the question. She did so and the Fact finder explained the situation to Pat Snyder, the Executive Director. She said she would have to do some research and call back.

In the meantime, Mr. McCarthy said that he had not received a copy of the current Agreement from the Union, which is also required. This was discussed and Mr. McCarthy's contention was that this was as significant as the issue raised by Mr. Dunn.

The Fact finder gave this further information to Ms. Snyder. It is to be noted that when the Fact finder finished speaking with Ms. Snyder, both Mr. Dunn and Mr. McCarthy were asked to also speak with Ms. Snyder so they would know what was said to the Fact finder. Basically, Ms. Snyder's response was that e-mail was probably not an acceptable manner for sending the Position Statements. She also told the Fact finder that if the hearing was held, as a recourse, either or both parties could ask that the findings be set aside.

Both representatives, Employer and Union, had explained the situation to their group.

The Fact finder asked all the individuals involved in the fact-finding to gather in the designated room. They gathered and the Fact finder explained the situation and told the group he saw two possibilities: postpone the fact-finding or conduct the fact-finding. There was some discussion concerning the point that Mr. McCarthy had not received a copy of the current Agreement and whether there was a current Agreement. In response, the Fact finder said he believed that from past practice and from what he received from both parties, there was a current Agreement. Also, it appears that both parties had agreed to extend the current Agreement. This was not an issue in the opinion of the Fact finder.

The Fact finder asked for opinions about proceeding with the fact-finding and receiving none, he decided to proceed with the fact-finding. The material from the fact-finding follows.

BACKGROUND

The parties are Bowling State University, referred to as the Employer, and the Bargaining Unit is Local No. 103, International Union of Police Associations, referred to as the Union. The Bargaining Unit consists of full-time Police Officers 1, full-time Police Officers 2, full-time and part-time Radio Dispatchers and a full-time Records Management Officer. There are approximately 17 employees in the Bargaining Unit.

There is a current collective bargaining Agreement and this is to be the successor collective bargaining Agreement.

The Parties have previously met for collective bargaining.

Earlier, before the fact-finding started, the Parties were asked about mediation, but both agreed that there was no possibility, at that time, for mediation.

This matter came for a hearing on September 14, 2005, before Raymond J. Navarre, who had been appointed as Fact finder in a letter dated April 14, 2005, in compliance with Ohio Revised Code Section 4117.14 (C)(3) and Ohio Administrative Code Section 4117-9-05.

At the beginning of the fact-finding, all present were asked to affirm that what they say would be the whole truth. They so affirmed.

FACT-FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the Fact-finder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

- (1) Past collectively bargained agreements, if any between the parties;
- (2) Comparison of 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 standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and,

(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 agreed-upon dispute settlement procedures in the public service or in private employment.

FINDING of FACT and RECOMMENDATIONS

The unresolved issues submitted by the Union and the Employer to the Fact-finder will be considered in what follows.

Below, the finding of fact will be presented for each issue, followed by the Fact-finder’s recommendation in respect to that issue. When applicable, the recommended language for the Agreement will be given. The Fact-finder’s report needs to be considered in its entirety as to the overall effect on the parties and their bargaining positions.

THE UNRESOLVED ISSUES

The unresolved issues are:

- Unresolved Issue No.1 COMPENSATION - ARTICLE 18
SECTIONS 18.10, 18.20, 18.30 and 18.50**
- Unresolved Issue No.2 COMPENSATION - ARTICLE 18 - SECTION
18.90**
- Unresolved Issue No.3 BONUS DAYS – NEW ARTICLE**
- Unresolved Issue No.4 HOLIDAY OBSERVANCE - ARTICLE 17
SECTION 17.30**

Unresolved Issue No.1

Article 18 COMPENSATION SECTIONS 18.10, 18.20, 18.30 and 18.50

The Union proposes the following wording for the sections noted.

Section 18.10 Police Officers 1 & 2 shall receive a two dollar (\$2.00) per hour market adjustment increase, plus a 3.0 percent increase effective with the beginning of the first full payroll period following April 27, 2005.

Radio Dispatchers and Record Management Officer shall receive a seventy five cent (\$0.75) per hour market adjustment increase, plus a three percent increase effective with the beginning of the first full payroll period following April 27, 2005.

Section 18.20 Police Officers 1 & 2 shall receive a two dollar (\$2.00) per hour market adjustment increase, plus a 3.0 percent increase effective with the beginning of the first full payroll period following April 27, 2006.

Radio Dispatchers and Record Management Officer shall receive a seventy five cent (\$0.75) per hour market adjustment increase, plus a three percent increase effective with the beginning of the first full payroll period following April 27, 2006.

Section 18.30 Police Officers 1 & 2 shall receive a two dollar (\$2.00) per hour market adjustment increase, plus a 3.0 percent increase effective with the beginning of the first full payroll period following April 27, 2007.

Radio Dispatchers and Record Management Officer shall receive a seventy five cent (\$0.75) per hour market adjustment increase, plus a three percent increase effective with the beginning of the first full payroll period following April 27, 2007.

Section 18.50 Following addition to the section.

**** Increases, other than Date of Hire, shall become effective with the first full pay period following the applicable anniversary date.**

The Union's rationale for their position is the following.

The comparables show that the bargaining unit is at the bottom of the list of state universities in Ohio.

Six years ago, the President made an appearance at contract talks and acknowledged the wage problem and made a commitment to raise the wages.

Currently wage steps that are normally implemented on the employee's anniversary date are not done so until January 1st, which means in some cases the step increase can be delayed almost a year.

The Union provided a number of comparables to support their proposal.

The Union further provided materials covering statistics at BGSU, as well as other state universities in Ohio, such as calls for service, student population, residence population on campus, pay for police officers, violent crimes/property crimes, motor vehicle thefts, larceny thefts, burglary, rape and other items. Also included with these statistics were news items from BG NEWS.COM which covered some of the tasks and incidents that involved the safety department.

The Employer is offering a two percent (2%) wage increase with a market adjustment of twenty-five cents (\$0.25) for Police Officers and fifteen cents (\$0.15) for Radio Dispatchers and the Record Management Officer each April 27th for the life of the contract.

The Employer argued that critical state funding has led to cuts in BGSU's budget. A presentation was made on the recent trends in state funding as well as tuition & fees and SSI as a percentage of the student revenue for the 2005-06 budget. The Employer pointed out that rising costs have meant cuts in the operating budget. Despite the budgetary constraints, the University's Safety Department has been shielded from the cuts and has added a number of sworn officers, made promotions and added a full-time dispatcher.

Some other items pertinent to this issue offered by the Employer were:

Officers in the Safety Department are the only University group with longevity salary increases and enjoying a shift differential.

PERS contribution rate for police officers is higher for police officers in the Safety Department than other University employees as well as they are able to retire at age 48 with 25 years of service.

The police officers have abundant opportunities for overtime.

The Union's proposal represents increases ranging from 38%-52% over the life of the contract for police officers and 24%-28% for radio dispatchers and dramatically exceeds the increases for law enforcement officers at other public Universities in Ohio.

SERB Annual Wage Settlement Report for 2004 shows an average increase of 2.79% increase and the Bureau of National Affairs, Inc. report settlements in the public sector in 2004 of first-year increase of 2.4% and a median average of 3.0%.

The Fact finder wishes to thank the Employer and the Union for their presentations on the issue and in particular the material provided.

There is no doubt that the University is in a very tight budget and financial situation. It is also evident that the employees of the Union are below an acceptable level of compensation. Taking account all the financial concerns of the Employer, the level of compensation of the employees, increases given to other employees, increases given in comparable units, the financial outlook for the future for both parties, the rising costs of basic necessities and many other factors presented by both sides, the Fact finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact finder's recommendation is that **Article 18, Sections 18.10, 18.20 18.30 and 18.50** read as follows in the Collective Bargaining Agreement.

Section 18.10 Police Officers 1 & 2 shall receive a two dollar (\$2.00) per hour market adjustment increase, plus a three percent (3.0%) increase effective with the beginning of the first full payroll period following April 27, 2005.

Radio Dispatchers and Record Management Officer shall receive a seventy-five cent (\$0.75) per hour market adjustment increase, plus a three percent increase (3.0%) effective with the beginning of the first full payroll period following April 27, 2005.

Section 18.20 Police Officers 1 & 2 shall receive a one and three quarter dollar (\$1.75) per hour market adjustment increase, plus a two and three quarter percent (2.75%) increase effective with the beginning of the first full payroll period following April 27, 2006.

Radio Dispatchers and Record Management Officer shall receive a sixty-five cent (\$0.65) per hour market adjustment increase, plus a two and three quarters percent (2.75%) increase effective with the beginning of the first full payroll period following April 27, 2006.

Section 18.30 Police Officers 1 & 2 shall receive a one and one half dollar (\$1.50) per hour market adjustment increase, plus a two and one half percent increase (2.50%) effective with the beginning of the first full payroll period following April 27, 2007.

Radio Dispatchers and Record Management Officer shall receive a fifty-five cent (\$0.55) per hour market adjustment increase, plus a two and one half percent (2.50%) increase effective with the beginning of the first full payroll period following April 27, 2007.

Section 18.50 Following addition to the section.

** Increases, other than Date of Hire, shall become effective with the first full pay period following the applicable anniversary date.

Unresolved Issue No.2

Article 18 COMPENSATION SECTION 18.90

The Union's proposal is that Section 18.90 shall read as follows:

Section 18.90 The University shall pay a shift premium to employees as provided herein.

A shift premium of \$0.50 per hour worked shall be paid to any employee who is regularly scheduled to start work on or after 12:00 p.m. and before 7:00 p.m. Starting times between this period shall be known as the afternoon or "C" shift.

A shift premium of \$0.40 per hour worked shall be paid to any employee who is regularly scheduled to start work on or after 7:00 p.m. and before 3:00 a.m. Starting times between this period shall be known as the night or "A" shift.

There was some question as to whether the Employer knew this was a proposal. However, the Employer presented a comparison of Shift Premiums for Safety Personnel among Ohio Public Universities. The Union's proposal would double their BGSU's present rate.

The Fact finder, in considering the arguments and the comparables presented, and in particular the impact of the total financial recommendations made, makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact finder's recommendation is that Article 18, Section 18.90 read as follows in the Collective Bargaining Agreement.

A shift premium of forty cents (\$0.40) per hour worked shall be paid to any employee who is regularly scheduled to start work on or after 12:00 p.m. and before 7:00 p.m. Starting times between this period shall be known as the afternoon or "C" shift.

A shift premium of thirty cents (\$0.30) per hour worked shall be paid to any employee who is regularly scheduled to start work on or after 7:00 p.m. and before 3:00 a.m. Starting times between this period shall be known as the night or "A" shift.

Unresolved Issue No.3

New Article BONUS DAYS

The Union proposes that an employee shall be given bonus days provided he earned sick pay benefits for the previous year in accordance with the Bonus Day Table set forth below:

MONTHS WORKED	SICK DAYS TAKEN										
	0	1	2	3	4	5	6	7	8	9	10
12	5	5	5	4.5	4	3.5	3	2	1	0.5	0
11	4.5	4.5	4.5	4	3.5	3	2.5	1.5	0.5	0	
10	4	4	4	3.5	3	2.5	2	1	0		
9	3.5	3.5	3.5	3	2.5	2	1.5	0.5	0		
8	3	3	3	2.5	2	1.5	1	0			
7	2.5	2.5	2.5	2.5	1.5	1	0.5	0			
6	2	2	2	1.5	1	0.5	0				
5	1.5	1.5	1.5	1	0.5	0					
4	1	1	1	0.5	0						
3	0.5	0.5	0.5	0							

Bonus Days continued

SERB Case No. 05-MED-01-0040

The Union is seeking a new way of rewarding and encouraging employees that do not use sick time. The Union noted that the above table is taken from the Toledo Patrolman's Association, Local 10 contract. It provides an incentive to avoid using sick leave throughout the work year.

The Employer declines to accept the proposal. The Employer says the employees of the Safety Department already have a bonus day system. Employees who maintain at the end of a given year a sick leave balance of 80 hours earn a personal leave day. Higher sick leave balances yield more personal leave days, up to a balance of 1,200 hours earning three personal leave days. Further, the Employer says that there is no empirical evidence that incentive systems work.

As noted by the Employer there is a bonus day system in place, also considering the comparables in respect to this item and finally looking at the total financial recommendations made, the Fact finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact finder's recommendation is that the Bonus Days Proposal be not added as an article to the Collective Bargaining Agreement.

Unresolved Issue No. 4

Article 17 HOLIDAY OBSERVANCE SECTION 17.30

The Union's Position

The Union proposes that in Section 17.30 of Article 17, that the eight (8) hours of holiday pay be raised to twelve (12) hours.

The Union stated that employees do not receive any additional compensation for working weekends and additional holiday pay would help offset that shortage. The Union also notes that the employees' families' lives suffer when they are required to work on a holiday. This increase of four hours would, in some part, compensate the employees for the family disruption due to working on the holiday.

The Employer's response was that the compensation the bargaining unit employees are already receiving, addresses this issue. The Employer sees no need for further compensation.

In considering the arguments presented, the financial impact, and the total financial recommendations in the fact-finding the Fact-finder makes the following recommendation.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the Collective Bargaining Agreement in Article 17, Section 17.30 remains as in the current Agreement.


Raymond J. Navarre, Fact finder
Dated 9/28/05