



**FACT FINDER'S REPORT** STATE EMPLOYMENT  
RELATIONS BOARD

2007 APR 19 P 12: 12

IN THE MATTER OF:

Ohio Patrolmen's Benevolent Association  
And  
City of the Village of Indian Hill

Case Number:  
2006-MED-08-0849

Before Fact Finder  
N. Eugene Brundige

PRESENTED TO:

Edward E. Turner, Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup>. Floor  
Columbus, Ohio 43215-4213

And

Matthew B. Baker, Esq.  
Ohio Patrolmen's Benevolent Association  
555 Metro Place North, Suite 100  
Dublin, Ohio 43017

And

Donald L. Crain, Esq.  
Todd, Frost, and Brown, Attorneys  
For the City of the Village of Indian Hill, Ohio  
300 North Main Street, Suite 200  
Middletown, Ohio 45402

Fact Finder N. Eugene Brundige was selected by the parties and appointed by The State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 (c)(3).

The parties met first with the Fact Finder on January 17, 2007, in the City Building at Indian Hill in an attempt to mediate the open issues. While both parties worked hard to find acceptable solutions to the open issues, they were unable to do so and a second date was scheduled for the Fact Finding Hearing.

The parties timely filed the required pre-hearing briefs and statements.

The parties met February 19, 2007, in Indian Hill for the purpose of conducting the actual hearing.

The open issues identified and discussed by both parties included:

Holiday Pay

Paid Leave

Training, Professional Development, &  
Tuition Reimbursement

Termination Pay/ Service Weapon

Wages

Duration

*In that this case involves an initial collective bargaining agreement no numbers have yet been assigned to the Articles.*

The City of the Village of Indian Hill was incorporated in 1941 and sits in beautiful eastern Hamilton County. Indian Hill encompasses nearly twenty (20) square miles. The City has a rich and unique history of preserving the beautiful natural surroundings through demonstrable civic pride.

The Police Department also has a rich history. The Department is identified as the Indian Hill Rangers and can trace its origins to 1903 when a group of citizens incorporated *Indian Hill Horse Rangers*.<sup>1</sup>

The Rangers are composed of twenty (20) sworn officers, four (4) dispatchers, and an administrative assistant.

There are twelve (12) patrol officers who comprise this bargaining unit. In addition there are four (4) lieutenants, two (2) captains, a detective and the Chief of Police.

The City has approximately fifty-five (55) other employees outside the Police Department.

The Ohio Patrolmen's Benevolent Association (OPBA) was selected as the exclusive representative of the patrol officers in June of 2006 and filed a *Notice to Negotiate* in August of 2006.

The parties have met to bargain ten (10) times between September 5, 2006, and the mediation session held with this Fact Finder on January 17, 2007.

In this report the Fact Finder will examine the submissions and arguments offered by each party regarding their respective positions on each open issue and will then offer findings and recommendations regarding those items.

### **HOLIDAY PAY**

#### **UNION POSITION:**

The Union notes that all patrol officers currently receive time and a half (1 1/2) pay for eight (8) hours on each holiday whether or not the employee works

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<sup>1</sup> The name was subsequently changed to *The Indian Hill Rangers*.

that holiday. Patrol officers who work currently on a holiday receive the eight (8) hours at time and one half (11/2) plus twelve (12) hours at straight time.

The Union proposes that the patrol officers be paid at a 1 ½ hour rate for all hours worked on the holiday plus the eight (8) hour time and one half (11/2) benefit. Rangers work two consecutive twelve (12) hour days and then are off two.

The OPBA offers comparable data from contiguous jurisdictions and Hamilton County. Most of the jurisdictions listed offer a 1 ½ hour rate and thus OPBA believes its proposal is justified.

The Union disagrees with the City's argument that this benefit is unreasonable because of the favorable twelve (12) hour schedule.

The Union also proposes adding language that would assure that the holiday pay earned by a bargaining unit member who dies while employed would go to the officer's estate or next of kin.

#### **MANAGEMENT POSITION:**

Management's position reflects current practice. The Employer notes that this practice is easy to administer in that each patrol officer who works receives the eight (8) hour time and a half (11/2) pay plus straight time for the twelve (12) hours worked for a total of twenty-four (24) hours pay for the shift.

Based upon the comparables offered by the City (five jurisdictions that are similar in demographics that have been used historically by the City for setting

employee wages and benefits), the Employer feels that the Holiday Pay Benefit is very comparable. (Number 2 among all listed.)

The City makes the point that employees are at or near the top in total benefits and salary and thus it is unfair to compare specific benefits without viewing the totality of all benefits provided.

#### **DISCUSSION, FINDINGS, AND RECOMMENDATION:**

Indian Hill is clearly a very affluent area and while I have considered the data from all the comparables presented, this situation is unique in that not only the bargaining unit employees, but city officials and I would suspect, the citizens themselves, share a concern about being at or near the top in benefits provided.

The unique schedule of two twelve (12) hour shifts on and twelve (12) hour shifts off does skew the comparison of benefits somewhat. The discussion between the parties regarding who benefits most from the schedule was not particularly persuasive in that it is apparent that the schedule has seemed to work well for both parties and thus my recommendation will be predicated on the expectation that it will be continued.

I take note of the concern raised by the City regarding the proper recording and accounting for time, if I were to recommend the Union's proposal.

While I am not usually influenced by such arguments, a city with only eighty (80) employees and no human resources professional in its employ, does have a challenge whenever new programs are enacted that require individual tracking of times.

After viewing both groups of comparables I am persuaded that the current benefit is a reasonable one and recommend the City's position regarding Section 2.<sup>2</sup> In addition I recommend the language proposed by the Union regarding a new Section 3.

These sections should read:

**Section 2. Employees of the Police Department, who are assigned rotating shift work, will be compensated at time and one half (1-1/2) rate for eight (8) hours. All others will receive the holiday off. Officers assigned to permanent detective duty will be guaranteed a minimum 2 days call-in holiday pay each year at time and one half (1-1/2) for eight (8) hours in lieu of receiving the holiday off. The guaranteed call in period will be for 12 months starting December 1.**

**Section 3. In the event of the death of the employee any holiday leave benefit owed to the employee shall be paid to the estate of the employee or in the absence of an estate, to his/her next of kin.**

### **PAID LEAVE**

#### **UNION POSITION:**

The parties are in agreement to all of the Paid Leave Article except Section 7 (Personal Leave Days).

The Union argues that employees should receive a day or twelve (12) hours of personal leave versus the eight. (8) hours they currently receive.

To support its argument the Union notes that most of the comparables refer to "days" for personal days rather than hours.

#### **MANAGEMENT POSITION:**

Management notes that while the personal leave benefit is calculated in hours, more senior employees can receive three (3) or four (4) days of personal leave.

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<sup>2</sup> Section 1 which lists the 11 holidays was not in dispute.

In this case, as with holidays, the City argues that the “more favorable” schedule of working two (2) twelve (12) hours shifts and then having two (2) twelve (12) hour shifts off, impacts the personal leave issue.

When one considers the total leave available to police officers, they receive more time than any other city employee.

The City calculates that if the Fact Finder were to recommend the Union’s position this would add as much as ½% of salary to the City’s cost.

#### **DISCUSSION, FINDINGS, AND RECOMMENDATION:**

When one views the totality of time off available to bargaining unit members it is difficult to justify recommending an additional amount of time for personal leave.

The review of comparable jurisdictions also does not support an addition.

I recommend the language of Section 7 in the Paid Leave article should read:

***Section 7. Employees, after completing their probationary period, shall be entitled to personal time off as follows:***

***(a) Full-time employees of the Police Department shall be permitted to take eight (8) hours off per year as personal time off, subject to the advance approval of the Chief of Police.***

***(b) Full-time employees of the Police Department shall accrue one (1) additional personal eight (8) hour period off per year upon the first day of any calendar year following their respective fifth, tenth, fifteenth, twentieth and twenty-fifth anniversaries marking uninterrupted service with the City, subject to the advance approval of the Chief of Police.***

The remainder of the Article on Paid Leave shall be as previously agreed to by the parties.

**TRAINING, PROFESSIONAL DEVELOPMENT, & TUITION REIMBURSEMENT****UNION POSITION:**

The Union proposes that the current City policy regarding training and development be included in the collective bargaining agreement. It proposes no change to current policy but wishes to lock the benefit into the collective bargaining agreement.

**MANAGEMENT POSITION:**

The City points to the richness of this benefit noting that the City approves tuition for courses not directly related to city employment. The Employer makes the point that this is almost unheard of in other jurisdictions.

The City desires to keep the flexibility of maintaining the training language in policy so that changes could be made uniformly for all City employees.

The Employer proposes language that guarantees equality of benefit with all other City employees, and a “meet and confer” right if any changes are proposed. The City proposal goes one step more by providing a guarantee that the benefit would not differ from that offered to any other Police Department employee.

**DISCUSSION, FINDINGS, AND RECOMMENDATION:**

Based upon the past record of the City in providing training and tuition reimbursement and upon the richness of the benefits currently offered, I tend to believe that there is very little chance this benefit would ever be “gutted.”

However, the Union's prefers the protection of including such benefits in a collective bargaining agreement where changes must not only be discussed with the Union, changes must also be agreed upon.

This is not an unusual position and after consideration of the statutory criteria I am required to review,<sup>3</sup> I am inclined to recommend inclusion of this language in the collective bargaining agreement.

**Specifically I recommend the section of the current City Policy titled TRAINING, PROFESSIONAL DEVELOPMENT AND TUITION REIMBURSEMENT POLICY, (dated 1.6.04) and Section E on pages 30 & 31 of the City Policy be included in the collective bargaining agreement.**

#### **TERMINATION PAY/ SERVICE WEAPON**

##### **MANAGEMENT POSITION:**

The City notes that this is another additional benefit not offered by most other jurisdictions. This monetary benefit is not tied to sick leave. This benefit is in addition to the traditional pay outs for accrued leaves

For the City it is important that the approval of the Department Head is necessary to assure that persons who leave under questionable circumstances are not rewarded for doing so. The City believes the richness and the uniqueness of these benefits permits it to maintain this program in policy and to have the protection of the Department Head approval.

The Employer notes that since no other comparable jurisdictions offer such a benefit, this should support its position.

### **UNION POSITION:**

As was argued in the last issue, the Union believes this benefit should be in the collective bargaining agreement and should not be discretionary.

### **DISCUSSION, FINDINGS, AND RECOMMENDATION:**

The City has done well by its employees and particularly The Rangers by providing a unique benefit like this one that goes beyond those offered in other jurisdictions. In my opinion the City should not be penalized for do so and should be afforded some flexibility in determining its design in the future.

The Union is correct that the withholding of the benefit should not be arbitrary or capricious.

The language proposed by the City would seem to provide adequate protection to bargaining unit members.

Since neither party had a problem with the inclusion of language guaranteeing the right of the retiring employee to purchase his or her service weapon, I will include that provision as well.

To that end I recommend the following:

#### **TERMINAL LEAVE PAY/SERVICE WEAPON**

**Section 1. Employees shall be entitled to terminal leave pay in accordance with current City policy as set forth in City Code Section 35.65. Any material changes to such policy must first be reviewed with the Union, on a meet and confer basis, before such changes occur.**

**Section 2. In addition, with respect to granting such benefit the recommendation of the Employee's department head shall not be unreasonably withheld.**

**Section 2. An Employee, upon retirement, shall also be entitled to purchase his or her service weapon for \$1.00.**

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<sup>3</sup> Particularly ORC 4119 09 5 (k) 6.

## WAGES

### **UNION POSITION:**

The Union proposes to incorporate the step system currently in Policy into the collective bargaining agreement except that the final step is contingent upon approval of certain City officials.<sup>4</sup>

The Union acknowledges that this is a very well paid police department compared to other departments. The issue for this unit is the wage differential between the officers and the lieutenants.

The Union argues that the average rank differential in the surrounding area is 11.5%.

The Union notes that many other jurisdictions utilize the rank of Sergeant as the first line supervisor and Indian Hill utilizes the rank of Lieutenant in the same way.

The Union acknowledges that the City believes Indian Hill Patrol Officers are the highest paid in the area and perhaps in the state. Thus their argument is that the rank differential should be reduced and the solution to this perceived problem is to grant 5% increases in each of the two (2) years of the collective bargaining agreement proposed by the Union.

The Union argues that six (6) jurisdictions in the surrounding area have full pension pickup.<sup>5</sup>

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<sup>4</sup> The City noted at the hearing that this step is not discretionary but occurs automatically.

<sup>5</sup> The City disputed this assertion noting that some are a pre-tax pickup only.

The Union also proposes that there be no threshold for Officer In Charge pay.

#### **MANAGEMENT POSITION:**

The City disputed the Union argument that the lieutenants are serving as first line supervisors only. Instead, the City notes that Indian Hill lieutenants do both first line duties and the normal managerial duties of a lieutenant in another department.

The Employer disputes the logic of the Union argument that just because the City feels a need to compensate someone out of unit (ie., lieutenants), the employees of this unit must receive more money.

The Employer acknowledges the City does not have an ability to pay argument, but notes it has faced some budgetary issues related to a shortfall in the estate tax. This has led to a tight budgetary year.

In addition, the action of Hamilton County property re-appraisals has led to a much higher than normal number of houses listed for sale in the City of Indian Hill.

While it has been a tight budget year, and while there is financial uncertainty ahead, the City Administrator is optimistic that the future will be bright for Indian Hill.

The City notes that the patrol officers are number one in salary in the comparables it has used for the last seventeen (17) years.

The philosophy of the City is to keep all employees within the amounts paid by the top five (5) comparable jurisdictions.

The City submitted documentation that the average differential between patrol officers and lieutenants is a bit lower than the differentials in the other comparable jurisdictions that the City utilizes (Average 22%).

The Employer argues that the CPIW for the greater Cincinnati area for the second half of 2006 is expected to be about 2.5%.

The Employer believes that the "out" years of the collective bargaining agreement will be in the 2.5% range.

The City prefers maintaining the six (6) hour threshold in Section 5 (*Officer in Charge*).

The City does not appear to have a problem with eliminating the wording in Section 7, "*upon the approval of the Chief of Police.*"

#### **DISCUSSION, FINDINGS, AND RECOMMENDATION:**

Any neutral person reviewing this situation would likely reach the conclusion that Indian Hill Patrol Officers have been fairly compensated in the past.

I fail to be convinced that the differential between what lieutenants are paid and what patrol officers are paid, is adequate justification to recommend the kind of increases being requested by the Union.

The differential is not that far out of line. In many jurisdictions this Fact Finder is asked to increase the differentials.

I am somewhat surprised by the intense reaction of the Union to this differential especially in light of the fact this is a very small department and promotions to lieutenant come from the ranks of the patrol officers.

The relevant question before this Fact Finder is what type of an increase would permit the bargaining unit members to maintain their relative status while observing criteria contained in the Ohio Administrative Code.

I am convinced that the 3.5% being offered in 2007 is a fair increase. I am also convinced that the collective bargaining agreement should be for a three (3) year period.<sup>6</sup>

The second and third years of the agreement are another matter. The data submitted by management regarding the CPIW and the predictions regarding the future are certainly consistent with what this Fact Finder has been reading but speculating about the future is always difficult.

Based upon the history of this jurisdiction I am sure it is the desire of all concerned that patrol officers remain at or near the top of the comparable units identified.

Regarding the two areas where there is a disagreement - on the threshold time for Officer in Charge pay and the wording of the Field Training Officer pay section - I believe the six (6) hour threshold is reasonable. The change to the six (6) hours apparently was inserted not long ago. There has not been adequate time to evaluate that change to see if it is problematic.

I do agree that the wording of Section 7 is confusing and my recommendation will attempt to clarify that section.

To that end I am recommending the following:

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<sup>6</sup> I will discuss this further in the next section.

1. The language in the Wages Article as proposed by Management (and as apparently agreed to by the Union) except for the wage increases and Sections 5 and 7.
2. An increase in 2007 of 3.5% retroactive to January 1, 2007.
3. An increase in the second year of 3%.
4. An increase in the third year of 3%
5. Section 5 – Officer in Charge should read as current policy.

***“Patrol officers who are required to perform all shift supervisor duties for 6 hours or more in a given workday shall receive Officer in Charge pay of \$2.50 per hour, retroactive to the first hour that the employee began to perform such duties.”***

6. Section 7 – Field Training Officer Pay should read:

***“Employees who are assigned as field training officers during the training of new personnel shall receive a Field Training Officer pay differential of \$1.50 per hour for the hours during which they are engaged in field training activities with new personnel.”***

Based upon the data reviewed and the best judgment of this Fact Finder, these increases and changes should permit the bargaining unit members to maintain their relative standing.

**DURATION:**

**UNION POSITION:**

The Union believes this first agreement is a “trial balloon” and because it is a first agreement, it favors a two (2) year agreement. This would give the parties the opportunity to correct areas they may have overlooked in the initial proposals.

### MANAGEMENT POSITION:

The City believes that it is simply too expensive and too burdensome to re-negotiate this matter in a very short period of time.

The Employer also requests that the new resulting collective bargaining agreement expire on February 28th in order to get away from end of the year bargaining.

### DISCUSSION, FINDINGS, AND RECOMMENDATION:

As noted earlier, a two (2) year contract does not appear to be in the best interests of the parties. Assuming this report is accepted, by the time the resulting agreement is executed there would likely be less than a year's experience before it would be time to begin bargaining again.

That is not an adequate period of time for either party to decide what works and what doesn't.

Likewise, since much of this agreement is based upon current policies of the City, there will likely not be a lot of revolutionary changes.

I recommend a three (3) year agreement.

In discussions it did not appear that either party had an objection to getting away from the year end expiration date, therefore I will also recommend the February 28th date.

The Duration Article should read as follows:

***"This Agreement shall become effective as of March 1, 2007, and shall continue until February 28, 2010 except that the 2007 wage increase shall be retroactive to January 1, 2007. Thereafter it shall continue in force from year to year unless either party hereto notifies the other in writing at least sixty (60) days prior to the expiration of the term or extended term of***

***this Agreement, of any intention to make changes in or terminate the Agreement.”***

**Summary:**

The Fact Finder has appreciated the opportunity to work with the parties in this situation and wishes them well in their relationship.

If, in considering this report, there are recommendations that the parties can jointly agree to improve upon, I urge them to do so. Otherwise, hopefully these recommendations will provide a foundation for moving forward.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated on SERB Rule 4117-9-05(k) the Fact Finder recommends the provisions as listed herein.

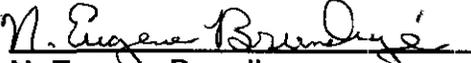
In addition, all agreements previously reached by and between the parties and tentative agreed to, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 18th day of April, 2007.

  
N. Eugene Brundige,  
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by regular U.S. Mail<sup>7</sup> upon Matthew B. Baker, Esq., Ohio Patrolmen's Benevolent Association, 555 Metro Place North, Suite 100, Dublin, Ohio 43017 and Donald L. Crain, Esq., Todd Frost and Brown, Attorneys for the City of the Village of Indian Hill, Ohio, 300 North Main Street, Suite 200, Middletown, Ohio 45402 and Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> floor, Columbus, Ohio 43215-4213, this 18<sup>th</sup> day of April, 2007.

  
N. Eugene Brundige,  
Fact Finder

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<sup>7</sup> At the Hearing the parties mutually agreed to waive overnight delivery of the Report.