



STATE EMPLOYMENT RELATIONS BOARD
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September 23, 2008

2008 SEP 25 P 12: 32

In the Matter of the Fact Finding Hearing Between:

CITY OF GIRARD, OHIO)	
)	
And)	SERB Case No. 06-MED-10-1300
)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	Captains
)	

APPEARANCES

For the City:

Michael Esposito, Esq.	Employer Advocate, Clemans Nelson
Jerry Lambert	Safety Director

For the Union:

Jeffery Perry	OPBA Representative
John Valica	Captain
Jeffery Palmer	Captain

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Girard (the “City”) and the Ohio Patrolmen’s Benevolent Association (the “Union” or “OPBA”). The bargaining unit consists of police officers at the rank of Captain. There are approximately five (5) employees in the bargaining unit. The terms of the parties’ successor collective bargaining agreement expired on December 31, 2006.

The parties held several bargaining sessions and were able to reach agreement on all but four issues. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed Fact-finder in this matter by SERB. A hearing was held on September 10, 2008. The parties waived the submission of pre-hearing statements. At the fact-finding hearing, the parties accepted the Fact-finder’s offer to mediate the unresolved issues. The parties reached tentative agreements on all but one issue. The tentative agreements on all the issues are incorporated in this report and recommended by the fact-finder.

A hearing on the remaining unresolved issue was held, and the parties were given full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining 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 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. 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.
7. 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.

UNRESOLVED ISSUE

Article 24 – Overtime/Call In/Court Pay

City's Proposal

The City proposes changes to Section 2 of this Article. Currently, the contract language requires overtime to be offered to a Captain when there is no Captain on the turn, regardless of how many patrol officers are on the turn. Only when no Captain wants to work overtime may a member of the Patrolmen classification fill the Captain's position. The City argues that the language has caused excessive overtime to be worked by the Captains at a time when the City is in fiscal emergency.

More importantly, the language takes away a Management right and places it in control of the Captains. Currently, Captains may unilaterally decide to work overtime when no Captain is on the turn. However, scheduling of overtime and staffing considerations are management functions. Management should determine if overtime is

necessary, because Management is charged with being fiscally responsible to the taxpayers of the City. In addition, Management should determine if a Patrolman who is scheduled to work may assume the Captain's position when the Captain is not available on a turn.

The City proposes changing the current contract language to state that the Employer will determine when an overtime opportunity is available, and if the Employer so determines, the overtime will be offered to a full-time member of the classification (Captain). If no Captain will work the overtime, it may be filled by a member of another classification (Patrolman). The City also proposes a side letter agreement between the parties as a guide in certain minimum manning situations. The City agrees to offer minimum manning overtime to bargaining unit members prior to calling in a patrolman to meet the minimum manning for the shift. The City reserves the right to place a patrolman in the Captain's position and pay out class pay when there are sufficient patrolmen on duty to cover the desk and send two officers out on patrol.

Finally, the City proposes changing the title of the section from Overtime Scheduling to Overtime Equalization.

Union's Proposal

The Union proposes to keep the current contract language, with the exception of the last sentence regarding Road Captains, which is no longer applicable. The Union asserts that current language recognizes that it is necessary to have a Captain on all turns. When patrolmen are permitted to work as Captains, they hesitate in making difficult decisions and are uncomfortable issuing discipline to patrolmen.

The money spent in overtime for Captains was the result of vacancies that were not filled in this bargaining unit. The bargaining unit has added more members and there are currently five Captains. That has significantly reduced the need for overtime for this bargaining unit. The Union argues that the right to work overtime when no Captain is available is a right/benefit under the contract that should be maintained.

Discussion and Recommendation

For the reasons stated by the City, the City's proposal is recommended. The City must be fiscally responsible to the taxpayers and cannot allow bargaining unit members to unilaterally decide when an overtime situation exists that requires a Captain. Because the City is having financial difficulty, this responsibility is more pronounced. The responsibility for determining when overtime exists must be returned to Management.

The concern of the Captains that Patrolmen who temporary assume the role of Captain are not always able to perform the job as effectively as a Captain is compelling. However, who is or is not appropriate to place in that position should be determined by the City, not by a bargaining unit member. That is a management function. That said, however, the City must accept the responsibility to ensure that a Patrolman who temporarily assumes the position of Captain is willing and able to fulfill all the responsibilities required by the job, which includes making difficult decisions and disciplining patrolmen when appropriate. The City must answer to the public for any missteps or failure to act by a non-Captain assuming the Captain's position that places the employees or staff in danger.

Recommended Contract Language

ARTICLE 24
OVERTIME/CALL IN/COURT PAY

Section 2. Overtime Equalization. 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 in which the opportunity occurs. In the event that no full-time members of the classification will work overtime, then it may be filled by a member of another classification in accordance with Side Letter #2, Call-Out Procedure.

SIDE LETTER #2
CALL-OUT PROCEDURE

Section 1. The parties acknowledge and agree that the Employer has and retains the right to determine the necessity for overtime under the parties' agreement. The parties have agreed, however, that in certain minimum manning situations, the Employer shall offer minimum manning overtime to bargaining unit members prior to calling in a patrolman to meet minimum manning for the shift.

Section 2. A Captain will be offered the overtime opportunity, prior to calling in a patrolman, in the following minimum manning situations:

1. When two (2) patrolmen are on shift, and a dispatcher is not available, thereby leaving the desk to be covered by a patrolman; or
2. When one (1) patrolman and one (1) dispatcher are on shift, and a patrolman would have to be called in to cover the shift to meet minimum staffing, necessitating captain's rate out of class pay.

Section 3. For all other situations not listed above, including but not limited to the following situations: (1) where the Employer is able to meet minimum staffing requirements by covering the desk with a dispatcher, (2) where there are already sufficient patrol personnel on duty to both cover the desk through assignment and put two (2) officers on patrol, (3) where a captain is already working the turn and the turn is shorted by absences of a patrolman or dispatcher, the Employer shall determine when overtime is necessary and fill it appropriately.

Submitted by:


Virginia Wallace-Curry, Fact-finder

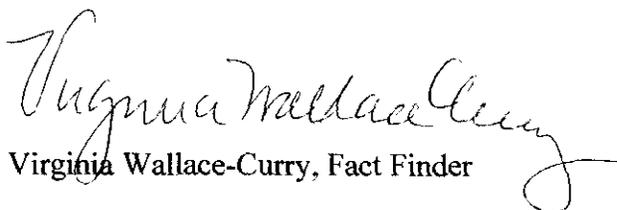
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Report for the City of Girard and the Ohio Patrolmen's Benevolent Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, September 23, 2008. The Fact-Finding Report was served upon:

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