

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

2009 APR 24 P 12: 23

STATE EMPLOYMENT RELATIONS BOARD

APRIL 22, 2009

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC

CASE # 08-MED-08-0758

and

JACKSON TOWNSHIP BOARD
OF TRUSTEES

FACT FINDING REPORT

APPEARANCES

For the Union

Charles L. Wilson, Staff Representative
Todd Morris, Union President
Danny Sturia, Union Vice President
Kim Haines, Union Secretary

For the City

Leslie Iams Kuntz, Attorney
Harley Neftzer, Chief
Neal Fitzgerald, Law Director
Marilyn Lyon, Township Administrator

ROBERT M. LUSTIG
Fact Finder
615 Leader Building
526 Superior Avenue, E.
Cleveland, Ohio 44114-1964

Introduction

This fact finding involves the patrol officers (“Officers”) of Jackson Township, Stark County, Ohio represented by the Fraternal Order of Police, Ohio Labor Council (“FOP” or the “Union”) and Jackson Township (the “Township” or the “Employer”). The Agreement between the FOP and the Township expired December 31, 2008.

The undersigned was duly appointed Fact Finder. Eight issues remained unresolved when the fact finding hearing opened on March 31, 2009. The parties engaged in mediation with the Fact Finder, which resulted in agreement being reached on four issues and one issue being withdrawn. The remaining three issues were then presented in the fact finding hearing which commenced following mediation.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, the Union binder on each issue with exhibits and the Township binder with exhibits. The Fact Finder thanks both parties for their professionalism and courtesy.

In reaching the recommendations made in this report, the Fact Finder considered the criteria set forth in Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the

normal standards 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 private employment.

Facts

The current Collective Bargaining Agreement (“CBA”) expired December 31, 2008. The extension of the timelines for fact finding are still in effect.

As to economic issues, the City does not assert an inability to pay as a basis for any of the economic issues but does assert that its positions are based on sound, conservative financial management of the City's finances.

The Police have 40 full-time employees, 31 of whom are patrol officers. The City has entered into an agreement with Firefighters that includes annual raises for 2009-11 but eliminates the pick up of the employees share of the pension contribution for new hires.

With that as background, we turn to the issues that were presented at the fact finding hearing, bearing in mind that the burden of proof is on the party advocating a change.

Issue No. 1 - Article 14 **Mid Term Bargaining**

Union Position:

Amend Article 14 by adding provisions to reopen the CBA for bargaining if the Employer

proposes any changes in wages, hours or terms of employment and provide for fact finding and conciliation in the event of impasse.

Employer Position:

Opposes any changes to current Article 14. The subject is not a matter of mandatory bargaining, it is not necessary and, if implemented, it would create an unending bargaining process.

Discussion

Whether this matter is the subject of mandatory or permissive bargaining, the provision does not appear to be necessary. There is no history of disputes regarding any mid term changes.

Finding

The Union proposal to require mid term bargaining is denied.

Issue No. 2 - Article 16

Overtime

The Union proposal on overtime was withdrawn.

Issue No. 3 - Article 16

Compensatory Time

Union Position:

Add a new Section 5 to Article 16 to provide Officers the ability to waive overtime pay and, instead, to obtain 1 1/2 hours compensatory time for each hour worked in excess of regularly scheduled hours to a maximum of 200 hours.

Employer Position:

Modify an existing Resolution to allow Officers to accumulate up to 40 hours compensatory time.

Comp time was eliminated from the CBA in 1996 when the Employer paid each bargaining unit member \$2,000 in exchange for the right to comp time. Two years later, the Employer instituted a limited comp time program by Resolution reserving the unilateral right to amend or modify the plan. The program was modified in 2003 to comply with the Fair Labor Standards Act.

No other bargaining unit in the Township has comp time. The current comp time plan allows accumulation of a maximum of 20 hours.

Discussion:

Comp time has been governed by a plan created by Resolution for the past 10 years. No other bargaining unit in the Township has comp time. Consistency in the provisions among the various bargaining unit is one of the criteria referred to in Ohio Administrative Code Section 4117-09-05(2).

Finding:

The Employers plan, as set forth below, is adopted as an appendix to the CBA.

Article 16
Compensatory Time Policy

Purpose:

In order to attempt to reduce the amount of overtime in Jackson Township Police Department, we are adopting the following policy with respect to compensatory time for full time patrol officers. The Board of Trustees specifically reserves the right to unilaterally modify or eliminate this policy, as compensatory time was specifically eliminated during the 1996 contract negotiations. Such elimination of this policy may occur in the event that compensatory time usage does not cut down on the overtime problems in the Jackson Township Police Department or because of other operational concerns.

Implementation Plan:

1. Officers will be permitted to accumulate up to 40 hours

overtime. Compensatory time, like all overtime, will be approved at the time it is earned by a supervisor.

2. An employee who has accrued compensatory time and requests use of the time may be permitted to use the time off within a reasonable period after making the request. Generally, the employee must submit a written request at least two (2) days in advance before using compensatory time. The use of compensatory time will be granted so long as it does not unduly disrupt the operation of the department.
3. A supervisor will be appointed as the manager of compensatory time.
4. Compensatory time will be taken at such time as the Bargaining Unit Member and the Chief or his designee mutually agrees.
5. Monthly, the supervisor in charge of compensatory time shall submit to the Chief of Police a report detailing the use of compensatory time during the previous month. The report will display the officers who used compensatory time, their shift, the part time officer who covered for the absence, if applicable and an approximate amount of costs saved by utilizing compensatory time rather than overtime.

Issue No. 4 - Article 22 **Compensation**

Employer Position:

3% wage increase for each year but eliminate the 9% pension pick up for new hires or 3-2-1% wage increases if the 9% pension pick up is not eliminated for new hires.

The Employer points out that, as a township, it cannot have an income tax and that the police department is funded, in large part, through a property tax levy. It argues that it believes it can succeed in getting the voter to pass a renewal levy but that if it has to ask for more revenue, it will have to go to the voters with a replacement levy which will be much more difficult to get approved.

It further points to diminished funds from the state due to the repeal of personal property taxes, generally declining property values and the current economic situation.

Finally, it points to the fact that the firefighters have accepted this two tier wage in their CBA by eliminating the pension pick up for new hires in the fire department.

Union Position:

3% wage increase for each year.

The Union argues that a two tier system, while it will have minimal impact initially due to the relative youth of Officers as compared to firefighters, such a system will eventually lead to dissension within the department.

It further points to the fact that the police lieutenants got a 9% raise, in exchange for giving up the pension pick up in 2004.

Discussion:

The Township has the burden of proof on this issue.

Its 3-2-1% wage proposal if the pension pick up is not eliminated is not supported by the evidence. The evidence was that there are 68 firefighters and that they are an older group than the 31 patrol officers, so retirements and, hence, new hires are expected in the fire department. At most, three to four new hires are anticipated among the patrol officers over the three year life of the new CBA. The base pay for a new patrol officer will be about \$32,000 so the saving, per officer, will be \$2,880. That might result in a maximum cost reduction of \$10,000 over the three year period of the contract depending on how many retirements occur and when they occur.

Comparing that to the difference in wages for the bargaining unit, a 2% wage increase in 2010 and 1% in 2011 would be 3% of wages (vs the 3-3-3 proposal) over the three year period

against a police department budget of about \$5,500,000. While much evidence was presented as to revenues received by the Township from various sources to provide for the police department budget, no evidence was provided as to what portion of the budget was for wages. However, even if only 50% of the budget is for wages, claiming that failure to obtain relief from the pension pick up in this contract period should bar a 3% across the board increase seems grossly unbalanced.

The fact the lieutenants got a 9% raise in exchange for giving up the pension pick up is not material. Current Officers are not being asked to give up anything so there is no violation of internal consistency.

Retaining parity among the Township's bargaining units is a criteria to be applied under the Ohio Administrative Code. Here, the other bargaining units do not have the pension pick up. There are other bargaining units in Stark County and in surrounding areas that, likewise, do not have the pension pick up.

Two tier systems have become fairly common both in private and in public employment. Frequently the difference is a lower wage scale for new employees.

Finding:

Increase pay 3% in each contract year in each pay grade. Eliminate the 9% pension pick up for new hires.

Contract Language:

Insert a 3% increase in base salaries for each year.

Add a new Section 6 to Article 22 as follows:

Section 6. For bargaining unit members as of December 31, 2008, the Township shall pay nine percent (9%) of the Employee's required contribution to the PERS Fund with the express

understanding between the parties to this Agreement that any increase in the required Employee's contribution percentage to the PERS Fund shall be paid by the Employee and further that the Employees shall not make any claims for lost compensation should the present required 9% Employee contribution rate be reduced. Employees hired after December 31, 2008 shall be solely responsible for payment of the Employee's required contribution to the PERS Fund.

Issue No. 5 & 6 - Article 24
Injury Duty Leave/Light Duty

The parties agreed to adopt the Employer's language in Section 1 and to add the Union's language in a new Section 3. Therefore, Article 24 will now read as follows:

Article 24
Injury Leave

Section 1.

When an Employee is injured or suffers an occupational disease in the line of duty while actually working for the Employer, the Employee will be entitled to injury leave pay for any remaining days within the one hundred twenty (120) day period from the date of the injury. The Employee must file for Workers' Compensation to be eligible for injury leave pay. The Employee shall also be subject to the Workers' Compensation requirements regarding light duty and/or transitional work programs. Injury leave pay shall be the difference between the Employee's regular weekly pay and the amount of weekly compensation (temporary total benefits) the Employee receives from Workers' Compensation.

If the Employer and the Employee agree, the Employee may participate in a workers' compensation wage continuation program. Under this program, the employee will be paid his or her present hourly rate with applicable federal, state, and local withholdings. This entitlement will be reviewed after 520 hours. In order to be eligible for this salary continuation, the Employee must file for and be eligible to receive Workers' Compensation. Wage continuation will be discontinued when you do not provide proper documentation, you return to work, the maximum of 26 weeks has been reached, if a dispute arises regarding the cause or extent of disability, or if you are able to perform light duties available and you refuse.

Section 2.

The Employer shall have the right to require the Employee to have a physical exam by a physician appointed and paid by the Employer resulting in the physician's certification that the Employee is unable to work due to the injury as a Condition precedent to the Employee receiving any benefits under this Section.

Section 3.

A bargaining unit member with the approval of the examining physician and the Chief of Police may return to duty under a light duty status. All benefits provided under this agreement shall accrue to such employee while on the said light duty status provided, however, that such light duty work is available.

Issue No. 7 - Article 39
Extra Duty Employment

The parties agreed to the following language:

Article 39
Extra Jobs

In order to be eligible for extra-duty employment, Officers must be on vacation, personal leave, compensatory time or regular scheduled time off.

When scheduling for extra-duty assignments that are of an ongoing nature, the Chief or his designee shall post the jobs which will be bid in order of departmental seniority (from the date of full time appointment).

Extra duty details that are requested with less than 72 hours notice shall be posted by the Chief or his designee, and will be filled on a first come first serve basis.

Determinations of whether to accept a posting for extra duty employment opportunities shall rest with the Chief.

Issue No. 8 - Appendix
Procedures for Workplace Drug Testing

The parties have agreed to the following language by adding a new subsection f to Section 102 and a new Section 103.

SECTION 102

...

f. Random Testing

SECTION 103
RANDOM TESTING

A percentage equal to 50 percent of our covered driver positions shall be tested for drugs, and a percentage equal to 10 percent of our covered driver positions shall be tested for alcohol annually. Random drug and alcohol testing applies to all bargaining unit employees.

Regulations:

- A. All bargaining unit employees shall be subject to drug and alcohol testing on an unannounced and random basis. A refusal to submit to these tests shall be presumed as a positive test, subjecting the employee to disqualification and discipline, up to and including discharge.
- B. The Township shall administer drug tests equal to 50 percent of covered employees, each calendar year. Considering the number of positive tests, this requirement could be reduced by the Township after two years according to Federal regulations.
- C. The Township must administer alcohol tests equal to 10 percent of covered employees, each calendar year. Considering the number of positive tests, this requirement could be reduced by the Township after two years according to Federal regulations.

- D. Each bargaining unit employee shall be in a pool from which random selection is made. Each employee in the pool shall have an equal chance of selection and shall remain in the pool, even after the employee has been tested.
- E. An employee shall be selected for drug and alcohol testing by a computer software program. This selection process will be accomplished by the drug testing facility.
- F. The random drug and alcohol testing shall be spread through the twelve month period. The random selections should be done quarterly. The selection will occur, by the testing facility at a different time each quarter to insure against predictable selection dates.
- G. The Township shall submit a list of employees to the testing facility subject to random testing. This list shall include the employee's name, driver's license number, and their assigned random drug and alcohol identification number.
- H. The Township will then notify the employee that he/she has been selected for random testing on the morning of the test. The employee shall then report immediately to the testing facility.
- I. If test results are negative, all documentation other than that required by Federal Regulations regarding the testing will be destroyed.
- J. If the test results are verified positive, the MRO will not notify the Township's designated representative of a positive test result until he has first had consultation with the employee. The employee shall be removed from his/her position. The employee, within seventy-two (72) hours of receipt of actual notice from the MRO must request that the split sample be forwarded by the first laboratory to another independent and unrelated DHHS approved laboratory selected from a list approved by the Union for conformity testing of

the presence of a drug. If the second (2nd) test is positive, and the driver wishes to use the rehabilitation option set forth in this policy, the driver or the Union shall reimburse the Township for the cost of the confirmation test before entering the rehabilitation program. If a driver requests that a split sample be tested, then disciplinary action will only take place after the first (1st) laboratory reports a positive finding and the second (2nd) laboratory confirms the presence of the drug. However, the driver will not be permitted to operate a Township vehicle once the first (1st) laboratory reports a positive finding while the second (2nd) test is being performed. Any driver testing positive for drugs or alcohol in any DOT drug test shall be disciplined according to Section 107 with the opportunity for rehabilitation and consultation.

A handwritten signature in black ink, appearing to read "Robert M. Lustig", is written over a horizontal line. The signature is fluid and cursive.

Robert M. Lustig
Fact Finder
Cleveland, Ohio
April 22, 2009

CERTIFICATE OF SERVICE

A copy of the foregoing document was sent, by agreement of the parties, by email and by regular U.S. Mail, postage prepaid, April 22, 2009 to:

Jackson Township
c/o Leslie Iams Kuntz
4775 Munson Street NW
P.O. Box 36963
Canton, Ohio 44735-6963

Fraternal Order of Police
Ohio Labor Council
2721 Manchester Road
Akron, Ohio 44319

Attn: Chuck Wilson

Via Email: likuntz@kwgd.com

Via Email: cwilsonfop@aol.com

and by U.S. mail only to:

SERB
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Attn: Edward E. Turner
Administrator
Bureau of Mediation


Robert M. Lustig

OFFICES OF

ROBERT M. LUSTIG
Attorney - Arbitrator
615 Leader Building
526 Superior Avenue, East
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STATE EMPLOYMENT
RELATIONS BOARD

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ARTHUR F. LUSTIG
ROBERT M. LUSTIG
MATTHEW H. LUCAS
SUSAN M. EVANS

PHILIP LUSTIG (1897-1983)

April 22, 2009

Jackson Township
c/o Leslie Iams Kuntz
4775 Munson Street NW
P.O. Box 36963
Canton, Ohio 44735-6963

Fraternal Order of Police
Ohio Labor Council
2721 Manchester Road
Akron, Ohio 44319

Attn: Chuck Wilson

Via Email: likuntz@kwgd.com

Via Email: cwilsonfop@aol.com

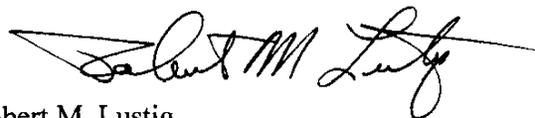
Re: Fraternal Order of Police, Ohio Labor Council, Inc.
and Jackson Township Board of Trustees
SERB Case No. 08-MED-08-0758

Dear Ms. Kuntz and Mr. Wilson:

Enclosed please find my fact finding report in the above matter.

My bill is also enclosed.

Very truly yours,



Robert M. Lustig

RML:aer
Enclosures

cc: SERB

Attn: Edward Turner