



STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

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RELATIONS BOARD

In The Matter of Fact Finding Between

2008 MAR 24 A 9: 10

The Ohio Patrolmen's Benevolent Association	}	Case No.(s): 07-MED-10-1075 07-MED-10-1076 07-MED-10-1077
Employee Organization	}	
AND	}	
The City of Sheffield Lake	}	Fact Finding Report Michael King, Fact Finder
Ohio Public Employer	}	

This matter was heard on March 12, 2008, in the City of Sheffield Lake, Ohio.

APPEARANCES:

For The Union:

Kevin Powers, General Counsel  
Ohio Patrolmen's Benevolent Association  
10147 Royalton Road, Suite J  
North Royalton, Ohio 44133

For The Employer:

Sandy Conley, Consultant  
Clemans-Nelson & Associates, Inc.  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319

## **I. Introduction And Background**

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on February 14, 2008. As Fact Finder the undersigned was tasked to issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a Collective Bargaining Agreement (CBA) to succeed the CBA that expired December 31, 2007.

The certified bargaining units include the following:

Bargaining Unit A	Sergeants (5)
Bargaining Unit B	Patrol Officers (4)
Bargaining Unit C	Dispatchers (4)

Prior to the hearing the parties submitted pre-hearing statements pursuant to SERB Rules.

The Parties identified eight (8) issues at impasse. These were: [1] Overtime and Compensatory time, Article 15, Section 1; [2] Court time, Article 15, Section 4; [3] Officer-In-Charge Pay, Article 15, Section 5; [4] Compensation, Article 26; [5] Uniform Allowances, Article 29, Section 1; [6] Duration of Contract, Article 36; [7] Medical Insurance, Article 28; and [8] Contracting Out (not covered in the expired contract).

## **II. Unresolved Issues**

### **Issue # 1 Overtime And Compensatory Time**

Under the current Article 15, Section 1, employees scheduled to work more than five (5) days in succession receive overtime pay for the sixth or seventh consecutive day. This is done irrespective of whether that day is the beginning of a new workweek.

The employer proposes to change this. Under the employer's plan it would pay overtime if the employee worked "in excess of forty (40) hours during a seven (7) day, one hundred sixty-eight hour work period." In arguing for this change, the employer notes that it is consistent with the Fair Labor Standards Act (FLSA).

Union officials strongly oppose the change, noting "a long history" related to the current language. "In the past the chief would schedule you to work ten (10) days in a row and it wouldn't be overtime," according to Officer Shawn Corr. "He would schedule the last five (5) days of one week, and the first five (5) of the next week. That's why we have" the current contract language.

At work here is an effort by the City to take advantage of a so-called 207(K) exemption to the Fair Labor Standards Act. That exemption allows an employer to set a higher threshold of hours worked before overtime kicks in for certain law enforcement positions. This means the calculation can justifiably be made based on a work period rather than a workweek.

A section of a collective bargaining agreement that is more generous than FLSA is fully enforceable, but a less generous provision would be invalid. The point is that election of a 207(K) exemption, is permissive and not mandatory. Furthermore, it relates to wages and other terms and conditions of employment about which there is a duty to bargain.

Here the parties have bargained on the issue through “a long history” not disputed by either side. Neither party presented any evidence of changed circumstance or other facts or evidence that would justify a change.

Recommendation:

No change.

#### Issue #2      Court Time

Under Article 13, Section 4 of the expired CBA, employees called in to work for court appearances are compensated for a minimum of four (4) hours. In March 2003, the police chief issued a memorandum modifying the court time minimums. Under the chief’s policy, officers could only receive the full four (4) hours pay for court time if they reported to the station prior to or after court. Upon reporting to the station officers could transport prisoners or handle paper work.

The Union acknowledges that the chief modified the way court time is handled with the union’s oral consent. The parties disagree, however, on whether the modification was to be temporary or permanent.

The union suggests new contract language as follows:

*Employees subpoenaed to any court as a result of their official duties shall receive court pay and shall not be required to perform additional duties prior to or after the court appearance.*

According to the union the proposed change would recapture the CBA’s original intent, as well as assuring that officers are compensated for court time to other jurisdictions.

The City agrees that clarification with respect to court appearances in other jurisdictions may be justified, but the city opposes further changes. It argues that the requested change isn't appropriate, and that its policy is already more generous than comparable jurisdictions. The City says those comparable jurisdictions provide an average of less than three (3) hours for court time. Sheffield Lake's current policy is four (4) hours for court time if the officer reports for further duty and two (2) hours if the officer doesn't report.

Moreover, the City notes, this issue was addressed in the Fact Finding prior to the last contract. At that time Fact Finder Jonathan Dworkin declined to recommend change in the CBA, concluding:

*The Chief's memorandum has influenced overtime rights for more than two years of the last Agreement's three-year term. It was either a legitimate exercise of Management Rights or a violation of employee rights. If it breached a privilege of employment, it should have been grieved.*

**Recommendation:**

The existing contract language shall be modified only so much as is necessary to clarify the issue of appearances in other court jurisdictions. The revised Article 15, Section 4, should read as follows:

*Whenever approved by the immediate supervisor, employees called into work, attending a department meeting, or when employees are subpoenaed to any court as a result of their official duties when the employee is not on duty, the employee shall be compensated not less than four (4) hours subject to the method in which compensation is to be received as set forth within Section 1 of this article.*

**Issue # 3      Office-In-Charge Pay, Article 15, Section 5**

Under the CBA, a patrol officer designated to perform duties of a higher ranking officer for more than two (2) consecutive hours is paid at the entry-level rate for the higher position. In Sheffield Lake's police department, one or more of the four (4) patrol officers often is called upon to fill-in for one or more of the five (5) sergeants. The city has two pay rates for sergeants, with the higher pay rate being achieved after one year.

The union seeks modification of the CBA to provide that a patrol officer who temporarily handles sergeant's work is paid at the top rate for sergeants. They argue that they are well familiar with the sergeant's task, regularly perform those tasks, and that there isn't a justification for payment at the lower rate.

City officials counter that patrol officers doing temporary officer-in-charge duties have only a fraction of the sergeant's duties. Also there is a learning curve to become proficient in the full array of sergeant's duties. Therefore, the City opposes any change with respect to office-in-charge pay.

**Recommendation:**

No Change.

**Issue # 4 Compensation**

Members of the bargaining unit believe they are underpaid when compared to firefighters in the same jurisdiction, and to police in comparable jurisdictions. They note 2007 total earnings for a Sheffield Lake Police Patrol Officer averaged \$50,853, compared to \$65,385 for a Sheffield Lake Firefighter. Police sergeants in the jurisdictions received average total earnings of \$57,085, compared to \$85,791 for firefighters.

The Union also offered comparisons with other jurisdictions including Amherst, Avon, Avon Lake North Ridgeville and Oberlin. On average base wages for some of those communities were more than 10% higher than Sheffield Lake, and wage increases in those communities for 2008 and 2009 ranged from 2.75% to 4%.

Union officials say this amounts to a wage gap that must be closed, and that Sheffield Lake is more than capable of closing it. In support of the latter point, the Union offers evidence that in seven years the City's average monthly fund balance hasn't fallen below \$678,956.

The Union suggests the following change to Article 26, Section 1:

*Wages for bargaining unit employees shall be as set forth in A (Attached). General wage increases for the contract term are as follows (top rate for each classification): Effective January 1, 2008 -- 8%; Effective January 1, 2009 -- 8%; Effective January 1, 2010 -- 8%. Sergeants shall be paid 10% more than the top patrol rate.*

The employer dismisses the Union's proposal as unreasonable, and proposes annual increases of 2.5% prospectively for 2008, and an additional 2.5% in 2009 and again in 2010.

According to City officials, the union misunderstands the funds balance. Some of those funds are restricted and aren't available for discretionary use. Lorain County has been hit very hard by the home foreclosure crisis, making the timing and exact amount of property tax revenues uncertain. Finally, the city argues that it shouldn't be compared to more affluent jurisdictions in Lorain County. It believes comparable Ohio jurisdictions would include Struthers, Girard, Campbell and Hubbard.

Sheffield Lake insists it isn't claiming an inability to pay. Instead, it says paying the increases sought by the union would be unwise public policy. The City also maintains that it currently is paying a proper market rate. Proof of this is that the City doesn't have a problem retaining members of the bargaining unit. Also, the City says it needs to be able to budget wage increases. For that reason it believes that increases in the first year of the contract should be prospective, rather than retroactive.

**Recommendation:**

Considering all of the economic issues discussed, and closely reviewing all of the exhibits and evidence, I recommend the following across the board increases: 2008 – 4.2% paid prospectively; 2009 – 3.25%; 2010 – 3.15%. The increase for 2008 would be calculated into salaries commencing in the first full pay period after ratification of the contract by both parties.

**Issue # 5      Uniform Allowance**

Under Article 29 of the CBA bargaining unit members receive an annual uniform allowance of \$650. Neither party is satisfied with this provision in its current form.

The union proposes to modify Article 29, Section 1 as follows:

*All employees covered by this Agreement shall receive uniform allowances of \$750 in 2008; \$850 in 2009; and \$950 in 2010 and thereafter.*

The City of Sheffield Lake proposes to essentially abolish the uniform allowance, and replace it with a plan for reimbursement of uniform expenses up to \$650 annually. It proposes the following contract language:

*All employees provided for in this agreement shall receive a uniform allowance in an amount not to exceed six hundred fifty dollars each year. Upon return of damaged or worn items (s) to the Chief of Police/designee, the uniform items shall be replaced or reimbursed as applicable, not to exceed the annual maximum amount.*

Union official Shawn Corr stated that the uniform allowance has stood at the current rate for eleven (11) years. Meanwhile clothing and equipment prices have risen steadily, especially for larger sized clothing items. The result, the union insists, is that a substantial increase in the uniform allowance is necessary.

The City disagreed with the union's conclusion, but didn't contest the underlying assertions. Instead, the City argues that its single-tier uniform allowance is overly generous when compared to a peer group. The peer group of jurisdictions provides a different allowance rate for patrol officers and for dispatchers. The City states, and the union agrees, that dispatchers don't have to purchase all of the same uniform and equipment items that patrol officers must purchase.

As part of its argument, the City offered the following peer comparisons for uniform allowances:

Jurisdiction	Patrol	Dispatch
Avon	850	550
Bellevue	800	450
Campbell	850	--
Girard	800	600
Hubbard	655	--
Oberlin	750	--
Sheffield Lake	650	650

**Recommendation:**

The overall uniform allowance should be increased, but a lower rate should apply for dispatchers. Article 29, Section 1 of the CBA, shall be adjusted to read as follows:

*Other than dispatchers, employees covered by this Agreement shall receive uniform allowances of \$710 in 2008; \$760 in 2009; and \$810 in 2010. Dispatchers shall receive an annual uniform allowance of \$675.*

**Issue # 6      Contract Duration**

The union proposes to change Article 36, Section 1 to read as follows:

*This agreement shall be in full force and effect beginning 1/1/08 to and including 12/31/10.*

The employer proposes that the agreement commence upon ratification by both parties or upon the date of issuance of a conciliator's award, if applicable, and that it expire on December 31, 2008.

**Recommendation:**

I recommend that the agreement be effective from January 1, 2008, until December 31, 2010, subject to the prospective calculation of wage increases during 2008.

Issue # 7      Medical Insurance

The Union seeks a change in the CBA with respect to medical insurance costs. Under the expired CBA the City paid 90% of the monthly cost of health insurance with the employee paying the balance. In addition, in 2007 the CBA capped the monthly employee contribution at \$52.50 for single coverage and \$105 for family coverage.

The Union proposes the following language:

*Article 28, Section 2: The Employer agrees to pay ninety percent (90) percent of the monthly cost for those bargaining unit employees who elect to receive health care coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following: January 1, 2008 through December 31, 2010, \$47.50 Single Coverage, and \$100 Family Coverage.*

The proposed changes are identical to the provision on medical insurance contained in the City's contract with Firefighters. That contract runs from January 1, 2008, through December 31, 2010.

The City objects to the proposed change. "The union did not submit a specific proposal on the issue until their March 11<sup>th</sup> Fact Finding Submission Statement," the City complained. "The union's January 22, 2008, proposal contained only the following statement: *Reduce Employee Premium Contributions.*"

Sheffield Lake's complaint appears to be that this may not have been an issue at impasse because there wasn't serious bargaining. Further, the argument goes, it would be unfair surprise to allow consideration of these specific numbers at a Fact Finding hearing if they hadn't been previously disclosed.

Yet further inquiry reveals that the parties did in fact discuss in some form the numbers proposed. "We offered what (Firefighters) got, but (Police) weren't willing to take the whole package," the City's representative stated.

**Recommendation:**

The language as proposed by the Union shall be added to the Collective Bargaining Agreement.

Issue # 8 Contracting Out

The Union recommends that a new article be added to the CBA limiting the right of the city to contract out work that would otherwise be done by the bargaining unit. Specifically the Union suggests this language:

*The City hereby agrees to meet and confer with the Union prior to awarding a subcontract for any work which would, in the normal course of City business, be performed by the Union. The extent of the work so subcontracted shall not cause: 1. Lack of work for full-time bargaining unit employees; 2. The elimination of regular overtime for full-time bargaining unit employees; 3. Any full-time bargaining unit employees to be laid off.*

The language offered is identical to Article 39 of the Agreement Between The City of Sheffield lake And The Sheffield Lake Professional Fire Fighters. Similar language is contained in at least one other contract between the city and its employees.

Nonetheless, the City objects to inclusion of this language in the police contract. The city insists that contracting out work is an inherent management right, and that it is not obligated to bargain on the issue. The city takes this position even though it bargains with other unions on this issue.

**RECOMMENDATION:**

The language proposed by the union shall be added to the CBA as a new article designated Article 35A.



Michael King  
Appointed Fact Finder

Date: March 20, 2008

**Appendix A**

**Participants**

**Shawn Corr**  
**Patrolmen's Representative**

**Mark Zgodzinski**  
**Dispatcher's Representative**

**Jim Mariner**  
**Sergeant's Representative**

**David Graves**  
**Sheffield Lake Law Director**

**Tammy Smith**  
**Sheffield Lake Finance Director**

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RELATIONS BOARD

**Michael L. King**  
Arbitrator  
31524 Schwartz Road  
Westlake, Ohio 44145  
440-617-9213  
[michaelruler@hotmail.com](mailto:michaelruler@hotmail.com)

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March 20, 2008

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

RE: Case No. 07-MED-10-1075; 07-MED-10-1076; 07-MED-10-1077  
Ohio Patrolmen's Benevolent Association and City of Sheffield Lake

Dear Mr. Turner:

Fact Finding in the above-referenced matter has been concluded and a report is enclosed.

Please do keep me in mind as other fact-finding appointments are made.

Thank you,

  
Michael L. King

Enclosure: