

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

Liberty Township Trustees )  
 )  
and )  
 )  
Ohio Patrolmen's Benevolent Association, )  
Police Officers )

Case No: 07-MED-09-0901

Fact-Finder: Colman R. Lalka

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STATE EMPLOYMENT  
RELATIONS BOARD

HEARING

Date of Hearing: June 20, 2008

Location of Hearing: Liberty Township, Ohio

ATTENDANCE AT HEARING

For the Employer:

John N. Barkan, Jr., Labor Relations Consultant  
Pat Ungaro, Township Administrator

For the Union:

Michael J. Hostler, Esq.  
Chad R. McGarry, OPBA Representative

MEDIATION

Prior to the commencement of the fact-finding hearing, mediation was requested by the Parties. The Fact-Finder acted as mediator with all outstanding issues being negotiated. Several issues were resolved, as noted below.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(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;

4117-9-05(K)(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;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(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.

## BACKGROUND

Liberty Township Trustees has recognized the Ohio Patrolmen's Benevolent Association as the bargaining representative for certain employees of the Township. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2007.

Formal bargaining between the Parties has been ongoing. When impasse was reached, the Parties requested the Fact-Finder convene a hearing, attain relevant facts, and prepare a report and recommendation in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Fact-Finder to render a report and make recommendations on the issues at impasse.

Labor negotiations are a unique process, requiring knowledgeable and professional representatives for both Management and Labor. Without such advocates at the bargaining table, negotiations can be long, contentious at best, and reaching negotiated settlement a difficult task. Both Parties were well represented at this hearing, with the Township being well represented in spite of its advocate having been precluded from participating in negotiations prior to Fact-Finding.

## ISSUES AT IMPASSE AND RECOMMENDATIONS

### Article 17 — Uniform Allowance

The Union proposes the following language be included in Article 17 of the Parties' Labor Agreement:

- (a) On or about April 1, 2008, each officer will receive \$750.00 for uniform purchase and/or maintenance.
- (b) On or about April 1, 2009, each officer will receive \$800.00 for uniform purchase and/or maintenance.
- (c) On or about April 1, 2010, each officer will receive \$850.00 for uniform purchase and/or maintenance.

In the event an item of any designated uniform/equipment changes, the Employer shall provide the initial issue of that item(s).

The Union contends funds must be expended for uniform and equipment purchase and maintenance. The Union emphasizes it is not only cloth uniforms which must be purchased and maintained, but modern police work requires the purchase and maintenance of specialized equipment in addition to uniforms.

In support of its position, the Union provided nine comparables for surrounding townships and cities, as well as the Mahoning County Sheriff Department, which establish Liberty Township's Uniform Allowance to be the lowest. In addition to police uniforms and equipment being overpriced upon original purchase, the Union contends, additional allowance is needed simply to keep pace with inflationary pressures on new purchase and maintenance costs.

The Union also argues the final paragraph of its proposal is needed to protect against changes in Police Department hierarchy wherein a new Chief mandates new or additional uniforms and/or equipment. Absent such language, the Union concludes, Police Officers are potentially subject to increases in out-of-pocket expenses at the whim of a changing administration.

The Employer points out the comparables used by the Union do not indicate the population of the locales or the number of Police Officers on the various Departments. In recognizing inflationary pressures, however, the Township proposes a \$100.00 increase in Uniform Allowance the first year of the Successor Agreement and \$25.00 per year for the remaining two years. This, the Township concludes, more appropriately addresses the Union's concerns, and moves Liberty Township from last on the comparables to the mid-point.

## RECOMMENDATION

The current Uniform Allowance for Township Police Officers is too low compared to the allowances provided by surrounding communities. Moreover, the Union's argument regarding uniform and equipment changes being initially provided by the Employer, is well taken. However, the total increase in Uniform Allowance requested by the Union, when coupled with its request initial purchases of uniform and equipment changes be borne by the Township, is high. Accordingly, the Fact-Finder recommends the following language be incorporated into the Parties' Labor Agreement:

- (a) On or about April 1, 2008, each officer will receive \$725.00 for uniform purchase and/or maintenance.
- (b) On or about April 1, 2009, each officer will receive \$750.00 for uniform purchase and/or maintenance.
- (c) On or about April 1, 2010, each officer will receive \$775.00 for uniform purchase and/or maintenance.

In the event an item of any designated uniform/equipment changes, the Employer shall provide the initial issue of that item(s).

### Article 17 — Longevity

The Union argues a Police Officer cannot be easily replaced, and experience not only counts, but is paramount to any Police Department. Longevity, the Union continues, is an invaluable means of maintaining a quality force. Comparing a ten year Officer from Liberty Township with Officers from comparable communities establishes, the Union argues, Liberty Township Officers to be the lowest in terms of Longevity pay. This is the result of the Longevity Formula remaining unchanged for many years. The Union proposes an increase from \$4.00 to \$6.00 per month, per year.

The Township contends the Union's proposal is an additional level of compensation to Bargaining Unit Members to compensate for out-of-pocket costs associated with their Health Insurance co-pay. Funds are not available for such an increase, the Township continues, and other Township Bargaining Units have the same \$4.00 per month Longevity Formula, and internal parity should be maintained. The Employer rejects the Union's proposal and requests the current Longevity Formula be maintained.

## RECOMMENDATION

In the view of the Fact-Finder, evidence in the form of external comparables does not justify an increase to this Bargaining Unit not enjoyed by the Township's other Bargaining Units. That is, internal comparables should be maintained.

The Fact-Finder recommends the current Longevity Formula be maintained.

## Article 12 — Holidays

The Union requests two additional holidays per year, noting the Township relies on the Ohio Revised Code which provides for ten. This is a "bare bones" minimum, and, the Union points out, the Police Department is a twenty-four hours per day, seven days per week operation, and the two additional days per year will offset the Township's proffered Health Care Insurance co-pay increase. Moreover, comparables, the Union concludes, establish this Bargaining Unit to be at the low end of holidays per year.

The Township emphasizes it has a unified holiday schedule for all its Bargaining Units, and this Bargaining Unit, in addition to its holidays, has provisions for Personal Days. The Road Department is slightly different, the Township notes, with eight fixed holidays and two floating, but the total holidays per year available to Road Department employees is still ten. The Township requests the current ten holiday per year schedule be maintained.

## RECOMMENDATION

As in the matter of Longevity, the Fact-Finder believes evidence in the form of external comparables does not justify an increase in holidays to this Bargaining Unit thereby providing a number of holidays not enjoyed by the Township's other Bargaining Units. That is, internal comparables should be maintained.

The Fact-Finder recommends the current Holiday Schedule be carried forward into the successor Agreement.

## Article 8 — Wages

A review of comparable communities establishes, the Union states, that the Township Police Department wages are currently below those of other Police Departments. Not only are Township Police Officers below comparable communities in wages, but they are also behind in

holidays and other benefits. The Union requests a 5% wage adjustment for the top pay scale, and a 4% increase per year for 2008, 2009, and 2010.

The Township emphasizes funding for the Police Department is based solely on levy revenues. While the Township has, in the past, drawn from its General Fund, this cannot continue, and, the Township states, it does not want to find itself in the same situation of other communities, that is, facing layoffs or employee give-backs. Moreover, the Township notes, its other Bargaining Units have settled for a 3% wage increase per year. With ever decreasing revenues, the Township concludes, sound fiscal management requires the Township to propose a 3% wage increase per year for the three years of the Labor Agreement.

#### RECOMMENDATION

The Union agreed it wants the Township to survive, and that it does not want layoffs, but points out the Township is now at minimum staffing. However, even at minimum staffing levels, the wage increases requested by the Union, evidence has established, are beyond the means of the Township's current ability to pay. The Fact-Finder recommends, for both Patrolmen and Probationary Officers, a 3% wage increase retroactive to January 1, 2008, a 3% increase on January 1, 2009, and a 3% increase on January 1, 2010.

#### New Article — Firearm Proficiency Pay

Police Officers, the Union stresses, must be able to shoot. The request for Firearm Proficiency Pay doesn't fall into a "me too" category, the Union continues, like numerous other bonuses offered to public employees. Firearm proficiency, the Union believes, is central to what a Police Officer does, and the Township's Officers should be compensated for maintaining that proficiency. Moreover, Firearm Proficiency Pay offsets the low wages received by Township Officers, and, the Union concludes, other municipalities have Firearm Proficiency Pay.

The Township contends Firearm Proficiency Pay is an additional level of compensation to Bargaining Unit Members for their additional out-of-pocket costs associated with the Health Insurance co-pay. A Police Officer must be proficient in the use of firearms, the Township continues, or the Officer is in the wrong profession. The Township rejects the Union's proposal in its entirety.

## RECOMMENDATION

Evidence of record has established Firefighters previously received a paramedic premium rolled into their base pay. Again in keeping with internal comparables, it is the recommendation of the Fact-Finder that the Union's proposal be implemented. That is, each Officer who passes the OPOTA firearm qualification course is to receive \$750.00 annually as Firearm Proficiency Pay.

### Article 9 — Insurance Coverage

The Union argues Police Officers are required to engage in activities the citizenry tends to avoid, and must work in all types of weather. Police Officers, the Union points out, come in close contact with criminals, and are exposed to any and all sickness they might have. Criminals aren't necessarily hygienic, it is emphasized, and some go out of their way to infect arresting officers, including leaning forward while in the back of a squad car and coughing on the Officer through the cage. Their health care coverage, the Union continues, is probably less than the coverage enjoyed by other employees.

The Union has indicated it is cognizant of the difficulties facing Employers regarding Health Care, and adds the Township has a Health Insurance Committee in place that has been successful in addressing Health Care coverage. Moreover, the Union continues, it is satisfied with the current Contract language regarding Health Care coverage, but desires "me too" language be added so its members do not receive less coverage than the coverage provided other Township employees.

The Township points out that at one time its employee Health Care coverage was self-funded, and was costing the Township between \$1 to \$1.2 million. To address rising costs, the Township changed to a fully insured plan through an insurance provider, and a Health Insurance Committee was formulated consisting of various employee organizations, including the OPBA. The Committee has worked to maintain costs on health insurance in order to provide the best possible coverage for the funds available.

Some methods used by the Health Insurance Committee, the Employer states, included modification of the health insurance plan, changing carriers, and alteration of individual/family deductibles. As a result, costs decreased while still maintaining good Health Care coverage. To maintain such coverage, the Township argues, it must continue with one Health Care plan for all

its employees, and the Township recommends the same contract language found in Collective Bargaining Agreements with its other Bargaining Units. This is the same coverage also afforded to non-represented employees. In that its goal is one Health Care plan for all Township employees, the Township agrees to the Union's proposed "me too" language.

**RECOMMENDATION**

There is no question of the problems facing Employers attempting to provide their employees with good, yet affordable, Health Care programs, and, as evidence at the hearing disclosed, the Township has managed to decrease costs while maintaining good coverage. For this coverage to remain affordable, evidence has established, one plan for all employees is needed, and it is the recommendation of the Fact-Finder that the Township's following requested Contract language be implemented:

SECTION 1. The Employer will provide and pay the premium for a life insurance policy for each employee in the amount of thirty-five thousand dollars (\$35,000.00).

SECTION 2. The Employer shall continue to provide full time bargaining unit employees and their eligible dependents, major medical, dental and vision insurance coverage as outlined in Appendix A. Effective upon execution of this Collective Bargaining Agreement and for the duration of this agreement, bargaining unit employees, covered under the employers health insurance plan, as defined in Appendix A, shall pay an employee health insurance contribution (of the total combined cost coverage for major medical; vision and dental) according to the following schedule:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Single:	4% of yearly prem.	6% of yearly prem.	8% of yearly prem.
EE/Dependant(s):	4% of yearly prem.	6% of yearly prem.	8% of yearly prem.
EE/Spouse:	4% of yearly prem.	6% of yearly prem.	8% of yearly prem.
Family:	4% of yearly prem.	6% of yearly prem.	8% of yearly prem.

Payments will be made through by-weekly payroll deductions, calculated as follows:

Yearly health premium (appropriate monthly premium x 12 months) times yearly employee percentage contribution (2008: 4%; 2009: 6%; 2010: 8%) divided by 26 by-weekly pay periods.

(Example: 2008 Family coverage (major medical, dental and vision) is \$1,294.21 per month x 12 months = yearly premium of \$15,530.52; x 2008 percentage of 4% equals \$621.14 ÷ by 26 bi-weekly pay periods equals \$23.89 bi-weekly payroll deduction for employee health insurance contribution.)

Employees may op-out of vision and/or dental coverage to reduce their contribution costs. In addition, employees may elect to op-out of health insurance coverage and receive a monthly stipend as allowed by Township resolution, provided the employee qualifies for the monthly stipend.

For the term of this agreement and not to extend past December 31, 2010, the employee health insurance contribution for "Family" rates shall be capped at \$110.00 per month (\$50.77 bi-weekly payroll deduction).

2008 Contributions:

Single:	\$ 7.66 per pay x 26 pays = \$199.16 per year
Employee/Dependent(s):	\$13.35 per pay x 26 pays = \$347.10 per year

Employee/Spouse: \$16.73 per pay x 26 pays = \$434.98 per year  
Family: \$23.89 per pay x 26 pays = \$621.14 per year

SECTION 3. In the event the yearly cost to provide a Maintenance of Benefits without any decrease in benefits of any kind to the employees, paid by the Employer, to the Health Insurance premiums, increases in excess of twenty-five percent (25%) of the previous year's premiums costs, the Employer may request to re-open the agreement to negotiate premiums by the Employer.

SECTION 4. At least four (4) months prior to the renewal date of the current hospitalization plan, or prior to the re-opener specified in Section 3 of this article, a "Township wide Health Insurance Review Committee" shall be convened by the Board of Trustees to review the current hospitalization plan. This committee shall review the current plan, and shall participate in the preparation of putting out for bids the hospitalization insurance coverage. After the committee's initial year of establishment, the committee shall meet at least quarterly. This committee shall consist of six (6) members from the following:

- One (1) representative from the IAFF
- One (1) representative from the OPBA
- One (1) representative from the Teamsters
- Three (3) representatives appointed by the Board of Trustees

SECTION 5. These committee members shall be selected and/or appointed at the sole discretion of their respective organization. The Chairperson shall be determined from one of the three (3) appointees from the Board of Trustees. The Committee shall, at its first meeting, establish rules and regulations for governing the committee. However, the rules and regulations shall provide that each of the six (6) members shall have one (1) vote and that a majority vote will be controlling. Each representative shall have the opportunity to use any advisor or consultant it deems necessary. The committee will review all bids and will be involved in any and all discussions with proposed carriers when any presentation is made to the Board of Trustees.

SECTION 6. The Township shall provide and pay charges for surgery to improve nearsightedness; farsightedness; and/or astigmatism that change the shape of the cornea. Benefits shall include the facility fee and materials related to surgery. Covered surgeries may include but are limited to excimer laser photorefractive keratectomy, heratomileusis and epikeraoplasty. This benefit is limited to the employee only. Employee dependants are not eligible for this benefit. This a one-time benefit subject to the calendar year deductible with coverage at 80% not to exceed a maximum amount of one thousand six hundred dollars (\$1,600.00) per eye per lifetime by the Township, with any remaining expense or portion thereof to paid by the employee.

SECTION 7. The Township shall provide and pay nine hundred dollars (\$900.00) towards orthodontic appliances for dependants up to the age of eighteen (18) years of age.

It is also the recommendation of the Fact-Finder that the Union's proposed language be added to the Parties' Labor Agreement, to wit:

Members of the Bargaining Unit will not pay higher premiums for health care coverage than any other member/participant of the Liberty Township health care plan. Police Bargaining Unit Members shall have coverage equal to any other member/participant of the Township's health care plan.

#### Article 10 — Compensatory Time Accrual

The Union requests compensatory time be increased from the current two-hundred hours to four-hundred eighty. The Union, pointing to a recent court case which held an employee, regardless of being unable to perform his or her job and being placed on disability separation, cannot be considered terminated in that the employee has two years to return to work. An increase in Comp Time accrual, the Union argues, will serve as a savings to offset the ruling.

The Employer desires the current Contract language remain unchanged. Banking Comp Time, the Employer argues, will present future problems for the Township. If an employee has four-hundred eighty hours Comp Time banked, the Township concludes, it must pay that amount if the employee decides to leave employment with the Township.

#### RECOMMENDATION

While the Union's concerns are legitimate, there is no evidence of such a situation having arisen, and it is more likely the Township will find itself in the situation it fears, that of paying for the additional banked Comp Time in the future.

It is the recommendation of the Fact-Finder that current Contract language be maintained.

#### Article 14 — Sick Pay Buy-Out at Retirement or Disability

The Union requests an increase in the amount an employee is compensated, upon retirement or disability, for unused Sick Leave from 33⅓% to 50%, for employees hired prior to April 1, 1989. For employees hired after April 1, 1989 the Union requests the current cap of nine-hundred sixty hours be removed. The Union contends it is a benefit to the Township when employees do not use sick leave, and employees not using Sick Leave is indicative the employees are not taking advantage of the system. Those employees, upon retirement or disability, the Union concludes, should be compensated for the hours to which they were entitled.

The Employer argues its current Sick Leave buy-out program is sufficient to address the Union's argument. That is, the Employer concludes, under the current system employees not abusing the system are already adequately compensated.

## RECOMMENDATION

It is the opinion of the Fact-Finder that evidence of record is insufficient to justify a change in the current policy of Sick Leave buy-out. Moreover, under the Union's proposal the Township may find itself facing a future Sick Leave buy-out situation it can ill afford.

It is the recommendation of the Fact-Finder that current Contract language be maintained.

## ISSUES OF TENTATIVE AGREEMENT

In addition to the issues at impasse, the Parties have made proposals, concessions, and withdrawal of proposals in the course of bargaining. Tentative Agreement has been reached on the following issues: Sick Leave Bonuses, Residency, Memorandum of Understanding to Supervisors, and the Amendment of Vacation Schedule, all as outlined in Union's Position Statement.

It is recommended that the above identified issues of Tentative Agreement be included in the Parties' contract. It is further recommended the remainder of the Contract—that is, with the exception of the above recommendations pertaining to the issues at impasse and the Tentative Agreements—remain the same as in the immediately preceding Contract.

The Parties also agreed any issues in each of their respective Position Statements not addressed at the hearing be considered withdrawn, and the Fact-Finder so recommends.

Dated: July 7, 2008  
Madison, Lake County, Ohio

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Colman R. Lalka, Fact-Finder