

STATE EMPLOYMENT
RELATIONS BOARD

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FACT FINDER'S REPORT

MIAMI TOWNSHIP TRUSTEES

AND

FOP/OHIO LABOR COUNCIL, INC.

CASE NO. 07-MED-09-0849

DATE OF HEARING: MARCH 26, 2008

DATE OF REPORT: APRIL 9, 2008

FACT-FINDER: JACK E. MCCORMICK
FACT-FINDER
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On March 26, 2008, the fact-finding hearing was held at the offices of the Miami Township Ohio Administrative Offices, 601 Meijer Drive, Milford, Ohio 45150, concerning the matter of FOP Ohio Labor Council, Inc. and the Miami Township Trustees, SERB Case Number 07-MED-09-0849. Appearing parties were the following:

Employer	Union
David Duckworth, Administrator Miami Township 601 Meijer Drive Milford, Ohio 45150	Ross Rader Staff Representative Fraternal Order of Police Ohio Labor Council, Inc. 222 East Town Street Columbus, Ohio 43215-4611
John C. Corbin, Esquire Law Director Miami Township 601 Meijer Drive Milford, Ohio 45150	Sergeant Ted Swain Miami Township Police Dept.

The Employer is Miami Township Trustees who provide law enforcement functions in the Township. These employees provide various functions for the Township such as responding to calls for service, patrolling the Township, traffic enforcement, making arrests, transporting prisoners, and/or supervising the above activities and performing other duties as directed by the Chief.

The bargaining unit is all full-time police sergeants of the Miami Township Police Department of which there are currently five. They engaged in collective bargaining on the following dates:

November 8, 2007
November 14, 2007
November 26, 2007
December 5, 2007
December 12, 2007
February 7, 2008
February 8, 2008.

Prior to officiating at this hearing the Fact Finder advised the parties of the rules and regulations surrounding fact-finding in general as well as the mediation process. During the fact-finding, at various times the fact-finding hearing was suspended and the parties entered into mediation, which resulted in the resolution of several issues which will be more detailed in this report.

The Fact Finder noted that he was personally served with the prehearing statement of the Union on March 24, 2008, however, he received no prehearing statement from the Employer. Accordingly, and pursuant to Administrative Rule 4117-9-05(F), the Fact Finder only took evidence in support of matters raised in the written statement of the Union. Those issues were as follows:

- Article 9 - Discipline
- Article 11 - Probationary period
- Article 15 - Wages
- Article 17 - Holidays
- Article 20 - Personal leave
- Article 22 - Insurance
- Article 31 - Training
- Article 35 - Tuition and Education Incentives
- Article 40 - Duration

During the fact-finding hearing and mediation sessions the following issues were resolved:

- Article 9 - Discipline, withdrawn
- Article 11 - Probationary period, withdrawn

Article 17 - Holidays, withdrawn

Article 20 - Personal leave, withdrawn

Article 22 - Insurance, withdrawn

Article 31 - Training, resolved by a tentative agreement (attached)

Article 35 - Tuition and Incentives, resolved by tentative agreement (attached)

This left two Articles which this fact-finding report addressed, those being Article 15 - Wages, and Article 40 - Duration.

The origin of the unresolved issue of duration (Article 40) was the Employer's proposal to insert language in section 40.3 which stated as follows:

...the Employer and the FOP, for the life of this Agreement, each voluntarily and unequivocally waives the right and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter not specifically referred to or covered in this Agreement.

There was discussion between the parties and the Fact Finder regarding the legality of this proposed language and a certain ruling by SERB specifically In the Matter of State Employment Relations Board v. Franklin County Sheriff, Case Number 202-ULP-06-0438 and the subsequent decision of the Franklin County Court of Common Pleas upholding of that decision on January 31, 2004. In the case of Franklin County Sheriff, Appellant v. State Appellant Relations Board, Appellee (unreported).

In that decision SERB ruled that if the parties had not adopted procedures in their collective bargaining agreement to deal

with mid-term bargaining disputes, it would apply the following standards to determine whether an unfair labor practice has been committed when a party unilaterally modifies a provision in an existing collective bargaining agreement after bargaining the subject to ultimate impasse. SERB further recommended that the parties adopt procedures especially designed to deal with mid-term disputes

The Union asserts that the proposed language by the Employer, set forth herein above, would necessarily preclude mid-term collective bargaining and therefore would be contrary to the ruling in the Franklin County Sheriff case, supra.

After a thorough review of the above referenced case and its progeny the Fact Finder agrees with the interpretation of the Union and would strike the proposed language of the Employer herein and in order to clarify the issue and to bring this Agreement, as well as its successors, into line with the SERB ruling in the Franklin County Sheriff case, supra, the following language be added to Section 40.3 of the Agreement instead of that originally proposed by the Employer:

Either party cannot modify an existing collective bargaining agreement without the negotiation by and agreement of both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the Agreement becomes effective that requires a change to conform to the statute.

ARTICLE 15 - WAGES

The Union proposes the following wage increases for bargaining unit members serving in the sergeants rank:

Increased base wages by 11.5% beginning 1/1/2008; 5% 1/1/2009; and 4% 1/1/2010.

The Union's proposal, it asserts, is a necessary wage adjustment based on several factors. It states that during the month of March, 2007 the agency received "Flagship" status from the Commission on Accreditation of Law Enforcement Agencies (CALEA). It further notes that on earning this status the agency accomplished a level of professionalism that only 3/10ths of one percent of all police agencies have achieved.

The Union also notes that the 45,000 residents of the township have been highly supportive of the police department and have overwhelmingly passed two tax levies over the past three years.

The Union further asserts that the police sergeants are a part of the agency's leadership team and play a critical role in the success of the last dozen years. It is the only rank currently within the agency that requires a bachelor's degree. It asserts that the sergeants have played, and continue to play, a critical role in the continuing delivery of services by the police department while receiving much smaller increases than the rest of the management team.

The Employer proposes wage increases for this particular bargaining unit of 5% for each of the first two years of this Agreement (beginning January 1, 2008) and 4% for the third year.

In taking this position the Township points out several matters in opposition to the Union proposal. First, while the Township is extremely proud of the "Flagship" status and, while the trustees, as well as the general population, are very satisfied with the police department for having achieved such status, it could just as easily be revoked at any time in the future. Accordingly, rewarding this bargaining unit for accomplishing something that may be transitory in nature would not be proper. However, the Employer also points to the fact that the patrolmen and corporals, who historically have bargained along with the sergeants, have recently accepted wage increases identical to those being proposed for this bargaining unit by the Employer, i.e., 5%, 5%, and 4%.

Before getting to the merits of any party's economic proposal a fact finder and/or conciliator is required by law and regulation to determine whether such an economic proposal, or proposals could be funded by the employer. A mutually agreed cost analysis indicates that the total cost (including fringe benefits of the Union's proposal) would be in excess of \$142,000 over the three year life of this Agreement. The Employer's proposal would cost approximately \$97,000.

The Union correctly points out that the current projected surplus in the Police District Fund for Miami Township is \$1,126,265. The Miami Township Police Department is entirely funded through a police levy and state and federal grants and receive no monies from the general revenue fund. Accordingly it appears that

on a factual basis this Employer has sufficient monies to fund the Union's wage proposal.

However, once a neutral finds that an economic proposal can be funded by the opposing party, a thorough examination must be made of the merits of any such proposal.

The Union asks the Fact Finder to consider certain internal as well as external comparables. Among those comparables were nine police departments' sergeants' salaries in which Miami Township's current pay level was eighth. The Union asserts that the 11.5% proposed increase would bring Miami Township's sergeants within forty-nine dollars of the average comparable wages.

In addition, the Union asserts that the gap between the payment of sergeants and lieutenants (now captains) in the Miami Township Police Department has been increasingly growing. In the year 2005 the gap was 19%, in 2006 the gap was 20%, and in 2007 the gap was 34.5%. Further, they noted that the lieutenants recently received a \$8,000 pay increase. They also went on to indicate that certain non-bargaining unit employees of the Township have been, and will continue to be, awarded incentive bonuses.

In an analysis of comparables all neutrals struggle to find truly accurate comparisons. There are always numerous problems with comparables. First is, the party proposing the comparables usually restrict their comparables to those agencies which support their particular position. This is only natural. However, there is an even bigger problem with comparables and that is, without going into a detailed thorough analysis of each comparable's total

benefit structure, it is impossible to ever truly state that one bargaining unit's wage and benefits are exactly equal to another. One would need to examine holidays, vacations, accumulation rates of holidays and vacations, pension contributions, population, crime rate, etc., etc. Dare to say, this Fact Finder after over two decades of working with police and fire departments, has yet to find two bargaining units whose total wage and benefit packages were identical. Accordingly, all neutrals are faced with attempting to find agencies which are "relatively" comparable, that is, unless there is some alternative to external comparables. In this matter, there exists a true comparable as called for in 4117-9-05(K)(2).

Over the twenty year history of this bargaining unit's negotiations with the Township, the patrolmen, corporals and sergeants bargained as one unit. This year is the first year, and only time, that the sergeants opted to split from the patrolmen and corporals and reject the Employer's offer, and bargain unilaterally. It is noted that the patrolmen and corporals accepted the same wage proposal now being proposed by the Employer to this bargaining unit. In addition, the Union's proposal is much larger than any wage increase given to this or any other bargaining unit historically by this Employer, and exceeds SERB Benchmarks.

The Fact Finder notes that at Administrative Rule sections 4117-9-05(K)(1) and (2), the Fact Finder is to consider past collective bargaining agreements and the comparison of unresolved issues relative to employees in the bargaining unit with those issues related to other public and private employees doing

comparable work. Notwithstanding the external comparables presented by the Union, the treatment of the patrolmen and corporals is much more compelling because we already know their wage benefit, insurance, pension contributions, etc., etc. exactly match those of the sergeants. Accordingly, a fact finder does not need to engage in exhaustive study of external comparables to make a factual determination. Furthermore, the burden of persuasion is on the Union to present facts as to why the wage increase for this bargaining unit in the first year of this Agreement should be more than twice that given to their brethren the patrolmen and the corporals.

The Union asserts this particular bargaining unit has taken on increased responsibilities and is, more than any other group, responsible for the Department receiving the "Flagship" status. Among other things, the Union notes that the sergeants not only have to come up with the ideas, but also must see that they are implemented and maintained. They further assert that in civil actions against assigned officers the sergeants are almost named as defendants.

Accepting all of the Union's arguments to be valid, the Fact Finder notes a couple of matters. First, about the outstanding performance which resulted in the "Flagship" status for this department, it is extremely admirable and valuable to all the citizens of Miami Township. It should be remembered that it is line officers (patrolmen and corporals) who, on a daily basis must maintain the level of service and professionalism necessary to

maintain that status. They are "where the rubber meets the road". That is not to diminish the important role that middle management plays in the operation of this or any other department. It is only to point out that it is hard to conceive that a sergeant's contribution and role to maintain the high professionalism that this department has achieved is more than 100% more valuable than that of the patrolmen and corporals.

As to the matter of being named as civil defendants in litigation, the sergeants have no greater exposure than any other member of the department to valid, or even frivolous, law suits. Indeed, more than likely everyone from the trustees to the lieutenants and virtually every other public official in Miami Township will probably be named by zealous plaintiffs' attorneys.

As to the argument that the lieutenants received a substantial wage increase and that non-bargaining unit members receive an incentive bonus, here the Union is asking the Fact Finder to compare apples to oranges when, as pointed out above, there is at hand a comparison of apples to apples.

Accordingly, this Fact Finder finds that there were insufficient facts presented to him by the Union to support its wage proposal in the new Agreement.

FINDING OF FACT

The collective bargaining agreement for the Miami Township Police Department, Sergeants' Unit, Article 15, should be adopted as proposed by the Employer, that is, raises in the sergeants' rate of base pay of five percent (5%) beginning January 1, 2008; five percent (5%) beginning January 1, 2009; and four percent (4%) beginning January 1, 2010.

This Fact Finder certifies that his Employer has the ability to fund the Finding of Fact set forth herein and furthermore that Employer did stipulate to that fact.



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Fact Finder
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EIN 31-1410950

April 9, 2008
Columbus, Ohio

T/A

3/26/06

**ARTICLE 31
TRAINING**

Section 31.1. Each bargaining unit member shall attend a minimum of one in service training seminar at the Ohio Peace Officer Academy or any other recognized training facility at least once each year. In-service training sessions conducted by state certified law enforcement instructor's is acceptable to meet the above requirements.

Section 31.2. The Employer, at its option, shall have the right to require an employee to attend more than one training seminar or course of study when the Employer feels that further training of an employee is necessary.

Section 31.3

- A. All hours spent in training sessions will be counted as hours worked.
- B. Travel time to and from training outside the Township shall be counted as hours worked up to the standard work day.
- C. Lunch breaks at training classes required under Section 31.1 shall be treated as hours worked.
- D. Homework and home study time connected to training classes required under Section 31.1 ^{+ 31.2} may be treated as hours worked provided the Chief of Police or his designee grants prior approval for the homework and home study time. The approval of the Chief shall not be unreasonably withheld. The Chief may use whatever resources he deems appropriate to determine the reasonableness of the request.
- E. Lunch breaks, homework and home study time connected to training classes not required under Section 31.1 ^{or 31.2} may be treated as hours worked provided the Chief of Police or his designee grants prior approval for the lunch breaks, homework and home study time.

+ 31.2 

3/26/08

T/A

**ARTICLE 35
TUITION AND EDUCATION INCENTIVES**

Section 35.1. The Employer and employees recognize the benefits of continued education and training for professional growth and development. Employees are encouraged to pursue their knowledge and participate in their formal education efforts. *In order to assist the employee, the Employer will provide any participating Bargaining Unit Member with tuition assistance as follows:*

- A. The employee will submit a written request to the Chief of Police (or his designee) and the Township Administrator/Safety Director prior to the start of the course for which reimbursement is sought. Requests for reimbursements will not be unreasonably denied, upon proof of successful completion of course(s).

- B. The course work pursued must be related to the criminal justice field, or be a *required course leading to a formal degree from an accredited academic institution* in one of the following fields: criminal justice, public administration, criminal justice administration, police administration, police management, police science, forensics, traffic safety, public safety, management, organizational leadership or degree in a field approved in writing by the Police Chief prior to enrollment in the program. To be eligible for reimbursement under this section, the college or university must be accredited by an accrediting agency or association recognized by the U.S. Department of Education or the Council of Higher Education Accreditation (CHEA).

- C. The employee will absorb all initial fees, including books and will submit proof of attendance or completion except as noted in Section 35.3.

Current bargaining unit members who are in the process of obtaining a degree have until 12/31/09 to obtain their degree and receive the educational incentive bonus set forth below.

The grandfathered employees are entitled to educational incentive bonuses as follows:

- A. Associate Degree - 2% of base pay
- B. Baccalaureate Degree - 3% of base pay
- C. Masters Degree - 4% of base pay

Payments shall be made on the base rate of the employee during the first pay period of December.

Section 35.5. Employees who are permitted to assess out of a course and who are charged a fee shall have 50% of said fee reimbursed by the Employer.

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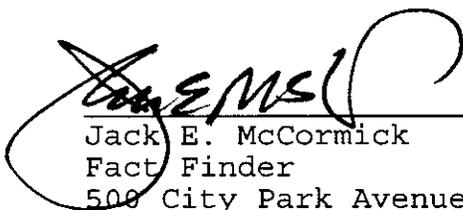
CERTIFICATE OF SERVICE

I hereby certify that a copy of the enclosed Fact Finder's report was mailed, via ordinary mail, postage prepaid, this 9th day of April, 2008, to:

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

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April 9, 2008
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