

2008 JUN 16 A 10: 31

In the Matter of Factfinding

Between

Before: Harry Graham

Ohio Patrolmen's Benevolent
Association

SERB Case Nos. 07-MED-08-0774,
0775, 0776

and

Sylvania Township, OH.

APPEARANCES: For OPBA:

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Allotta, Farley & Widman Co. L.P.A.
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Toledo, OH 43617

For Sylvania Township:

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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board two days of mediation were held in this matter. That this report is necessary is indicative of the fact that mediation did not produce agreement. A hearing was held in Sylvania Township on May 16, 2008. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed on May 16, 2008.

Three bargaining units are involved in this proceeding. They are:

Command/Rank: This bargaining unit is composed of Sergeants and

Lieutenants. **Patrol/Road:** This bargaining unit is composed of Patrol Officers

Civilian/Dispatch: This bargaining unit is composed of Dispatchers, Record Clerks, Property Room Managers, Administrative Secretaries and Secretaries.

In formulating this Report reference was had to the various statutory criteria set forth in ORC 4117. Of particular weight are the comparisons, internal and external, that are to be made. So too is the financial condition of the Employer.

ISSUES: There are a substantial number of issues in dispute between the parties. These are:

1. Holidays (Civilian Unit Only)
2. Leave of Absence, Bereavement Leave
3. Wage increase
4. Grievance Procedure
5. Disciplinary Procedure
6. Layoff Procedure
7. Vacancies/Promotion
8. Hours of Work and Overtime
9. Insurance
10. Uniform and Equipment
11. Miscellaneous/Minimum Staffing
12. Side Letters

ISSUE 1, HOLIDAYS

POSITION OF THE UNION: The Union points out that all other Unionized employees of the Township are permitted to elect to accrue comp time in lieu of payments for holidays. It is only the Dispatchers and their colleagues in the civilian bargaining unit that do not have this benefit. No cogent reason exists why

that should be so in the opinion of the Union. Thus, it urges its proposal on the use of comp time accrual be recommended.

POSITION OF THE EMPLOYER: At the hearing the Employer indicated this is a very small group of people. Should comp time be used it will seriously affect its ability to staff the operation. Recourse to overtime will increase. Recognizing that members of this bargaining unit are treated differently than other Township employees with respect to use of comp time, the Employer nonetheless opposes the proposal of the Union.

DISCUSSION: The Employer is correct on this issue. This is a benefit employees of this Unit do not presently have. Use of comp time among a very small number of people can seriously affect operations. Given the need to staff the Dispatch service it is unfortunate but the case that that no change can be recommended.

ISSUE 2, LEAVE OF ABSENCE, BEREAVEMENT LEAVE

POSITION OF THE UNION: The Union alludes to a problem in the usage of bereavement leave. It has occurred that bargaining unit members have been on vacation and a family member has died. Such employees have sought bereavement leave and it has been denied. Accommodation was made on a case-by-case basis. That is unsatisfactory as people so situated do not have a guarantee of use of bereavement leave when a death in the family occurs while the Employee is on vacation. Adoption of its proposal would rectify that situation.

POSITION OF THE EMPLOYER: The Township did not advance strong opposition to the proposal of the Union. It points out that such situations are rare.

When they have occurred, accommodation has been made. As that is the case, no change in the Agreement is warranted it contends.

DISCUSSION: The Employer is correct to indicate such situations are rare. That represents a reason to recommend adoption of the proposal of the Union.

Employees who have the misfortune to lose a family member while on vacation should be able to use bereavement leave rather than family leave to deal with the situation. Considerations of equity and fairness compel a recommendation on behalf of the Union on this issue. No substantial expense will occur to the Township as a result of the inclusion of the Union proposal in the Agreement. It is recommended without alteration.

ISSUE 3, WAGE INCREASE

POSITION OF THE UNION: The Union has different wage proposals for each bargaining unit. They are as follows:

Civilian Unit	Equity Increase	Percentage Increase
	2008 \$1.00	5%
	2009 \$.50	5%
	2010 \$.50	5%
Command Unit	2008	6%
	2009	5%
	2010	5%
Road Unit	2008	5%
	2009	5%
	2010	5%

The Union is well-aware that these increases exceed those being seen in law-enforcement in Ohio by a considerable margin. Data supplied by the State Employment Relations Board show such increases to approximate three percent

(3.0%) statewide. Those data should not be given great weight according to the Union. As is set forth above, there is another issue in this proceeding, health insurance. The Union knows that other employees of the Township have experienced substantial increases in the amounts they pay towards health insurance. It is concerned that if such increases extend to its members, the worth of any wage increase is substantially diminished.

The Employer cannot make any claim of an inability to pay. There is in existence in the Township a dedicated levy to support police operations. For 2008 Township Trustees decided not to collect all funds the levy would have generated. It reduced the rate by 1.5 mills. Had the levy been collected in full it would have generated an additional \$690,000. The Employer voluntarily forfeited those funds. Its employees should not receive an inadequate wage increase due to that action the Union contends.

Notwithstanding the return of levy funds in 2008 the unencumbered balance in the police levy fund has increase regularly since 2005. It is expected to rise again in 2008, even with the failure of the Employer to collect all monies the levy would have generated. The Township can easily fund the proposed wage increase put forward by the Union. There is no doubt about that according to the data supplied by the Union. As that is the case, it should be recommended given the large increase in health insurance costs that is likely to occur for members of these bargaining units the Union urges.

POSITION OF THE EMPLOYER: The Township proposes there occur three wage increases, each of three percent. (3%). The initial wage increase would

take effect upon execution of the Agreement. The second and third would take effect the first pay periods of 2009 and 2010 respectively. The Employer also proposed there be made a signing payment of \$1000 to all represented employees.

Internal comparables support the Employer. Other Township employees received three percent (3%) wage increases commencing in January, 2008. No reason exists to provide greater wage increases to employees of the Police Department. Further, There is an exception to the pattern of three percent raises in Township service. Firefighters resolved their negotiations with a two percent (2%) raise in 2006 and a lump sum payment of \$1250 in 2007. Given the developments in the Township, the proposal of the Union is excessive in the view of the Employer. Other Township employees are now on the revised insurance plan. Members of these bargaining units have reaped a benefit from the calendar, they have not paid the revised premiums. Their colleagues in Township service have. Under these circumstances the Employer asserts that the delay occasioned by the calendar of negotiations should not be rewarded.

It is the case that wages paid Police Department employees in the Township compare favorably to those paid in other nearby jurisdictions. (Er. Ex. 6). For officers with 20 years of service wages are \$2,199.91 above the area average. For sergeants, they are \$350.00 above.

DISCUSSION: In this proceeding the Union is seeking to be immunized against increases in health insurance expenditures. Their colleagues in Township service

have not had that good fortune. No reason exists why members of these bargaining units should be so advantaged.

In fact, the course of negotiations has benefited members of these bargaining units. Their colleagues in Township service have been paying increased health insurance premiums. They have not.

The external comparison data does not show that members of the Police Department are paid below their counterparts in the area. They are in the ball park.

Wage increases throughout the State are in the three percent (3%) range. However, the Employer is seeking vast changes in the Agreement. In order to secure any such changes it must pay for them. It simply cannot credibly propose a "going rate" wage increase and expect to secure anything but a small part of its agenda. Based upon these factors I recommend there occur a three and one-half (3.5%) percent wage increase followed by two, three percent (3%) wage increases.

These Agreements expired at the end of September, 2007. During negotiations the parties did not agree upon whether or not wage increases should be retroactive. As set forth above, the Employer proposes that any wage increase be made effective with execution of the Agreement. That is commonplace. So too is retroactivity. I recommend that given that widespread practice, the initial wage increase be made retroactive to the first pay period following expiration of the prior agreements.

The proposal of the Employer regarding the signing bonus of \$1000 is insufficient. At mediation the figure of \$1500 was discussed. That is recommended.

ISSUE 4, GRIEVANCE PROCEDURE

POSITION OF THE UNION: As is set forth below, the Employer has several proposals involving the grievance procedure. The Union is opposed to all of them. It claims the grievance procedure is working well. No problems have been experienced and no change is justified.

POSITION OF THE EMPLOYER: The Township has extensive proposals in Article VI, the grievance procedure. Presently it is the case that when grievances are advanced beyond the level of the Chief they go to the Township Board of Trustees for a hearing. In reality, most such hearings are conducted by the Township Administrator. From time-to-time the Trustees conduct hearings. It is the norm that executive officials, e.g. Human Resource Directors, City Administrators, or Mayors, hear grievances at the final stage of the grievance procedure prior to arbitration, if necessary. That is the case in other jurisdictions in the area. The situation in Sylvania Township is an anomaly.

Currently when a grievance is advanced to arbitration the parties secure a list of arbitrators from the Federal Mediation and Conciliation Service or other acceptable agency. The Employer asserts that is unwieldy. It proposes there be created a panel of seven arbitrators, mutually acceptable to the parties. In its view, that would be more efficient than the current system for securing an arbitrator.

DISCUSSION: It is certainly the case that recourse to the Township Board of Trustees as the final step in the grievance procedure is unusual. The analogy may be made to recourse to a City Council or Board of County Commissioners. Such is not seen. Nor is recourse to a Board of Trustees. If the parties have a Collective Bargaining Agreement, it should look like a collective bargaining agreement. No other jurisdiction in the area has a grievance procedure similar to the one in Sylvania Township. The proposal of the Employer on this issue is recommended.

It was not shown that the parties had any difficulty in securing a list of arbitrators from the FMCS. That said, in mediation the parties indicated that there was dissatisfaction with the names that appeared from time-to-time on those lists. It is recommended a panel of arbitrators be created. The parties should promptly meet to discuss composition of the panel.

ISSUE 5, DISCIPLINARY PROCEDURE

POSITION OF THE UNION: The Union is opposed to the position of the Employer on this issue.

POSITION OF THE EMPLOYER: At present the Agreement provides that an employee who is facing suspension be provided a hearing before the Board of Trustees. The Employer seeks to eliminate that provision. It regards it to be anachronistic and not needed. The Agreement calls for arbitration as the final step in the grievance procedure. As that is the case, appeal to the Trustees is superfluous in its opinion.

DISCUSSION: Obviously this issue is related to Issue 4 above. The Employer proposal is recommended. There is no need for appeal to the Trustees when the Agreement provides for appeal to arbitration. Once again, the proposal of the Employer represents a mainstream adjustment of the Agreement. It is not innovative. It merely codifies the normal practice. As such, it must be recommended.

ISSUE 6, LAYOFF PROCEDURE

POSITION OF THE UNION: The Union is opposed to the proposal of the Employer. It points out the current layoff procedure has been in the Agreement for many years and no problems have developed. The proposal to change the current procedure is unneeded according to the Union.

POSITION OF THE EMPLOYER: The Township points out that presently layoffs may occur throughout the Department. When any person is laid off the Employer cannot hire in a different classification. For instance, if a dispatcher is on layoff, the Township cannot hire a patrol officer. Only after the dispatcher is recalled can a patrol officer be hired. That is unwieldy. The Employer proposes that the language regarding layoff be modified such that a layoff would occur within the "affected" job title. Thus, were a dispatcher to be on layoff and the Township desired to hire a police officer, it could do so. The Employer also proposes that when employees on layoff are recalled, they would be recalled to the classification in which the layoff occurred. This would prevent the possibility of a police officer being recalled to a dispatcher position. This is the norm in layoff

situations. Other nearby jurisdictions deal with layoff in this fashion. So too should Sylvania Township it contends.

DISCUSSION: The position of the Employer on this issue is unassailable. Layoffs should be by classification. Recall should be as well. The situation posited by the Employer is unlikely. Yet, were it to occur, operations of the Department would be adversely affected. No reason exists for department-wide layoff language. The various Agreements should specify layoff to occur by classification and recall to do so as well. The Agreements should itemize the classifications they cover and not those in the entire Department. The proposal of the Township on this issue is recommended.

ISSUE 7, VACANCIES AND PROMOTION

POSITION OF THE UNION: As is set forth below, the Employer is proposing an increase in the probationary period for people who are promoted. It is currently 30 days. There has been no difficulty with that period in the past. No good reason exists to change it in the opinion of the Union.

POSITION OF THE EMPLOYER: The Township proposes that the existing 30 day probationary period be extended to six months. It asserts that the 30 day period is inadequate to properly evaluate employees who have been promoted.

DISCUSSION: The problem alluded to by the Employer is hypothetical. It did not show difficulties in evaluating employees during the 30 day probationary period had occurred. Nor was it shown that a six month probationary period was widespread in similar Departments in Northwest Ohio. No change is recommended.

ISSUE 8, HOURS OF WORK AND OVERTIME

POSITION OF THE UNION: Once again, as will be seen below, the Employer has an extensive proposal on this issue. The Union is opposed to it. It contends that no change is required as no problems have developed.

POSITION OF THE EMPLOYER: Overtime is currently paid after eight hours per day. The Employer desires it be paid after 80 hours in a bi-weekly pay period. It also proposes that employees who work on a scheduled ten hour day become eligible for overtime after 80 hours in a bi-weekly pay period.

The Township may presently stagger starting and quitting times for a particular shift by one-half (1/2) hour. The Employer proposes it be lengthened to one hour. It also wants to delete the current shift starting times found in Section 16.05. It also seeks to exclude time off, e.g. vacation, holiday, personal leave, as time counted for purposes of overtime.

The Employer points out that no other Agreement in the area has shift starting and ending times. (Er. Ex. 14). It also asserts that some employees would be willing to work a schedule other than eight (8) hours per day. e.g., a ten (10) hour day. The provision that overtime pay commence after eight (8) hours inhibits such flexibility. Further, it may be the case that the Employer desires to create a shift not presently contemplated in the Agreement. It may not do so as the Agreement is presently constituted.

DISCUSSION: The notion of overtime after 80 hours in a pay period is excessive. I recommend it commence after 40 hours in a work week. To be consistent, the reference to a 10 hour day in Section 16.3 (renumbered 17.03 in

the proposal of the Employer) should be eliminated. Overtime should commence after 40 hours in a week as noted above. It is the case that specification of the eight (8) hour work day is unusual. I recommend it be eliminated from the Agreement. In Section 16.5 the Agreement calls for a 4 and 2 schedule. That should remain in the Agreement. So too should the language referring to itemization of the first, second and third shifts. in 16.5 .Included should be the sentence, "The Employer may schedule additional shifts." The remainder of that paragraph should be stricken with the exception of the final sentence, "The Employer may make changes in shift assignments...." To be consistent the language in the current 16.7 should be changed to reflect 40 hours in a week.

The Employer proposes excluding vacations, holidays etc. as part of the time worked for overtime calculation. That is also excessive. Only sick leave should be excluded from overtime calculations. The other sorts of time off, e.g. vacation, holiday, personal leave, etc should count for purposes of overtime calculation.

ISSUE 9, INSURANCE

POSITION OF THE UNION: The Union is well-aware the Employer is proposing substantial change in health insurance. It points out that increases in the health insurance premium paid by employees will consume a large proportion of any wage increase. Such inequity should not be recommended according to the Union.

POSITION OF THE EMPLOYER: As noted above and referenced throughout this report, the Township is proposing substantial changes in the health

insurance program offered employees. There is what may be termed a 100% plan. The employer proposes to also offer an 80/20 plan at some time if practical. At hearing it was indicated such a plan could not be offered in 2008. Effective February 1, 2009 the Employer would pay 90% of the premium. Employees would pay the remaining 10%. At that date as well employees would be responsible for 50% of the premium over \$1,484.00 per month. On February 1, 2009 as well the Employer would pay 90% of the 80/20 premium towards the 100% plan with employees who choose it responsible for the remainder.

The Township points out that all other employees, unionized and non-unionized alike, are enrolled in the health insurance program it proposes. Some have been in the program for many months as of this date. Thus, members of the Police Department have reaped a windfall of sorts. They have not been paying the health insurance premium that has been paid by their colleagues. This is inequitable and unfair to other Township employees in the view of the Employer.

DISCUSSION: During the mediation sessions and at the hearing the Union expressed grudging acquiescence to the health insurance proposal of the Employer. It is an unfortunate and discouraging reality of the times that health insurance coverage is becoming less comprehensive at the same time costs are being shifted to employees. Other employees of the Township are enrolled in the health insurance scheme proposed by the Employer. No reason exists for members of the Police Department not to be as well. The premium co-pays proposed by the Employer should be made retroactive to April 1, 2008. Any plan design should be made as soon as practicable. Should health insurance carriers

be changed by the Employer during the life of the Agreement benefits in the changed plan should be "substantially identical" to those in the existing plans.

ISSUE 10, UNIFORM AND EQUIPMENT

POSITION OF THE UNION: The Union proposes no change in the Uniform allowance which is presently \$600.00. That amount is paid out in cash. No change is justified according to the Union.

POSITION OF THE EMPLOYER: The Employer is proposing a radical alteration in uniform allowance. From a cash payment it seeks to institute a quartermaster system. Items of uniform and equipment would be provided as needed.

DISCUSSION: No other jurisdiction in the area has a quartermaster system. It was not shown that the present manner of providing uniform and equipment was unsatisfactory in any fashion. No change is recommended.

ISSUE 11, MISCELLANEOUS

POSITION OF THE UNION: The Agreement presently calls for a Sergeant to work each shift. That arrangement is of longstanding and the Union opposes any change.

POSITION OF THE EMPLOYER: The Township proposes to delete Section 31.2 of the Agreement dealing with minimum staffing. It points out that when a Sergeant is absent normal practice in the industry is for an officer to function as a Sergeant and receive "acting pay." Further, it occurs that on occasion the Township has as many as six officers on a shift but has to call-in a Sergeant on overtime. This is costly and results in the shift being overstaffed. Examination of

the practice in other jurisdictions in the area (Er. Ex. 15) shows that none have the requirement that a Sergeant be present on all shifts.

Overtime costs for the call-in of a Sergeant have been substantial. (Er. Ex. 14) From January through April of this year, 2008, when a Sergeant has had to be called-in the Employer has spent \$49.6 thousand dollars in overtime. In those instances when a Sergeant was present but there were less than 4 officers the Township has spent in excess of \$50 thousand dollars for overtime in the same period. These are costs that should not be incurred as the provision dealing with the requirement for a Sergeant to be on each shift is unique to Sylvania Township. Thus, it should be removed from the Agreement the Employer contends.

DISCUSSION: Obviously this is an unusual provision. It is unique in the region. It is costly to the Employer, with approximately \$100,000 spent in overtime through January-April, 2008. That no other Police Department in the area has this benefit provides strong support for the proposal of the Employer. In its proposal the Employer made reference to "acting pay." (FAX, p. 45). It indicated "Virtually all police departments pay officer-in-charge pay when a sergeant is not working. In other words, a patrolman will become an acting sergeant for the day and receive sergeants' pay." It is recommended that the present provision at Article 31.2 of the Agreement be deleted and the mandatory call-in of a Sergeant be eliminated. It is further recommended that language regarding acting pay be included in the Agreement. The following is recommended:

When acting in place of a Sergeant the officer with the most seniority on the shift shall be considered Officer in Charge. When acting in that

capacity the Officer shall be paid at the rate of the Sergeant for all hours worked.

ISSUE 12, SIDE LETTERS: It is the case that over the years a number of side letters or Memoranda of Understanding have been reached by the parties. They are appended to the various Agreements. They have been reviewed by me. To all appearances they deal with workplace concerns. It is recommended that all existing side letters continue unchanged unless mutually altered or terminated by the parties.

All tentative agreements are incorporated into this award by reference and recommended to the parties.

Jurisdiction is retained for 60 calendar days from the date of this award to deal with any questions or issues that might arise.

Signed and dated this 12th day of June, 2008 at Solon, OH.



Harry Graham
Factfinder