

FACTFINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

2008 AUG 18 P 2: 22

STATE EMPLOYMENT RELATIONS BOARD

August 15, 2008

In the Matter of:

Perrysburg Township Trustees)	
)	Case No. 07-MED-09-0990
and)	Patrol Officers
)	
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the Township:

Gary McBride, Attorney
John G. Hrosko, Administrator
Edward J. Stribny, Police Chief

For the Union:

Marilyn Widman, Legal Counsel
Jeremy Green, Patrol Officer
Bob Weber, Patrol Officer
Guy Pinson, Patrol Officer
Matt Weaver, Patrol Officer

Factfinder:

Nels E. Nelson

BACKGROUND

The instant case involves Perrysburg Township and the Ohio Patrolmen's Benevolent Association. The township is located in Wood County and had a population of around 14,000 in 2000. The Ohio Patrolmen's Benevolent Association represents three bargaining units. The non-command unit consists of 16 patrol officers. The command unit includes five sergeants. The remaining unit consists of the dispatchers. This report involves the patrol officers and a separate report focuses on the sergeants. The dispatchers reached an agreement with the township.

The parties are negotiating a successor agreement to the one that expired December 31, 2007. Pursuant to this, the parties agreed on October 26, 2007, to engage in Interest Based Bargaining and adopted ground rules, including provisions dealing with a transition from IBB to traditional bargaining. Between that date and February 15, 2008, the township held numerous joint and separate IBB bargaining sessions with the patrol officers' and sergeants' bargaining units. However, on February 15, 2008, the union notified the township that it wished to transition to traditional bargaining.

The parties continued negotiations using the traditional bargaining process. After several meetings, the township and sergeants reached a tentative agreement. However, on March 14, 2008, the union informed the township that the sergeants' unit had rejected the 12-hour work schedule, which was an important element of the agreement. Since the revised work schedule would have to be implemented in both units, the parties declared impasse.

The Factfinder was notified of his appointment on April 29, 2008. The hearing was held on June 13, 2008. The parties subsequently agreed that the report should be issued on August 15, 2008.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) The interest and welfare of the public, and 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted seven issues to the Factfinder. For each issue, he will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. The Factfinder will then offer his analysis, followed by his recommendation.

1) Article 25 - Vacations, Section 25.1 - Vacation Schedule - The current contract provides for 160 hours of vacation for 13 through 21 years of service; 200 hours for 22 through 25 years of service; and 240 hours for more than 25 years of

service. The union proposes changes to the schedule so that patrol officers receive 160 hours for 13 through 18 years of service; 200 hours for 19 through 24 years; and 240 hours starting with 25 years of service. The township opposes any change in the vacation schedule.

Union Position - The union argues that its demand ought to be adopted. It points out that the first two increases in vacation entitlement come after six years of service but the next increase requires nine more years of service. The union notes that its demand will not be a burden because it affects only two employees. It suggests that the current promise of six weeks of vacation after 26 years of service is not very meaningful because police officers can retire after 25 years of service.

Township Position - The township argues that the union's demand should be denied. It observes that all of its bargaining units have the same vacation schedule, including the sergeants, who just gained a sixth week of vacation. The township reports that the dispatchers and firefighters settled their contracts without any changes in their vacation schedules.

The township contends that vacations in comparable departments support its position. It indicates that in eight of the departments for which the union provided information, patrol officers do not receive six weeks of vacation. It adds that in two other nearby departments, which were not included in the union's data, employees do not receive six weeks of vacation.

The township maintains that in other departments the thresholds to attain additional vacation are equal to or greater than in Perrysburg Township. It reports that patrol officers earn a fourth week of vacation after 18 years of service in only one of the 13

nearby departments. The township emphasizes that only five of the area departments have both six weeks of vacation and more generous thresholds. It states, however, that those departments have lower pay and benefits. The township notes that one of those departments, the City of Perrysburg, pays its patrolmen 1½ % less after six years than it pays after three years.

Analysis - The Factfinder cannot recommend the improvement in the vacation schedule sought by the union. First, the data for nearby departments provided by the township and the union indicate that the union currently enjoys a vacation schedule that is comparable to other departments. Second, if the union's demand were accepted, it would create a disparity in the department and the township. Finally, the union cannot argue that an improvement in the vacation schedule must be made to make up for inferior wages and benefits.

Recommendation - The Factfinder recommends no change in the current contract language.

2) Article 28 - Training & Education, Section 28.4 - Meal

Reimbursement - The current contract establishes a maximum reimbursement for meals of \$25 per day for overnight travel. The union seeks to set the reimbursement equal to the IRS rate for the location involved. The township offers to increase the maximum to \$30 per day.

Union Position - The union argues that its demand is reasonable. It points out that the township has long accepted the IRS rate for mileage. The union claims that

“the IRS-determined rate for reimbursement of meals is a legitimate guideline in the same way the IRS-determined mileage rate.” (Union Pre-Hearing Statement, page 4)

Township Position - The township argues that its proposal should be recommended. It indicates that during IBB the parties discussed raising the meal maximum to \$40 or \$50 per day but never considered using the IRS rates. The township notes that the Ottawa Sheriff's Department has a maximum of \$35 per day and the other departments refer to city policies. The township states that only the City of Perrysburg refers to federal per diem rates. It adds that other bargaining units in the city have \$25 per day maximums.

The township suggests that the parties have already bargained over the meal reimbursement. It notes that the meal reimbursement rate is in the article with training and education and that it was settled on December 20, 2007, when it agreed to grant tuition reimbursement of \$750 per year.

Analysis - The Factfinder cannot recommend the use of the IRS rates. The current IRS rates for meals and incidental expenses exceed the current contract amount by a considerable margin in all 12 areas of Ohio included in the General Services Administration data provided by the union.

The Factfinder, however, cannot accept the township's proposal. While the IRS figures may seem somewhat generous, the current maximum appears to fall short of the cost of meals in most Ohio cities. Since the Factfinder does not believe that employees should be forced to subsidize the township, he recommends that the maximum meal reimbursement be increased by \$5 on January 1 of 2008, 2009, and 2010.

Recommendation - The Factfinder recommends the following contract

language:

An employee required to travel over fifty (50) miles from Perrysburg Township to attend a training session, seminar or conference shall be reimbursed of the actual cost of meals not provided when required to work more than eight (8) hours. Reimbursement shall be made for meals, which shall be reasonably priced meals, during the approved travel status upon presentation of receipts. For overnight travel, the amount of meal reimbursement shall not exceed \$30 per day effective January 1, 2008; \$35 per day effective January 1, 2009; and \$40 per day effective January 1, 2010.

3) Article 27 - Wages, Section 27.1 - Detective Stipend - The current

contract states that patrol detectives are to be paid \$10 per day for each day they are subject to being called in. The union proposes increasing the amount to \$13 per day. The township opposes any increase in the stipend.

Union Position - The union argues that its demand should be adopted. It observes that patrol detectives are required to be on "standby call-in" every other week throughout the year. The union states that the stipend is intended to compensate them for the inconvenience of being subject to call-in and to provide some "cushion" for their inability to earn shift differentials and other remuneration, including pay for working on a holiday.

The union states that detective stipends are "all over the board." It observes that in Bryan detectives have the option of working on holidays.

Township Position - The township argues that there is no basis for the union's demand. It claims that the basis for considering an increase in the stipend was eliminated when the 12-hour schedule was rejected. The township points out that the 12-hour schedule would have added 90 hours of straight time and 78 hours of overtime to the

patrolmen's schedules but not to the detectives. The township claims that "it was in that context that the parties first addressed the subject [of increasing the stipend.]" (Township Pre-Hearing Statement, page 13)

The township asserts that comparable departments support its position. It observes that patrol officers who are assigned to work as detectives get no stipends in Fostoria, Lucas County Sheriff's Department, Northwood, City of Perrysburg, and Sylvania. It acknowledges that Oregon provides \$60 per week to detectives subject to call-in; that the Ottawa County Sheriff's Department has a 10.5% pay differential for detectives; and Sylvania has a 2% stipend for detectives. The township claims that no stipend beyond the current \$10 per day for being on call and a three cent per hour payment as in the sergeants' contract would be acceptable.

Analysis - The Factfinder believes that it is appropriate to adjust the stipend. The payment received by the patrol detectives has become a part of their customary compensation. Since the Factfinder is recommending annual wage increases of approximately 3% in the patrol officers' base wage, the detective stipend should be increased by the same percentage.

Recommendation - The Factfinder recommends the following contract language:

Patrol Detectives shall earn additional pay for each day that they are subject to standby call-in status. The amount of the stipend shall be \$10.75 effective January 1, 2008; \$11.50 effective January 1, 2009; and \$12.25 effective January 1, 2010.

4) Article 24 - Holidays, Section 24.3 - Good Friday (New) - Section

24.1 of Article 24 provides for ten eight-hour holidays, not including Good Friday. The

township proposes a new section that adds four hours of holiday pay for Good Friday.

The township opposes the union's demand.

Union Position - The union argues that its demand is justified. It points out that the township's contract with the Teamsters lists ten eight-hour holidays, including Good Friday. The union adds that some other township employees are allowed to leave work at 12 noon on Good Friday with no loss of pay. It indicates that rather than proposing that Good Friday be added to the patrol officers' list of ten holidays, it is proposing that they receive compensation that is equivalent to the time off received by other employees

The union maintains that comparables support its demand. It states that Bryan, Fostoria, Fremont, Lima, Napoleon, Oregon (four hours), Sylvania (four hours), Upper Sandusky, and Wauseon have Good Friday holidays. The union stresses that the Teamsters' contract with the city has a one-half day holiday on Good Friday.

Township Position - The township rejects the union's demand. It complains that the addition of a second single-religion holiday is unnecessary and unwise. The township notes that Good Friday is not a widely observed as a holiday from work and, in particular, is not a state or federal holiday.

The township questions the union's claim that patrol officers should be compensated for being unable to be with their families to celebrate Good Friday. It points out that employees who are not scheduled to work are able to be with their families. The township notes that in any case, Good Friday observances ordinarily take place outside the normal work day.

The township maintains that comparisons support its position. It acknowledges that its list of the ten holidays is “on the low side” of comparable units but stresses that “it is among a wide majority of those units for whom Good Friday is not a recognized holiday.” (Township Pre-Hearing Statement, page 15) The township stresses that the firefighters do not have a Good Friday holiday and that the sergeants are not demanding one.

Analysis - The evidence relating to the union’s demand for four hours of holiday pay for Good Friday is mixed. Comparisons to other employers provide limited support for the union’s demand. The data reveal that only one-third of the police departments in the area have a Good Friday holiday. Furthermore, the fact that state and federal employees do not have such a holiday, suggests that most public employees do not enjoy the benefit the union is seeking.

At the same time, a comparison to the township’s other employees is a different matter. The township’s contract with the Teamster bargaining unit provides for a three-hour holiday on Good Friday. In addition, the testimony at the hearing indicated that some other township employees are allowed to leave work at 12:00 noon on Good Friday with no loss in pay.

The union’s demand is also supported by a comparison to the ten holidays enjoyed by police officers in the township with police officers in other departments and with other bargaining units in the township. With respect to area police departments, the township acknowledges that its police officers have somewhat fewer holidays. In the township, the Teamsters contract lists ten eight-hour holidays and three half-day holidays.

Based on these points, the Factfinder believes that the union's demand should be adopted.

Recommendation - The Factfinder recommends the following contract language:

Full-time employees in the bargaining unit shall receive four (4) hours holiday pay for Good Friday.

5) Article 27 - Wages, Section 27.1 - Wage Increases - The current contract has a salary schedule with seven steps where patrol officers receive a wage increase every six months, reaching a top rate of \$25.88 per hour after three years. The union seeks a 3.1% increase effective January 1, 2008, and 3% increases effective January 1 of 2009 and 2010 plus 75-cent per hour equity adjustments effective January 1 of 2008 and 2009. The township offers a 3% increase effective January 1, 2008; 2.75% effective January 1, 2009; and a 3% increase effective January 1, 2010, and opposes the union's demand for equity increases.

Union Position - The union argues that its demand ought to be recommended. It points out that sergeants earn in excess of \$3.00 per hour more than patrol officers. The union notes that this difference is more than in many surrounding departments. It claims that the patrol officers' and sergeants' job duties are not that different.

The union contends that police officers are entitled to narrow the gap between their wages and the wages of the sergeants. It indicates that the data show that the proportion of the calls handled by the sergeants have declined from 14% in 2006 to 9% in

the first five months of 2008. The union complains that if a sergeant is the first to arrive at a scene, he simply waits until a patrol officer arrives.

The union rejects the township's claim that it is engaging in whipsawing by demanding an equity increase. It reports that although the dispatchers' wages have been tied to patrol officers' rates, the township recently agreed to an equity adjustment for the dispatchers. The union states that it is attempting to do the same for the patrol officers.

The union maintains that the township can afford its wage demands. It points out that between the end of 2000 and the end of 2007 the unencumbered balance for the township's general fund grew from \$9.1 million to \$14.3 million. The union claims that the township's ability to pay its proposed wage increases is shown by its recent construction projects.

Township Position - The township argues that its wage offer is consistent with the increases received by the other bargaining units. It reports that the firefighters received 3% increases in 2008, 2009, and 2010; the dispatchers agreed to increases of 3%, 2.75%, 3%; and the sergeants got raises of 3.1%, 3%, and 3%. The township claims that the 3.1% increase for the sergeants in the first year of their contract was in response to the union's request to round up the wage rate to \$31.00 per hour.

The township contends that its offer is similar to increases in Ohio and, more specifically, in northwest Ohio. It observes that data from State Employment Relations Board show that in 2007 the average wage increase in the Ohio public sector was 2.9%. The township adds that a survey of private and public employers in northwest Ohio done by the Toledo Area Employers Association reported an average 2007 wage increase of 2.2%.

The township maintains that it would be inappropriate to reduce the sergeant's rank differential. It indicates that the differential in area departments ranges from 8% in Upper Sandusky to 15% in the City of Perrysburg. The township states that adding 60 cents per hour to the patrol officers' wages beyond the general wage increase would reduce the differential to 10.5%. It claims that this would mean that only Norwalk, Tiffin, and Upper Sandusky would have smaller differentials.

The township asserts that its starting wage and top wage compare favorably with other departments. It states that in 2007 top pay ranged from \$18.99 per hour in Upper Sandusky to \$25.51 per hour in Sylvania. The township stresses that the general wage increase plus 60-cent per hour equity adjustments would make its patrol officers the second highest paid in the entire region. It adds that the total income of patrol officers, including overtime and compensatory time, is very high relative to administrative employees and competitive with the firefighters.

The township accuses the union of engaging in "whipsaw negotiations." It claims that if it granted an adjustment to narrow the gap between the patrol officers and sergeants, the sergeants would seek to restore the differential in the next round of negotiations. The township asserts that this would be followed by the patrol officers again seeking to narrow the gap.

The township acknowledges that it has the ability to pay the union's demands. It indicates, however, that while it has a police levy, it is required to take increasing amounts from the general fund for the police department. The township acknowledges that it paid for the current construction with cash from the general fund but indicates that market conditions made it the best option.

Analysis - The Factfinder cannot recommend the union's demand. First, while the Factfinder understands the union's complaint that a comparison of the duties of a police officer and a sergeant does not justify the \$3 per hour difference in the wages, the requested 75-cent per hour equity adjustments result in very large increases in the patrol officers' wages. Since they are already well-compensated, there is no justification for such large increases.

Second, the Factfinder recognized the township's concern about what it terms "whipsawing." If the patrol officers were to succeed in obtaining the equity adjustments reducing the rank differential, in the next round of bargaining the sergeants would be sure to attempt to restore the previously existing differential. This would likely be followed by another attempt by the police officers to reduce the gap between their wages and the sergeants.

The Factfinder must also reject the township's wage offer. First, the township has agreed to grant sergeants a 3.1% effective January 1, 2008, followed by 3% wage increases on January 1, of 2009 and 2010. Since this is less than its offer to the patrol officers, recommending the township's position would only widen the already greater than average rank differential for the sergeants.

Second, SERB data for wage settlements in the Toledo area and the data supplied by the parties for comparable departments, suggest that wage settlements are approximately 3% per year. An increase equal to the average for the area will preserve the existing hierarchy of wages. Given that the township has not claimed an inability to pay the union's demand, there is no reason to see the union's favorable rank among area departments eroded.

Recommendation - The Factfinder recommends the following contract

language:

The wage schedule for 2007 shall be increased 3.1% effective January 1, 2008; 3% January 1, 2009; and 3% January 1, 2010.

6) Article 11- Hours of Work and Overtime, Section 11.5 - Active Pay

Status - The current contract provides that active pay status for purposes of computing overtime includes hours worked, paid sick leave, paid injury leave, bereavement leave, vacation, and holidays. The union wishes to include compensatory time as time in active pay status. The township opposes the union's demand.

Union Position - The union argues that comp time should count as time worked. It claims that employees who receive comp time for working overtime during one week "may be again be subject to working beyond [their] scheduled hours and not being paid overtime." (Union Pre-Hearing Statement, page 8) The union offers as an example the case where "an officer works four of his five scheduled shifts, takes one day off as comp time, and is forced to work a sixth day in the week; the officer would be paid straight time wages for the comp day AND for the sixth day in the work week." (Ibid.)

The union contends that comparable data support its position. It points out that six of ten nearby departments include comp time as hours worked for the purpose of calculating overtime. The union states that under Section 124.382 of the Ohio Revised Code, an employee is for eligible sick leave credit for comp time and notes that the township's previous attorney sent a letter to the township telling it that active pay status includes comp time. It adds that 29 CFR 553.22 defines comp time as "paid time off the

job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required.”

The union offers an alternative proposal. It suggests that active pay status include sick leave, vacation, holidays, and comp time but exclude injury leave and bereavement leave. The union indicates that this would correspond to the situation in Lake Township, Northwood, and Wauseon.

Township Position - The township argues that counting comp time as hours worked is inconsistent with Section 11.5, which prohibits the pyramiding of overtime, and Section 11.4, which bans the use of comp time if it creates additional overtime. It suggests that the union’s position is also contrary to the provisions of the Fair Labor Standards Act.

The township rejects the union’s claim that the ORC requires comp time to be included in calculating an employee’s eligibility for overtime. It acknowledges that Section 124.383 of the ORC and the township’s former attorney indicate that for purposes of sick leave entitlement active pay status includes comp time. The township claims, however, that pursuant to the principle of “expressio unius est exclusio alterius,” comp time is not counted toward eligibility for overtime.

The township contends that the contracts of other departments support its position. It states that in every case where comp time is included in the overtime calculations, other time that it counts as time worked is excluded. The township reports that among the departments that include comp time in the overtime calculations Northwood excludes funeral leave, jury leave, injury leave, and military leave; the Lucas

County Sheriff's Department excludes sick leave; the Ottawa County Sheriff's Department excludes all forms of paid time off; and Toledo excludes "unworked paid time off." It stresses that not one collective bargaining agreement provides all of the time off it counts plus comp time.

Analysis - The Factfinder cannot recommend the union's demand that comp time be counted as hours worked for the purpose of calculating overtime. First, a careful examination of the data for comparable departments does not support the union's demand. While a number of departments do count comp time, those departments exclude from active pay status various kinds of paid time off that is included in active pay status in the township.

Second, the union's demand appears to run contrary to the purpose of comp time. The FLSA allows public employers to offer comp time in lieu of pay for overtime hours. Counting comp time earned in one time period as hours worked in another time period generates additional overtime liability for an employer.

Finally, the data submitted by the township for 2007 indicate that one-half of the 16 police officers earned \$6,696 or more in overtime. Granting the union's demand would increase the patrol officers' overtime and would likely trigger demands by other bargaining units to count comp time as hours worked.

Recommendation - The Factfinder recommends no change in the current contract language.

7) Article 11 - Hours of Work and Overtime, Section 11.4 - Overtime in Short Weeks - The current contract establishes an annual work schedule of 2016

hours, consisting of 44 weeks of 40 hours and eight weeks of 32 hours and requires overtime pay after 40 hours in a workweek. The union proposes that overtime be paid for work beyond 32 hours during those weeks when patrol officers are scheduled for four days of work. The township opposes the union's demand.

Union Position - The union argues that employees are entitled to overtime when they work more hours in a week than they are scheduled to work. It points out that during short weeks employees who are called in to cover a shift vacancy or to appear in court are not paid overtime. The union further complains that employees working a 32-hour week cannot be used on some of the work funded by grants when the grant provides for the work to be done on overtime.

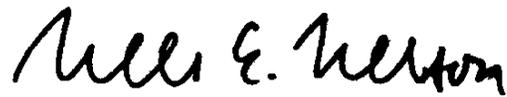
Township Position - The township rejects the union's demand. It states that the patrol officers' unique schedule of periodic 32-hour weeks gives rise to the union's demand for overtime after 32 hours during those weeks. The township indicates that many years ago it agreed to the desires of patrol officers to have an occasional four-day work week so that days off would move and everyone would enjoy the full range of days off. It stresses that no contract provides for overtime after 32 hours.

The township recognizes the union's concern about the ability of patrol officers to work on grants during their short weeks. It offers to permit them to work on grants at time and one-half provided the grant allows for it. The township offers to incorporate this arrangement in a letter of understanding.

Analysis - The Factfinder must deny the union's demand for overtime after 32 hours during a police officer's short week. The 2016-hour annual work year and the eight four-day work weeks enjoyed by the township's police officers may be unique.

This arrangement was apparently agreed to by the township in response to the police officers demand for more time off to be with their families. The union's demand for overtime appears to be an attempt to convert the agreed-upon time off to extra cash and is contrary to the intent of the provision. Furthermore, the demand for overtime after 32 hours of work in a week appears to be a unique demand and must also be denied on that basis.

Recommendation - The Factfinder recommends no change in the current contract language.



Nels E. Nelson
Factfinder

August 15, 2008
Russell Township
Geauga County, Ohio