



## I. Introduction

The Fraternal Order of Police (FOP) represents employees of the Hamilton Township Police Department, including in the unit involved here, the Full-Time Patrol Unit. The hearing in this matter was held January 26, 2007, at the Hamilton Township Administration Building in Maineville, Ohio. At the hearing, the parties were afforded full opportunity to present evidence and their positions on the issues.

This is the second collective-bargaining agreement between the FOP and Hamilton Township Trustees (Township) covering this unit which was certified May 22, 2003. The parties' initial agreement, which, by its terms, expired December 31, 2006, involved fact finding and that Fact Finding Report was provided at the hearing.

Prior to the hearing, the parties timely submitted their pre-hearing position statements. At that time, the outstanding issues pertained to Sections 6.3, 6.4, 9.5, 9.6, 11.2, 11.9, and 12.3. At the hearing, the parties agreed they had reached tentative agreement on the issues in Sections 6.3 and 6.4. The hearing was conducted on the outstanding issues in the remaining sections. Subsequently, on February 1, 2007, the parties informed the Fact Finder that they had reached tentative agreement on the issues pertaining to Sections 11.2, 11.9, and 12.3, leaving only Sections 9.5 and 9.6 to be substantively addressed in this report. The parties are to be commended for continuing to negotiate and reaching tentative agreement on these additional sections. The new tentative agreements involve the Union's rescinding the language it had proposed to be added as Section 12.3, and the parties' tentative agreement to the following language:

Section 11.2. Management has the right to schedule and assign shifts. However, shifts will be bid on annually, by seniority as set forth in Section 9.1 of the bargaining agreement. In the event that special circumstances deem it necessary to move an officer off of his/her bid shift, every effort will be made to return the officer to their bid shift as soon as possible. In the event that an officer is reassigned from another unit, that officer will work the open shift available for the remaining length of the current schedule. Every effort shall be made allowing full time employees to have their days off scheduled consecutively, except as a result of a rotation in the shift schedule. Employees will work an eight (8) hour work day on a 5-2 rotation. An exception to the eight (8) hour work provision shall be deemed accepted when the Employer and Employee(s) mutually agree to do so (e.g., four [4] ten [10] hour days). Full time employees shall be paid overtime at a rate of one and one half (1½) times their regular rate of pay for hours

worked in excess of the forty (40) hour pay cycle currently in place for employees. Coverage for vacation, sick time, comp time, and personal days shall be the responsibility of the scheduling officers.

Section 11.9. Part time employees may be used to supplement the schedule due to the limited amount of full time officers in the department. However, in the event that there is open scheduled shifts due to vacation, or compensatory time lasting five (5) days or longer, all full time employees will be given the first opportunity to work the shifts for the first two (2) days. In the event that no full time employee wishes to work any of the first two (2) days, the shifts may then be filled by part time employees.

In rendering these Findings and Recommendations, the Fact Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.A.C. Rule 4117-9-05(J) and (K):

- (1) Past collectively bargained agreements, if any, 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 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 service;
- (4) The lawful authority of the public employer;
- (5) Any 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **II. Findings and Recommendations**

An apparent underlying theme to the FOP's presentations and arguments is that the employees in this unit feel their positions are threatened because of the Township's increase in the number of full-time police personnel positions in the sergeant/lieutenant unit from two to five while it reduced the positions in the full-time patrol officers' unit from six to five, as well as because the Township continues to employ ten or eleven part-time patrol officers and use eleven auxiliary officers. (Auxiliary officers are not paid). The FOP noted that the part-time officers are paid \$10.50 per hour and receive no benefits.

On the other hand, the Township contends that it is not the Township's intent to be moving in a direction away from full-time officers, toward part-time officers and that history does not show that it is. In this regard, the Township points to the increase in full-time police personnel in the combined bargaining units from eight to ten since 2003. The Township acknowledges the shift in numbers between the two bargaining units over that time, but denies that there has been a "backward slide or a shift in the philosophy to move toward an ever more professional police department."

The Fact Finding Report from the 2003 negotiations shows that Article 9 was at issue then as well. The discussion of Article 9 in the 2003 Report indicates that the parties' "disagreement centers on the future role of part time officers, currently eight in number, who perform the same duties as full time officers but are not in the bargaining unit," and that the Union sought to include provisions that "would mandate the creation of a full time officer position for every 2080 hours of part time work per year" and "would mandate a ratio of no more than one part time officer for every two full time officers as of one year from the institution of the proposed contract." The 2003 Report also says that, "over the last year," "the part time officers worked a total of 6631 hours" and, roughly speaking, "part time officers account for something in the neighborhood of one third of all hours worked, a not insignificant amount." According to the 2003 Report, for reasons discussed therein, including "the fact that the parties are entering into a new relationship where mutual trust and confidence, or their reverse, will grow over time if given an opportunity," the Fact Finder recommended "that the parties state their mutual intent of moving to an all full time force in contractual language, but without fixed quotas or timetables." The Fact Finder's recommended language for Article 9 is the same as the Article 9 language contained in the parties' collective-bargaining agreement which, by its terms, expired December 31, 2006.

Information provided to the FOP by the Township on January 26, 2007, pursuant to the FOP's request, shows that in 2003 there were 6 full-time patrol officers, 2 full-time sergeants, and 10 part-time officers with a budgeted 7,600 hours for part-time staff, as compared to in 2006 when there were 5 full-time patrol officers, 2 full-time sergeants, 3 full-time lieutenants, and 11 part-time officers with a budgeted 7,000 hours for part-time staff.

The following chart shows the number of full-time, part-time and auxiliary officers currently working for Hamilton Township and seven other governmental entities in the geographic area, as provided by each party:

<u>Gov't Entity</u>	<u>Party's Data</u>	<u>Est. Pop.</u>	<u>Sq. Miles</u>	<u>Tot. FT</u>	<u>Chief</u>	<u>Asst. Chief</u>	<u>Cap.</u>	<u>Lt.</u>	<u>Sgt.</u>	<u>Corp.</u>	<u>FT Pat. Off.</u>	<u>PT Pat. Off.</u>	<u>Aux. Off.</u>
Hamilton Twp	Twp	17,000	36	11	1	0		3	2	0	5	11	
	FOP	17,000	42.5		1			3	2		5	10	11
Clearcreek Twp	Twp	15,000	47	11	1	0		0	3	0	7	3 to 5	
	FOP	17,000	42.5		1				2		8	3 to 5	0
Colerain Twp	Twp	60,144	45	35	1	0		2	4	0	28	0	
	FOP	65,000	46		1			2	4		28	0	0
Delhi Twp	Twp	30,000	10.71	29	1	0		1	4	3	20	0	
	FOP	30,000	15		1			1	4	3	20	0	0
Green Twp	Twp	57,000	28	26	1	0		2	2	2	19	5	
	FOP	57,315	28		1			2	2	2	19	1	0
Springfield Twp	Twp	37,587	16	55	1	1		2	5	0	46	3	
	FOP	38,000	20		1	1		2	5		36	3	0
Miami Twp	Twp	36,632	33	42	1	0		2	4	1	34	3	
	FOP	40,000	36		1		2		4		40	2	
City of Mason	Twp	30,000	19.8	40	1	0		1	7	0	30	0	
	FOP	27,900	17		1	1			7		32	0	0

**A. Section 9.5:**

**Current Language**

Section 9.5 Any layoff or job abolishment of bargaining unit employees shall be in inverse order of seniority within the unit, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two hours shall have five calendar days following the receipt of such notice to exercise his right to bump the least senior unit employee of lower rank.

### FOP's Proposed Language

Section 9.5 Any layoff or job abolishment of bargaining unit employees shall be in inverse order of seniority within the unit, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two hours shall have five calendar days following the receipt of such notice to exercise his right to bump the least senior unit employee of lower rank. **Any layoff or job abolishment of full-time employees within the department shall be in inverse order of seniority within the department regardless of rank.**

### Township's Propose Language

Section 9.5 Any layoff or job abolishment of **Patrol** bargaining unit employees shall be in inverse order of seniority within the **department**, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two hours shall have five calendar days following the receipt of such notice to exercise his right to bump the least senior unit employee of lower rank.

#### 1. FOP's Position

The FOP gives several reasons for requesting the addition of the new last sentence (emboldened above) to this section. It notes that four full-time officers have been at full-time status for at least three years longer than two of the current lieutenants who were appointed to their positions "with no hiring or promotion process taking place," and that one lieutenant has less than six months of road patrol experience and was not given "a Field Training Program," which all other employees are required to complete prior to working the road. The FOP posits that a police department's most important unit is its patrol officers in that their presence is observed on a daily basis and they have the most interaction with township residents. Accordingly, the FOP argues that eliminating those positions first before other units, especially those with fewer years of full-time service, could create low public confidence, and possibly allow less experienced officers to patrol the Township. Further, the FOP contends "the Township has attempted to make every effort in having our contract, the Sergeants contract, and the Lieutenants contract mirror each other as much as possible," and a tentative agreement was made with the Sergeants and Lieutenants before addressing this unit's issues with the section and language, which left the Township "to present language of their own which we are in disagreement over."

## 2. Township's Position

The Township contends that the FOP's proposed language "requires clarification because there are two FOP Union contracts," and, thus the Township proposed changes (which are emboldened above) to the existing language in the first sentence of Section 9.5. The Township argues that its proposed language would eliminate "ambiguity between the FOP Patrol unit and the department as a whole." The Township indicates that it considers its proposal to be a "clarification" rather than a "change." The Union's proposed language, according to the Township, should not be added because: "(1) Every effort should be made to clarify that the Patrol bargaining unit is separate, distinct, and only a part of the entire police department; and (2) The language as proposed by the Patrol bargaining unit would potentially result in the 'bumping' of senior ranking officers, covered by a separate collective bargaining agreement who may have less time in service than Patrol officers, which would be in conflict with the existing FOP Sergeant/Lieutenant collective bargaining agreement." The Township further argues that, for effective management, the lay-off procedures of this unit and that of unit of sergeants and lieutenants need to be "parallel." At the hearing, the Township indicated that it would accept language paralleling the lay-off provision from the contract with the unit of sergeants and lieutenants and provided a copy of it which reads as follows:

**Section 9.2 Layoffs with full-time Employees shall be inverse order of seniority within rank, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two (72) hours they shall have five calendar days following the receipt of such notice in which to exercise their right to bump the least senior full-time employee of a lower rank.**

## 3. Fact Finder's Recommendation and Rationale

It appears to me from the FOP's arguments, that its proposed language change is intended to clearly protect the patrol unit employees from being bumped by sergeants or lieutenants with less departmental seniority if sergeants' or lieutenants' positions are abolished or the target of layoffs. However, I am unable to harmonize this last sentence addition proposed by the FOP with the existing language of Section 9.5, which the FOP proposes remain unchanged. Thus, to me, the first sentence says that any layoff within the unit will be by seniority within the unit, but the proposed last sentence says that any layoff

within the department, which presumably would include any layoff within the unit, will be by seniority within the department. Additionally, inasmuch as I am not clear regarding whether unit or departmental seniority is what is desired, I am extremely reluctant to craft suggested language. It seems clear that the Township wants language which clearly "parallels" that agreed to for its contract with the unit of sergeants and lieutenants. However, inasmuch as the Township has characterized its proposed language for Section 9.5 to be clarification rather than change, it should not be disappointed with this recommendation.

I recommend that there be no change made to the existing language for Section 9.5 and that, consequently, it should read as follows in the agreement:

Section 9.5 Any layoff or job abolishment of bargaining unit employees shall be in inverse order of seniority within the unit, with the least senior employee being laid off first. Any employee receiving notice of a long term layoff lasting more than seventy-two hours shall have five calendar days following the receipt of such notice to exercise his right to bump the least senior unit employee of lower rank.

**B. Section 9.6:**

Current Language

Section 9.6 Any employee(s) laid off under the provisions of Section 9.4 and 9.5 above shall be placed on a recall list for a period of two years from date of layoff. While on such a recall list, the Township shall keep the employee(s) commissions active.

FOP's Proposed Language

Section 9.6 **In the event that a layoff is necessary, full-time officers will only be laid off after all part-time and auxiliary officers. If the township finds it necessary to keep part-time officers during the layoff, full-time officers shall be offered the part-time positions.** Any employee(s) laid off under the provisions of Section 9.4 and 9.5 above shall be placed on a recall list for a period of two years from date of layoff. While on such a recall list, the Township shall keep the employee(s) commissions active.

Township's Propose Language

Retain the existing language.

### 1. FOP's Position

The FOP explains its proposed new language (emboldened above) as an attempt to save the unit employees' positions if layoffs are necessary. Additionally, it indicates that most part-time and auxiliary officers have full-time employment elsewhere, but, because "a full-time career in law enforcement is extremely competitive," it could take six months at a minimum for the full-time officers to find other employment if they were laid off.

Accordingly, if part-time positions must be retained at the expense of the full-time patrol positions, the part-time employment could ease the financial stress on the full-time officers who the Township found it necessary to lay off from their full-time positions. Regarding the Township's argument that the tentatively-agreed-to language of Section 10.4 "would be against" the FOP's proposed changes here, the FOP notes, "If full time positions are eliminated, then section 10.4 would be void because the contract wouldn't cover anybody."

### 2. Township's Position

The Township proposes that the current language of Section 9.6 be retained without change. It argues that the FOP's proposed language infringes on the flexibility and ability of the Township to continue to provide adequate road patrol staff, and meet the officer safety concerns, especially since "it has been tentatively agreed that there be a new Section 10.4 providing that after "December 31, 2007, all shifts will be covered by a minimum of two (2) road patrol officers excluding auxiliary and K-9 officers." According to the Township, the new requirement of Section 10.4 "can best be met, under current budgetary restraints, with the use of part-time officers." The Township further argues that the use of the eleven part-time road patrol officers is essential to adequately cover the Township. Additionally, according to the Township, "If unanticipated budgetary concerns require cost reductions, the Township must have the flexibility to call upon all available personnel to adequately safeguard the Township."

The Township acknowledges that the cost of a part-time employee is less than the cost of a full-time employee. It explains that for budgetary concerns the Township needs to have a full-time officer nucleus to which the auxiliary or part-time officers are added so that it can have extended coverage. It indicates that it would cause too much of an impact to add a contract provision that, in the event of a layoff, the part-time employees would go

first. The Township argues that, if there were a layoff, it would be because of a financial crisis and the Township would need the flexibility of the part-time employees to manage the crisis. Also, the Township provided a copy of Ohio Rev. Code §4117.08, Subjects Appropriate for Collective Bargaining, and posits that it is not an "appropriate matter for collective bargaining to dictate that the [unit] employees are continued and the part-time officers would be eliminated first."

### 3. Fact Finder's Recommendation and Rationale

The FOP's proposed language for this Section addresses the issue of full-time versus part-time employees in layoff situations. The above-quoted excerpts from the 2003 Fact Finder's Report show that the use of part-time patrol officers to the detriment of the bargaining unit, has been a major concern to the FOP from the beginning of this collective-bargaining relationship three years ago. As the 2003 Fact Finder implied, this is a problem best worked out between the parties rather than having a formula imposed from outside the relationship, and the relationship is still young.

On the other hand, the above chart shows that none of the seven governmental entities in the geographic area which were offered as comparables by the FOP, currently employ more than 5 part-time officers. The Township did not offer any comparable governmental entities, but did raise the issue of whether the FOP's are truly comparable. Certainly, the population data in the chart shows that all of the entities, except Clearcreek Township, are almost twice the size of Hamilton Township, or larger. However, Clearcreek Township, has about the same population as Hamilton Township, but, according to information provided the Fact Finder by Hamilton Township, Clearcreek Township currently employs 3 part-time officers and has budgeted for a total of 5 part-time officers. Thus, it would appear Clearcreek Township has found a way to work without as many part-time officers.

Certainly, there is validity to the contention that the Township needs some flexibility to manage effectively, especially if a financial crisis has precipitated a need to lay off patrol officers. Further, during the term of the first agreement, the Township has made progress in adding full-time officer positions, although they were not added to this unit. However, according to the data the Township provided to the FOP less than a month

ago, it has also increased the number of part-time officers from 10 to 11 during the last three years.

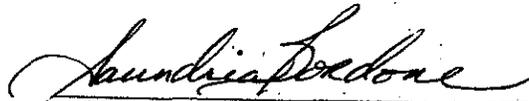
All things considered, the following compromise language is my recommended

**Section 9.6:**

In the event a layoff is necessary, the Township shall make every effort to lay off full-time patrol officers only after all part-time and auxiliary officers have been laid off. If the Township finds it necessary to use part-time officer positions while laying off full-time patrol officers, full-time patrol officers selected for layoff shall be offered the part-time officer positions the Township intends to use. Acceptance of the offered part-time officer positions shall not affect the officers' recall rights to full-time patrol officer positions. Any employee(s) laid off under the provisions of Section 9.4 and 9.5 above shall be placed on a recall list for a period of two years from date of layoff. While on such a recall list, the Township shall keep the employee(s) commissions active.

**Conclusion**

I have recommended that the language of Section 9.5 remain unchanged and have recommended compromise language for Section 9.6. I also incorporate by reference into this report as recommendations; the tentative agreements of the parties, and the language of the expired agreement which remains unchanged by the parties' tentative agreements or the other recommendations of this report.



Saundria Bordone, Fact Finder

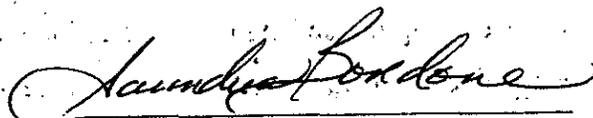
**CERTIFICATE OF SERVICE**

I certify that on the 6th day of February, 2007, I served the foregoing Report of Fact Finder upon each of the parties to this matter at their respective addresses given below by express U.S. mail and upon the Ohio State Employment Relations Board at its address given below by regular U.S. mail:

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