

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2006 FEB 23 A 11: 52

**IN THE MATTER OF
THE FACT FINDING**

Between

AUSTINTOWN TOWNSHIP

and

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

SERB Case No. 05-MED-11-1309

Before:

**CHRISTOPHER E. MILES, ESQUIRE
Fact Finder**

Appearances:

**Kerry L. Limbian,
Assistant Mahoning County Prosecutor
Representing the Township**

**Jeff Perry,
Business Agent
Representing the Association**

BACKGROUND

This case concerns the fact finding proceedings between Austintown Township Board of Trustees (hereinafter referred to as the "Township") and the Ohio Patrolmen's Benevolent Association representing the Full-time and Part-time Dispatchers (hereinafter referred to as the "Union"). By letter dated November 18, 2005, the undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB). The fact finding proceedings were conducted pursuant to the Ohio Administrative Code Rule 4117 and the rules and regulations of SERB, as amended. The Township and the Union engaged in the collective bargaining process for a period of time prior to the appointment of a Fact Finder and additional negotiations were conducted by the parties subsequent to the appointment of the Fact Finder. During their negotiations, the parties were able to resolve several provisions for the new collective bargaining agreement; however, the following issues remained unresolved:

- Article 11 – Layoff and Recall
- Article 12 – Leaves of Absence
- Article 14 - Compensation
- Article 17 - Overtime Scheduling & Article 33 – Scheduling Procedures
- Article 19 - Insurance
- Article 34 – Dispatch Supervision

The items which were resolved by the parties during negotiations prior to the fact finding hearing are hereby incorporated in this fact finding report.

The Township was represented by Kerry L. Limbian, Assistant Mahoning County Prosecutor, and the Union was represented by Jeff Perry, Business Agent. Prior to the fact finding proceedings, which were conducted at the Township Building in Austintown Township, Ohio, on November 29, 2005, the Fact Finder offered, and the parties agreed, to attempt mediation of the unresolved issues. During the mediation, the parties were able to resolve or withdraw several of the outstanding issues. The hearing in this matter was continued on January 19, 2006. The parties were afforded full opportunity to present testimony and evidence, as well as arguments, in support of their positions. As a result of those deliberations, the Fact Finder makes the Findings and Recommendations set forth below.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the financial information and documentation supplied by the parties, the Fact Finder makes the following recommendations:

Article 11 Layoff and Recall

The current agreement provides the Township with the discretion to lay off employees due to a "lack of funds, lack of work, or job abolishment" on the basis of seniority. It further requires 14 days of notice prior to the layoff and allows for recalls of the laid off employees in inverse order of seniority. The Union proposes the following language:

The Township will not lay off any current full-time Dispatch employees.
The Township will not close the Communications Division and will not farm out the work to any other entity.

The Township proposes to retain the current contract language.

Recommendation

The Fact Finder does not recommend the inclusion of the language proposed by the Union. The right to reduce the number of employees in the bargaining unit, when necessary, is generally a Management prerogative which, in my opinion, should not be taken away in Fact finding. The Township has the authority to bargain away such right, however, in this case the Union has argued that the Dispatchers are short staffed and it is pointed out that the Township has already hired an additional part-time Dispatcher thereby obviating any foreseeable need to lay off full-time Dispatchers. Therefore, it is recommended that the Union's proposed language not be included in the Agreement.

Article 12 Leaves of Absence

The only issue which remained in dispute at the time of hearing in this matter concerns Section E (06). The current agreement provides at Section E (06) Leave of Absence, that:

A full-time employee shall be entitled to one (1) leave of absence from the department without pay for a period not to exceed ninety (90) days, without loss of rank, seniority or previous benefits if the employee returns at the end of the leave. An employee may only exercise the right one time during the term of this agreement. During leave granted by this section the employee shall have the option to continue health insurance and life insurance benefits if they reimburse the Township for the cost of the premiums.

The Union proposes to add the following language to Section 06:

Employees may only use thirty (30) days of this leave to work another full-time job to determine if they wish to work it rather than dispatch full-time for Austintown. Any employee presently working a full-time job to determine if they wish to work it rather than dispatch full-time for Austintown will be given two weeks notification prior to implementation.

The Township proposes that Section 06 be eliminated from this Article.

Recommendation

The Fact Finder recommends that this provision remain in the Agreement. However, it is my finding that there should be restriction that such leave of absence will not be taken in order to try a new job while the Township remains in limbo concerning the employee's future employment. There may be reasons other than those related to FMLA for which an employee may need a leave of absence, however, given the complexity and length of time required to train a new Dispatcher the Township should not have to wait 90 days if an employee takes another job. Therefore, the Fact Finder recommends that a sentence be added to Section (E) 06 as follows:

A full-time employee shall be entitled to one (1) leave of absence from the department without pay for a period not to exceed ninety (90) days, without loss of rank, seniority or previous benefits if the employee returns at the end of the leave. **Such leave of absence may not be taken by an employee to try a new job.** An employee may only exercise the right one time during the term of this agreement. During leave granted by this section the employee shall have the option to continue health insurance and life insurance benefits if they reimburse the Township for the cost of the premiums.

Article 14 Compensation

The Union proposes three and one-half percent (3.5%) across the board increases for full-time and part-time Dispatchers. In addition, the Union wants to maintain Section 05 of this Article which reads: "All Dispatchers shall have one percent (1%) of their PERS picked up and paid by the Township on May 1st of each year of the contract." The union wants to continue to have such section interpreted as increasing PERS pickup by one percent (1%) on May 1st of each year. Presently, six percent (6%) of their PERS is picked up or paid by the Township. The Union also requests new language in the form of Section 07, as follows:

Section 07. In the event that any employee within Austintown Township receives a signing bonus, then all members of the Dispatch unit shall receive that same amount, but not less than seven-hundred and fifty dollars (\$750).

The Township proposes no wage increase for 2006, one percent (1%) for 2007 and two percent (2%) for 2008. Also, the Township accepts the Section 05 PERS Pickup language but wants to cap it at the current six percent (6%).

Recommendation

After review and consideration of the documentation and arguments submitted by the parties, it is recommended that the employees in the bargaining unit receive wage increases of 3.5% for 2006 and 3% for 2007 and 2008, respectively. The wage schedule for Section 01 would be:

Full Time Dispatcher				
	2006	2007	2008	
Seniority	3.50%	3%	3%	
0-1	\$16.59	\$17.09	\$17.60	
1-3	\$17.51	\$18.04	\$18.58	
3+	\$18.44	\$19.00	\$19.57	

Part Time Dispatchers				
Seniority	2006	2007	2008	
	3.50%	3%	3%	
Probationary	\$9.17	\$9.45	\$9.73	
Less than one (1) year from date of hire and off probation	\$11.63	\$11.98	\$12.34	
One (1) year from date of hire and off probation	\$15.21	\$15.67	\$16.14	

A 3.5% wage increase for 2006 will help ease the increased co-pay amounts recommended below with regard to Article 19 Insurance.

With regard to Section 05, the Fact Finder recommends that the PERS pick be capped at the current rate of six percent (6%) to be paid by the Township on May 1st of each year of the Agreement.

The Union's request for a signing bonus is not recommended by the Fact Finder. The primary reason is that no Agreement was reached and signed by the parties prior to Factfinding. Had the parties been able to reach agreement prior thereto, a signing bonus may have been appropriate.

**Article 17
Overtime Scheduling**

Section 01 of this Article currently provides that:

Section 01. For any vacant shifts:

- By seniority
- 1) Full-time then part-time
 - 2) Full shift then part shift
 - 3) If the whole shift can not be filled:
 - a) Fill any portion possible
 - b) Go with one person

The intent is to maintain double coverage whenever possible. Shifts will not be moved to avoid calling someone out. Errors may only cause compensatory time not overtime pay, if the Employee has not refused an overtime shift in the last ninety days. The Chief Dispatcher or Turn Commander will make the calls.

In reading Article 17 in conjunction with Article 33 – Scheduling Procedures, the Township proposes to delete all language requiring minimum manning and mandatory overtime. The Township wants the discretion to determine manning. The Township seeks the right to make the minimum changes necessary to schedule to cover 24/7 without scheduling overtime.

The Union requests that the current language be retained, except for the elimination of the 90 day period related to an employee who has refused an overtime shift.

Recommendation

The Fact Finder recommends that there be no change in the existing language. This provision, as noted during the hearing, and as pointed out in the prior Factfinding Report by William J. Miller, Jr., has generally served the parties well, for the most part. The one time situation discussed by the Township at the hearing was not one of a recurring nature. There were two employees on sick leave at the time and since that time another part-time Dispatcher has been hired which should alleviate the problem encountered in the week of October 23, 2005. It is my observation that the parties may be better served by negotiating a requirement that part-time Dispatchers work a minimum number of shifts per week or per month even though they may have worked 520 hours (which amounts to one year of seniority) for the year.

**Article 19
Insurance**

Currently, the Township pays all necessary premiums for the maintenance of health insurance and bargaining unit employees contribute \$30.00 for family coverage and \$20.00 for single coverage per month. Employees are also responsible for prescription co-payment of \$5.00 for Generic Drugs; \$12.00 for Name Brand Drugs; and \$22.00 for non-formulary. For Doctor's Office Visits, the co-pay is \$15.00.

The Township proposes the employee contribution toward health care be in the amount of ten percent (10%). In addition, the Township proposes that the Dispatch employees' co-pay

for prescriptions be increased from \$5.00, 12.00 and \$22.00 for generic, brand name and non-formulary prescriptions, respectively, to \$20.00, \$40.00 and \$60.00 and the office co-pay be increased from \$15.00 to \$20.00.

Recommendation

After review and consideration of the data presented with regard to proposed changes sought by the Township for Article 19, the Fact Finder recommends the following:

- 1) that the employee contribution toward health care be increased to ten percent (10%),
- 2) that the employees' co-pay for prescriptions be increased to \$10.00 for Generic Drugs; to \$24.00 for Brand Name Drugs; and to \$44.00 for non-formulary.
- 3) that the co-pay for a Doctor's Office Visit be increased to \$20.00.

As with other employers nationwide, both public and private, the Township continues to experience cost increases for health care coverage, although recent changes in the level of benefits may result in some cost savings. The recommended increases are found to be appropriate and generally in line with the comparable jurisdictions. Currently, an employee with single coverage contributes about eight percent (8%) and an employee with family coverage contributes about three and one-half percent (3½%) of the cost per month. The significant increase of eleven percent (11%) for the 2005 renewal was for the Family Premium. Consequently, in my opinion, the Township's proposal is warranted.

Article 34 Dispatch Supervision

The current provision provides for a Limited Dispatch Supervisor position with a limit of 24 hours of actual dispatching and 16 hours of supervisory duties. This position pays an additional 15% per hour above the top Dispatcher Rate. The Union has proposed a four percent increase each year of the new contract. The Township proposes zero percent (0%), one percent (1%), and two percent (2%), respectively.

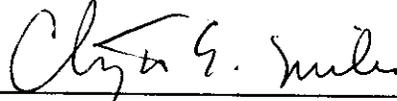
Recommendation

The Fact Finder recommends that the current language of Article 34 be retained for the new Agreement. It is my opinion that the payment to the Dispatch Supervisor of 15% per hour above the top rate available to a Dispatcher is fair and reasonable. Accordingly, the hourly rate would be:

Dispatch Supervisor	
1/1/2006	\$21.21
1/1/2007	\$21.85
1/1/2008	\$22.50

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.



Christopher E. Miles, Esquire
Fact Finder

February 21, 2006