

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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JANUARY 2, 2009

In the matter of the Fact-Finding Between

THE CITY OF VANDALIA)	Case No.	08-MED-06-0689
)		
and)		
)		
OHIO PARTOLMEN'S BENEVOLENT)	Sergeants	
ASSOCIATION)		

APPEARANCES

For the City

Daniel G. Rosenthal	Attorney, Denlinger, Rosenthal & Greenberg
Douglas Knight	Chief of Police, City of Vandalia
Julie Trick	Assistant to the City Manager, City of Vandalia

For the Union

Joseph M. Hegedus	Attorney for OPBA
Scott Breisch	Sergeant, OPBA Local Representative
Ken Poff	Sergeant, OPBA Local Representative

Fact-Finder

John P. Downs

UNCHANGED ARTICLES

The parties mutually agreed to the following articles as contained in the negotiated Agreement between the City of Vandalia and the Ohio Patrolmen's Benevolent Association Sergeants effective January 2, 2009, through December 31, 2011, shall remain unchanged and be continued in their present form:

Preamble

Article 1	Purpose – Cooperation 1.01, 1.02
Article 2	Recognition only 2.06
Article 3	Management Rights & Responsibilities 3.01
Article 4	Prohibition of Strikes & Lockouts 4.01, 4.02, 4.03
Article 5	Dues Deduction 5.01, 5.02, 5.03
Article 6	Union Business 6.01, 6.02, 6.03, 6.04, 6.05
Article 7	Disciplinary Action & Appeals 7.01, 7.04
Article 8	Grievance Procedure 8.01 except last sentence, 8.02 except step 2, 8.03, 8.04, 8.05
Article 9	Arbitration 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07
Article 10	Holidays 10.01, 10.02, 10.03
Article 11	Vacation 11.01, 11.02A (except B), C OK, D OK, 11.03
Article 12	Sick Leave 12.01, 12.02, 12.03, 12.04, 12.05, 12.06, 12.07
Article 13	Injury Leave 13.01, 13.02, 13.03, 13.04, 13.05
Article 14	Other Leaves of Absence with Pay 14.01, 14.02, 14.03, 14.04, 14.05
Article 15	Health & Welfare Plan 15.01, 15.02, 15.03, 15.04, 15.05
Article 16	Overtime 16.01
Article 17	Other Compensated Time 17.01, 17.02, 17.03
Article 18	Uniforms 18.01, 18.02
Article 19	Recreational Use Benefits 19.01, 19.02
Article 20	Compensation 20.03 Shift Differential
Article 21	Layoffs 21.01 A & B
Article 22	Bulletin Boards 22.01, 22.02
Article 23	Effect of Law 23.01
Article 24	Training & Tuition Reimbursement 24.01, 24.02, 24.03
Article 25	Waiver 25.01
Article 26	Union/Management Committee 26.01
Article 27	Posting of Vacancies
Article 28	Termination 28.01 3 years effective January 2, 2009

UNRESOLVED ISSUES

Article 2	Recognition
Article 7	Disciplinary Action & Appeals
Article 8	Grievance Procedure
Article 11	Vacation Leave
Article 16	Overtime
Article 17	Other Compensated Time

INTRODUCTION

This case involves the fact-finding between the City of Vandalia, Ohio (City) and Ohio Patrolmen's Benevolent Association (Union). The unit under Case No. 08-MED-06-0689 is made up of six (6) full time Sergeants.

A current collective bargaining agreement between the parties is in place for City Patrol Officers. There is no contract for Sergeants and this will be a first time contract. Negotiations for an agreement began prior to and continued until the fact finder was appointed by SERB on September 8, 2008. Per Ohio Administrative Rule 4117-9-05 (G) both parties agreed to an extension of the fact finding to begin on November 21, 1008.

Both parties prior to fact finding agreed to and held mediations. The parties reached a tentative agreement which was rejected by the bargaining unit 3 – 3. On November 21, 2008, fact finding commenced at which time the parties were given full opportunity to present their respective positions on the issues. The fact finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (1) Past collectively bargained agreements, if any, between the parties;
- (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;
- (3) The interest 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ARTICLE 2 RECOGNITION

Union's Position

The Union proposes recognition as a result of SERB's voluntary recognition and certification in this case. That the Union is the exclusive negotiating spokesman with regard to wages, hours, fringe benefits and agreed to working conditions of full-time employees except probationary employees in this bargaining unit, as Police Sergeants. The unit pointed out in exhibit 15 page 10 that the City is capable of funding this bargaining unit based upon their credit rating and adequacy of resources available for contingencies.

The Union is asking for contract language in order to protect its employees should the City desire to change conditions such as working conditions.

Their position is the tentative agreement reached was only that, tentative and was rejected by the entire unit. Under 4117 of the Ohio Revised Code the entire body must approve the agreement which it did not do, since it felt the City was retaliating.

It was testified to that the City policy of 6/3 schedule was thirty (30) years old. But the City got 5/2 schedule in the Patrolman's contract which equals 2080 hours a year. The 6/3 equals an 8.5 hour day which equals 2068 hours a year. The Union asks for a 40 hours work week equaling 2080 hours a year. Sergeants assigned to pretrial including relief Sergeant worked 6/3 schedule with 8.75 hours, .5 hour prior to roll call and .25 hour after the shift for paper work and review with no equity adjustment pay back of hours.

City's Position

The City's position is to take the tentative agreement that was rejected by the Union. They referenced Arbitrator Whitley McCoy who noted that the function of an interested arbitrator, "the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?"

The City also referenced Arbitrator Kirkman in City of Oshkosh Decision 1988, "when considering the reasonableness of language reached in a tentative agreement which was rejected by one of the parties, the committee has found the proposal to be reasonable it would seem to follow that the arbitrator should find the proposal is reasonable as well.", Lincoln County 1988.

Also cited was Franklin County Sheriff fact finder Stein, "the parties reached tentative agreement in all issues; the bargaining unit rejected it. The fact finder recommended the tentative agreement stating the rejection of the tentative agreement does considerable damage to the trust placed in the negotiation process, the union carries a burden of demonstrating why the fact finder should render a decision on issues the parties themselves once agreed to."

The City's position on scheduling is to place the Sergeants on a 5/2 schedule instead of the 6/3 schedule they have been on for many years. The City in the past has paid the equity adjustment. The City pointed out it desired to have the supervisors work the same schedule as the people they supervise 5/2.

RECOMMENDATION

This fact finder has reviewed both arguments concerning the tentative agreement made by the parties.

The City has requested I follow the tentative agreement and references several prior fact finding cases, which I have reviewed. Their position, it appears, is this was agreed to through the negotiation process.

On the other side the Union takes the position the tentative agreement which their negotiating team agreed to was rejected by the entire unit (3 – 3). Therefore, there is no agreement (Ref. Hancock Sheriff 19 OPER (LRP) p. 1726 (July 24, 2002)). SERB also held that rejection of the tentative agreement does not constitute bad-faith bargaining. Therefore, I reject the City of Vandalia's request to accept the tentative agreement made between the parties prior to the fact finding process and the Union has the right to proceed in fact finding with any current disputed issues. With regards to the recognition Article 2.01 it shall read as follows:

ARTICLE II RECOGNITION

2.01 As the result of voluntary recognition and SERB certification in Case Number 08-REP-04-0066, the City recognizes the Union as the certified employee organization and the exclusive negotiating spokesman with respect to wages, hours, fringe benefits and agreed-to working condition of full-time employees (excluding probationary employees) in the bargaining unit covered by this agreement in the Vandalia Division of Policy in the following classification:

Police Sergeant

A full-time employee is one who works a regular workweek, which is normally 40 hours, or on an annualized basis, 2080 hours.

2.02

Union's Position

The Union is requesting a 6/3 schedule with an 8.75 hour work day. One half hour prior to the shift for roll call for preparation and conducting and one-quarter hour after the shift for paperwork review. There is no equity adjustment (payback of hours).

City's Position

The City proposes a 5/2 schedule the same as the Patrolmen work. They want the supervisors, Sergeants, to work the same schedule as the Patrolmen.

RECOMMENDATION

While I understand the concern the Sergeants have to perform their duties to the best of their ability, they need to work the hours of the people they supervise. While the argument of the Union for a 6/3 schedule is strong due to testimony of the Sergeants who stated this was approximately a 30 year practice, I feel the City must be able to assign the Sergeants as they see fit to use them.

As to time worked before the shift and after for roll call and paper work, these officers should be compensated under the Fair Labor Standards Act, if the City requires these Sergeants to work the time.

The following articles should read as follows:

2.03 No employee covered by the provisions of this agreement shall be required as a condition of employment, to acquire and/or maintain membership in the Union.

2.04 There shall be no discrimination by the City or the Union against any employee on the basis of such employee's membership or non-membership in the Union.

2.05 The Union recognizes the City Council of the City as the elected representatives of the citizens of the City of Vandalia, and the City Manager as the appointed Chief Executive Officer and Chief Negotiating Spokesman of the City of Vandalia, Ohio. The City Manager may designate another person as the City's Chief Negotiating Spokesperson.

2.07

City's Position

The City asked for Command Responsibility of the Sergeants to assist management of the department. This would appear to be an understanding between the parties. Secondly the City asks that the Sergeants take no action inconsistent with their responsibilities and cooperate fully with the City to help formulate policies to be carried out.

RECOMMENDATION

Here again it should be understood or in a position description that discipline could be imposed if these duties are not carried out. Therefore, I do not see the need for article 2.07 as echoed by the Union.

ARTICLE 7 DISCIPLINARY ACTION AND APPEALS

7.02

City's Position

Concerning written warnings given an employee, the City has proposed the warning and an employee's written comments attached should remain in the file for 24 months from the date of issuance. If an employee desires to have a warning removed he or she shall notify the Chief of Police in writing after the expiration of the 24 month period.

Union's Position

The Union has proposed 18 months for both time periods.

RECOMMENDATION

I recommend the Union's proposal of 18 months for both time periods.

7.03

City's Position

The City is proposing that disciplinary actions other than criminal shall be conducted within 60 days for the involved employee from the date the supervisor had knowledge of the incident.

Union's Position

The Union is proposing 30 days instead of 60 days to have the disciplinary action taken by the City.

RECOMMENDATION

While 60 days is a considerable time and thirty days is far shorter, I am recommending 45 days.

ARTICLE 8 GRIEVANCE PROCEDURE

8.01 Grievance defined

City's Position

The City's position is grievances involving disciplinary action shall be subject to the same review as available to Patrol Officers, including any changes in that process.

Union's Position

The Union's position is grievances are limited to matters of interpretation or application of expressed provisions of the agreement, including wages, benefits and working conditions. Grievances involving disciplinary action shall be handled in accordance with Article VII (Disciplinary Action & Appeals) of the agreement.

RECOMMENDATION

Grievances involving disciplinary suspensions, demotions or discharges will be subject to the grievance and arbitration procedure.

8.02 Notification Step 2

City's Position

The City states that in matters that are covered by the City Charter as being within the jurisdiction of the Civil Service Board may be appealed to the Civil Service Board. Notice of appeal either can be to the Civil Service Board or to arbitration, etc.

Union's Position

The Union states that grievances that are unresolved may be submitted to arbitration as provided in the contract and appeals to the arbitration, etc.

RECOMMENDATION

I recommend that all matters concerning the contract either interpretations, administrative, or discipline shall be through the grievance process outlined through arbitration, not the Civil Service Board.

ARTICLE 11 VACATION LEAVE

11.02 B

Union's Position

The Union is requesting the use of 16 hours vacation under the Article Holidays (Personal Days) which is the same as the patrolman's contract.

City's Position

The City's position is even though the patrolmen are currently receiving this benefit it is not workable.

RECOMMENDATION

The City is in the best position to determine what is best for the City and its residents. Therefore, I recommend this practice not be part of this contract.

ARTICLE 16 OVERTIME

16.02 Definition of Overtime

Union's Position

The Union's position is Sergeants working fifteen (15) minutes prior to shift is overtime and should be compensated at the overtime rate.

City's Position

The City's position is that to earn overtime you must be called in to be eligible.

RECOMMENDATION

If the City requires the Sergeants to be present for duty 15 minutes early the Sergeant shall be paid overtime. If he or she is required to complete paper work after the shift or converse with the new shift supervisor he or she shall be compensated overtime. I, therefore, recommend the tentative agreed to article.

ARTICLE 17 OTHER COMPENSATED TIME

17.04 Additional Training & Departmental Meetings

Union's Position

The Union proposes that if a Sergeant attends training on a scheduled day he/she shall be compensated from the end of his shift to the end of the training/meeting provided the Sergeant remains on duty and is productive between this time and first watch until the supervisor staff meeting commences.

City's Position

The City's position is when the employee is not scheduled to work he/she shall be paid for meetings at time and a half for a minimum of three hours. The union management committee is to recommend to the Chief for preferred area of in-service training.

RECOMMENDATION

I recommend the Union's language on this article.

17.05 Compensatory Time

Paragraphs one and two were agreed to.

For paragraph three:

City's Position

The City proposes different carry over number of days depending upon the schedule of 5/2 or 6/3. They also propose 18 of 26 hours must be applied to equity adjustment (12 hours at OT = 18 hours) and conversion must be done in one adjustment. Employees notify the Chief of their intent.

Union's Position

The Union proposes employees may carry eight hours of compensatory time to the next calendar year. Employees notify the Records supervisor by December 15 of their intent to carry over any compensatory time.

RECOMMENDATION

I recommend the Union's language.

17.06 Equity Adjustment in Hours Worked

Union's Position

If a Sergeant works 15 minutes prior to shift, they receive pay. They also stated that in the past the 12 hour deficit was never repaid to the City for the 6/3 schedule.

City's Position

The City's Position is the tentative agreement. However, they do not want the 15 minutes in the contract.

RECOMMENDATION

I recommend the tentative agreement language with the 15 minutes worked prior to the shift to be paid at time and one half.

ARTICLE 20 COMPENSATION

20.01 2008, 2009, 2010 & 2011 pay schedules.

City's Position

The City's proposal is to follow the tentative agreement which is a 3% lump sum increase effective beginning 2009 and a re opener in 2010 and 2011. Any step increases scheduled for 2009 would occur as scheduled. The City is having a wage study conducted.

Union's Position

The Union's proposal is exhibit #15, Research Bulletins from the Government Finance Officers Association dated September 10, 1990, and Topic Unreserved Fund Balance & Local Government Finance, page 10, paragraph 4. "As a general rule, local government should maintain an amount equal to 5% of annual operating expenditures. This should satisfy some of the credit rating agencies concerns regarding the adequacy of resources available for contingencies." Also contained were statements of revenues, expenditures, and changes in fund balance for the City of Vandalia, Ohio along with revenues, net assets, cash flows, property funds, fiduciary assets, liabilities, and a report, "Notes to Basic Financial Statements for the Year Ending December 31, 2007".

The Union stated that steps A-C were less than what a patrol officer makes.

RECOMMENDATION

I recommend that the Sergeants should make more than the patrol officers. When the City has its wage study completed it could request a re opener. I recommend 3.5 % for January 2009, January 2010, and January 2011.

20.02 Promoted employees (Sergeants)

Union's Position

Their proposal is for Sergeants to serve a six months probationary period including newly hired Sergeants. The Union is also asking for five yearly step increases until the Sergeant reaches step 6 which is the highest step in the classification.

RECOMMENDATION

The language in the tentative contract with the following exceptions: First, the probationary period will be the same for promotion or new hires of six months for Sergeants. Second, the increases stated will not be subject to an automatic wage re opener for 2010 and 2011.

This agreement is effective January 2, 2009, through December 31, 2011.

Both parties have signed the G-11 agreement on retro pay and I recommend November 21, 2008.

TOTALITY OF AGREEMENT

It is recommended that all agreed to articles in the tentative agreement and listed in this report be included in the agreement.

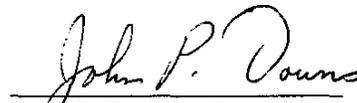
This will affirm the foregoing report, consisting of 12 pages, includes the findings and recommendations set forth in the award by the fact finder.

Any matter presented before the fact finder and specifically addressed in this determination and award were given consideration but are not recommended for inclusion in the agreement.

If there is found conflict in the report between this fact finder's discussion and recommendation, the language in the recommendation shall prevail.

To the best of my knowledge, said report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I, therefore, offer my signature at my address in the county of Pickaway in the State of Ohio this date of January 2, 2009.


John P. Downs, Fact Finder

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

THE CITY OF VANDALIA

V

CASE NO: 08-MED-06-0689

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

was served to the below named parties at the stated addresses

Daniel G. Rosenthal
Denlinger, Rosenthal & Greenberg, Co., LPA
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Joseph M. Hegedus
Ohio Patrolmen's Benevolent Assn.
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Columbus, OH 43235

by U.S. Postal Service mailed, overnight express on January 2, 2009.

Copy of this Award was submitted U.S. Postal Service by First Class Mail to
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on
January 2, 2009

I affirm, to the best of my knowledge that the foregoing is true and accurate and in
keeping with ORC 4117 and related SERB Rules and Regulations.

John P. Downs, Fact Finder: January 2, 2009