

In the Matter of Fact-Finding Between City of Girard and Ohio Patrolman's Benevolent Association(Radio Dispatchers and Sworn Patrolmen)
Case Nos. 06-MED-10-1197, 06-MED-10-1198.

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between :
:
CITY OF GIRARD, :
:
Employer :
:
and :
:
OHIO PATROLMEN'S BENEVOLENT :
ASSOCIATION (RADIO DISPATCHERS :
AND SWORN PATROLMEN) :
:
:
Union :

Case Nos: 06-MED-10-1197
06-MED-10-1198

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STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING AND RECOMMENDATIONS

Michael D. McDowell, Esq., Fact-Finder
Report Dated: September 4, 2007

APPEARANCES

For the City of Girard:

Michael D. Esposito, Esq.
Senior Consultant
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For the Ohio Patrolman's Benevolent Association:

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SUBMISSION

The undersigned was selected as Fact-Finder in this dispute by the parties pursuant to written notice to the Fact Finder dated November 29, 2006. A collective bargaining agreement is in full force and effect between the City of Girard, Ohio ("City") and the Ohio Patrolman's Benevolent Association (Radio Dispatchers and Sworn Patrolmen) ("Union"), and is hereinafter referred to as the "CBA." The three year CBA became effective January 1, 2004, and the term of the CBA was to end on December 31, 2006. The CBA has been continued by agreement of the parties pending resolution of contested items. The bargaining unit consists of approximately eleven (11) Police Officers and three (3) Police Dispatchers, all full time employees.

The parties commenced multi-unit bargaining for a successor CBA in fall, 2006. The parties met on multiple occasions and were able to voluntarily agree on several articles and provisions, but were at impasse on other issues.

The parties met in Girard, Ohio and participated in multi-unit mediation sessions on July 20 and August 23, 2007, and tentative agreements were reached at the mediations sessions on all but one of the disputed issues. Following the mediation session on August 23, 2007, a multi-unit Fact Finding Hearing was then held.

In addition to the representatives of the parties and the Fact-Finder, the following individuals were present at the multi-unit Fact Finding Hearing:

For the City:

**Jerry Lambert – Director Public Service
Nita Hendryx, Assistant Chief Project Manager, Auditor of the State of Ohio**

For the Union:

Ronald Schnarrs - Patrolman

The Fact-Finder heard testimony, argument and admitted evidence submitted by the parties on the issue involving Article 17, Overtime/Call-in/Court Time. The parties have entered tentative agreements on all other issues

The parties agreed to extend the time periods to and including the issuance of the Fact Finding Recommendation as provided under the Ohio Administrative Code Rule 4117.260.

In presenting this recommendation, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec.

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4117.14(C)(4)(e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the 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, 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) Stipulations of the parties;
- (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.

ISSUES

The parties did, through their multi-unit negotiation and mediation efforts, consummate agreements on a number of contract articles, said articles being as follows:

1. Article 1 Preamble
2. Article 2 Purpose and Intent
3. Article 3 Recognition
4. Article 4 Dues Deduction/Fair Share Fees
5. Article 5 Personnel Files
6. Article 6 Management Rights
7. Article 7 Employee Rights
8. Article 8 No Strike/No Lockout
9. Article 9 Discipline
10. Article 10 Association Representation
11. Article 11 Grievance Procedure
12. Article 12 Arbitration Procedure
13. Article 13 Non-Discrimination
14. Article 14 Gender and Plural
15. Article 15 Obligation to Negotiate/Mid-Term Bargaining
16. Article 16 Severability
17. Article 17 Section 7, Scheduling
18. Article 18 Holidays
19. Article 19 Vacation
20. Article 20 Sick Leave
21. Article 20 Section 3, Injury Leave
22. Article 20 Section 4, Military Leave

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23. Article 20 Section 5, Leave without Pay
24. Article 20 Section 6, Bereavement Leave
25. Article 21 Sections 1 and 2, Seniority
26. Article 21 Section 3, Reduction in Force & Recall
27. Article 21 Section 4, Job Assignments
28. Article 22 Personal Leave
29. Article 23 Probationary Periods
30. Article 24 Injury on Duty
31. Article 25 Jury Duty Leave
32. Article 26 Compensation
33. Article 27 Health and Safety
34. Article 28 Labor Management Relations
35. Article 30 Life Insurance
36. Article 31 Drug Screening
37. Article 32 Execution
38. Article 33 Miscellaneous
39. Article 34 Pension
40. Article 35 Retention of Benefits
41. Article 36 Savings Clause
42. Article 37 Duration
43. Article 38 Execution
44. New Article Work Rules
45. New Article Bargaining Unit Application of Civil Service
46. New Article Attendance Incentive Program
47. Side Letter Attendance Incentive Program
48. Side Letter Probationary Period/Current Employees
49. Side Letter Prior Service Credit/Vacation
50. Appendix A Insurance Benefits Schedule
51. Appendix B Formula to Pay Longevity
52. Appendix C Wage Schedule

The above tentatively agreed to articles and/or issues are incorporated into this multi-unit Fact Finding and Recommendation as if fully rewritten herein. The remaining issue for multi-unit Fact Finding is as follows:

Article 17, Sections 1-6 Overtime/Call-in/Court Time

City's Position: The State of Ohio Auditor's Office declared a fiscal state of emergency in the City of Girard in late 2001 as a result of its inability to meet both its payroll and debt obligations simultaneously and multiple fund balances running a deficit. At the end of 2001, when the Fiscal Emergency Commission finally determined the scope of the problem, the City of Girard was saddled with more than 2.2 million dollars in deficit funds. To address the situation, the City was mandated to drastically reduce expenditures, cut costs, and put together a plan for fiscal recovery. As part of that plan, the City has undergone significant personnel reductions, both through layoff and attrition.

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Additionally, during the last set of negotiations, the Union, along with the other City unions, agreed to wage freezes and modest insurance contributions.

These factors, along with the receipt of significant one-time revenues and the oversight commission's continued stewardship, have allowed the City to make substantial progress toward its goal of continued solvency.

However, the City still has a struggle ahead to emerge from its fiscal emergency, meet the requirements placed upon it by the Fiscal Emergency Commission, and provide its citizens with the most efficient service for their tax dollars.

Specifically to this issue, the Employer has proposed language to clarify the current practice of the parties with respect to overtime compensation and delineate the difference between contractual overtime and FLSA overtime. The current contract language calls for the payment of overtime after twenty (20) eight (8) hour shifts during a twenty eight (28) day schedule. Although this language creates an FLSA 207(k) schedule for overtime payment, in practice the parties have been paying overtime after eight (8) hours worked in a workday. The Employer has proposed to memorialize this practice, and clarify the manner in which overtime is paid.

In addition to this the Employer has also proposed reasonable, new language dealing with the determination of when overtime is required. The practice of the parties, apparently due to an arbitration award, has been that an employee has been allowed to dictate to the employer when he wants to work overtime, even if the Employer already has sufficient personnel on duty. The City presented evidence of comparable cities which the Employer determines the need for overtime, and the City's dramatically increasing overtime costs under the present provision.

The Employer is more than willing to live with reasonable language that requires it to offer overtime opportunities to members of the classification where the opportunity occurs, prior to utilizing other personnel, when it determines that an opportunity exists. However, the determination of when overtime is required is something that a public employer must be able to determine.

The ability of the City to efficiently utilize its funds and personnel, meet the requirements placed on it by the City's Fiscal Emergency Commission, and the interest of the public demands that the Employer have the most basic of management rights restored. The Employer already pays overtime in a much more generous manner than the law requires and it is willing to continue to do so. It is unreasonable and irresponsible, however, to allow an employee to force an employer into an overtime situation when it already has sufficient personnel on duty.

Union's Position: The Union opposes any change in this provision. The Union contends that this provision should be maintained as to implement the changes requested by the City would impose a financial hardship on the bargaining unit members. The Union

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questions whether the savings that are suggested by the City will be realized and that indeed, the changes suggested by the City could make this provision more costly to the City.

Recommendations of the Fact-Finder: For the reasons set forth in the City's Position above, it is recommended that the position of the City be accepted and that Article 17, Overtime/Call-In/Court Time of the CBA be modified as follows:

ARTICLE 17

~~OVERTIME PAY AND /CALL IN/COURT PAY AND SCHEDULING~~

Section 1. FLSA Overtime Definition. *The parties acknowledge that the Employer has established a FLSA 207(k) alternative schedule for overtime. Overtime for sworn police officers shall be defined as any time worked in excess of twenty (20) eight (8) hour shifts, one hundred sixty (160) hours, during a regular twenty-eight (28) day ~~schedule~~ work cycle. For dispatch personnel, FLSA overtime is defined as any time worked in excess of forty (40) hours during a seven (7) day, one hundred sixty-eight (168) hour work cycle established by the Employer.*

FLSA overtime shall be paid in accordance with the FLSA. Contractual overtime shall be paid in accordance with the contract.

Section 2. Overtime Scheduling Equalization. ~~Overtime~~ *When the Employer determines that an overtime opportunity is available, it shall be offered, on a rotating basis, first to the full-time members of the classification ~~of the member who is absent, regardless of turn staffing, or if not a regularly scheduled shift, to~~ the full-time members of the bargaining unit in which the opportunity occurs. In the event that no full-time members of the classification will work the overtime, then it may be filled ~~by a member of another classification, if the turn shortage falls below minimum staffing,~~ by any means the Employer determines to be appropriate.*

Section 4 3. Contractual Overtime Compensation. Each bargaining unit member shall receive for each overtime hour worked, an amount equal to one and one-half (1½) times their prevailing normal hourly rate of pay. *Contractual overtime is paid to bargaining unit members for all hours worked in excess of forty (40) hours in a workweek or eight (8) hours in a workday.*

Section 3 4. Out of Classification. When a member of the bargaining unit is required to work out of his classification said employee shall be paid at the hourly rate of the specific employee whose classification he temporarily fills, or at his own rate of pay, whichever is greater. Such hourly wage shall also include the appropriate shift differential payment.

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Each member shall select overtime payment or compensatory time for all overtime worked. Compensatory time shall be accumulated to a maximum of *two hundred forty (240)* hours and any overtime earned beyond the ~~of two hundred forty (240)~~ hours shall be paid overtime.

All existing accumulated time shall be granted subject to the reasonable rules of the department; provided, however, no further such compensatory time shall be accumulated.

Section 5. Call-in Time. A bargaining unit member in an off-duty status who is ordered to report to work and so reports, shall be paid a minimum of four (4) hours or actual time worked, whichever is greater, at the *normal contractual* overtime rate as defined in this Agreement.

Section 6. Court Time. Members in an off-duty status who must appear in court in reference to their official duties shall receive a minimum of four (4) hours or actual time worked, at the *normal contractual* overtime rate, whichever is greater.

This concludes the Report and the Recommendation of the Fact Finder.

Pittsburgh, PA
September 4, 2007

Respectfully submitted,



Michael D. McDowell
Fact Finder

CERTIFICATE OF SERVICE

This is to certify that an executed original of the foregoing was mailed this 4th day of September, 2007, by First Class U.S. Mail Mail to Michael D. Esposito, Esq., Senior Consultant/Employer Advocate, Clemans, Nelson & Associates, Inc., 2351 South Arlington Road, Suite A, Akron, OH 44319; and Kevin Powers, Esq., Union Advocate 10147 Royalton Road, Suite J, PO Box 338003, North Royalton, OH 44133. This will also certify that an electronic copy in .pdf format of the executed original of the foregoing was emailed this 4th day of September, 2007, to Michael D. Esposito, Esq. at mesposito@clemansnelson.com, and to Kevin Powers, Esq. at kpowersopba@sbcglobal.net.



Michael D. McDowell
Fact-Finder