

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT
RELATIONS BOARD

2009 NOV -6 P 4: 40

November 2, 2009

In the Matter of the Fact Finding Hearing Between:

WARREN TOWNSHIP BOARD OF)
TRUSTEES)
And) SERB Case No. 08-MED-10-1088
OHIO PATROLMEN'S BENEVOLENT) Patrol Officers, Sergeants and
ASSOCIATION) Investigators

APPEARANCES

For the City:

Robert Burkey, Esq. Attorney
Kay Anderson Trustee
Terry Ambrose Trustee

For the Union:

Jeffery Perry OPBA Representative
Anthony Tvaroch Director
Edward Airhart Alt. Director

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the Warren Township Board of Trustees (the "Township") and the Ohio Patrolmen's Benevolent Association (the "Union" or "OPBA"). The bargaining unit consists of full-time Police Officers, Sergeants and Investigators. There are approximately six (6) employees in the bargaining unit. The terms of the parties' existing collective bargaining agreement expired on December 31, 2008. The parties agreed to continue the terms of the expired agreement until a successor agreement is in place.

The parties held several bargaining sessions and were able to reach agreement on some issues but not all. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed fact-finder in this matter by SERB. A hearing was held on September 3, 2009, at which time the parties accepted the fact-finder's offer to mediate the unresolved issues. The parties reached tentative agreements on several issues. The tentative agreements on all the issues are incorporated by reference in this report and recommended by the fact-finder. The parties have agreed to allow a neutral to grant matters with cost implications effective on/retroactive to January 1, 2009.

A hearing on the remaining unresolved issues was held, and the parties were given full opportunity to present their respective positions. 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 bargaining 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.
7. 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.

UNRESOLVED ISSUES

1. Article 18 – Compensatory Time
2. Article 28 – Compensation and Compensation –Longevity Pay
3. Article 31 – Uniform Allowance
4. Article 32 – Insurance

BACKGROUND

Warren Township is located in Trumbull County. The Township has a population of about 7800, which includes the population of the local prison. The actual residential population is about 6200. According to 2007 data, the median income of the Township is \$38,514 compared to \$46,597 for the state of Ohio.

The Warren Township Police Department is supported by six tax levies. The levies are based on property values and home prices, and the large number of foreclosures and decreases in property values in the Township has negatively impacted the money that is collected from the levies. In November 2009, the renewal of a Police Department levy will be on the ballot. The tax valuation of the levy when it was passed in 2004 was \$108,095,351. The valuation now is \$73,940,053. Revenue for the 2006 calendar year was \$786,266, for 2008 was \$726,087 and for 2009 is projected to be under \$700,000.

UNRESOLVED ISSUES

1. Article 18 – Compensatory Time

Township's Proposal:

This Article provides for compensatory time off in lieu of a cash payment for overtime. Employees bank comp time at a rate of 1.5 hours for each hour of overtime worked. Currently, employees can bank a maximum of 480 hours. The Township argues that the accrual of banked time creates a substantial financial risk to the Township Police District should one or more of its senior employees retire and/or demand payment of the maximum 480 hours banked time together with other accrued buy-out entitlements.

In addition, the language of this Article is unclear as to the rate of payment for accrued comp time. Banked hours may be accrued at a time when the wage rate is lower than the time when payment is being made. The Township proposes to reduce the maximum of accrued compensatory time to 120 hours. All overtime worked in excess of 120 accrued hours will be paid in cash at the regular overtime rate. No additional hours shall be banked until a reduction from the 120 hours maximum has been made.

Union's Proposal:

The Union opposes any reduction in the maximum number of accrued compensatory time. The Union argues that there are not many employees who have accrued large amounts compensatory time. Most employees have less than 120 hours of comp time; it is not accrued as fast as the Township would imply. The Union argues that with the economy not doing so well, buying out the comp time now would not be prudent. The Township is better off allowing the accumulation of comp time and paying it off later when the economy improves.

In addition, compensatory time saves money. Part-time employees, who are paid at a lower rate of pay, are used to cover the compensatory time that full-time employees take. Therefore, the Union recommends keeping the current contract language.

Recommendation:

It is recommended that the parties keep the current contract language. The Township's argument to drastically reduce the number of hours of compensatory time that employees are permitted to accrue is not persuasive.

There does not appear to be much difference between the paying the large amounts of accumulated compensatory time now and paying it a few years from now when these employees retire. In fact, paying it at a later date may be more feasible, if the economy improves. In addition, the Township did not put into evidence any comparables, either internal or external, to show what other Township unions or jurisdictions' police units allow as accrued compensatory hours. Cutting the hours to one-fourth the current amount is very harsh without any evidence or valid justification.

2. **Article 28 – Compensation**

Union's Proposal:

The Union is requesting a wage increase of 2.5% across the board for the Police bargaining unit for each year of the contract. The Union is also requesting an additional 0.25% for the Investigator and Sergeants.

The Union is aware that it is requesting a wage increase during a time when many employees are not receiving wage increases and some have been laid off from their jobs. However, there are no Townships in Trumbull County that have foregone a pay raise this year. In fact, Brookfield Township, in Trumbull County, recently agreed to increase Police Officer salaries by 4%, effective July 1, 2009. In Champion Township, the parties agreed to an increase of 3% in each of the next three years effective in 2009.

Warren Township is doing fine financially. Townships are better able to weather a weak economy than other governmental units. They rely upon levies

rather than more sporadic forms of tax that can vary greatly. Their income should not decrease markedly due to the economy. There is no good reason to deny these proposed wages based upon the Township's present financial position.

The comparables show that this unit is behind other police jurisdictions in the area and has been for a number of years. The result of the Fact-finding of Mr. Greg Van Pelt noted how the unit was underpaid. He noted the need to improve the financial position of the Police Officers in general and the Investigators and Sergeants in particular. Mr. Van Pelt's recommendation resulted in a slightly above wage increase for the present agreement. There is no reason not to receive an above average wage increase this time as well.

In addition, the Union requests that the Township pick up 1% of the employee's portion of OPERS, via the fringe benefit method, each January 1st for the three years of the contract. Most of the townships in Trumbull County pay the full amount of the employee's portion of OPERS. Picking up 1% a year is a good way to gradually increase the net salary of the officers. It is important to continue to move them closer to the wages of other township officers.

Lastly, the Union requests that the shift differential for all hours worked on afternoon and midnight shifts be increased from \$.30 to \$.40 per hours. Shift differential is another common method of increasing wages. At the same time, it helps make up for the negative impact of working the odd shifts required by the job. The amount presently paid is low, while the percentage of officers working second and third shifts is high. In fact, it is 100%.

Township's Proposal:

The Township proposes no increase or decrease be made to compensation. The Township, like other governmental agencies in Trumbull County, is facing tremendous issues with its budget. The Township has a stand alone Police Department financed by the tax revenues from four levies, with one renewal levy up before the voters in the November 2009 election. The tax valuation on this levy continues to decline; thus, tax revenues continue to decline. Revenue for 2007 was \$786,266; 2008 was \$726,087 and for 2009 is projected to be under \$700,000.

The Township continues to lose the tax base and real estate tax collections by abandonment of residences and closing businesses. In addition, changes made by the Ohio Legislature are reducing personal property tax collection, public utility tax and local government fund allocations.

Safety-service departments in other jurisdictions are laying off staff and/or employees are taking roll backs on wages and benefits. One local township closed its police department in the face of this economic reality.

Because of the budgetary constraints, the Township opposes wage increases, OPERS pick up, and an increase in shift differential.

Recommendation:

Based on a comparison of surrounding townships and cities, the Warren Township police department's compensation is below average. Although the prior contract resulted in a decrease in the gap between Warren Township and other jurisdictions, Warren Township's wages are still 97% of the average and

total compensation is 92% of the average. The average general wage increase for seven of the surrounding communities is 3% for 2009. A wage freeze, as the Township suggests, would seriously erode the small gains that Township police department has made in closing the gap with surrounding communities.

Additionally, as Fact-finder Greg Van Pelt pointed out in his 2006 Fact-finding Report, there are several senior officers who will retire in the next few years. In order for the Warren Township to attract and keep competent and qualified police officers, it must pay a competitive wage for the local labor market.

The Township has not demonstrated an inability to pay wage increases for the police department. The Township has a general fund balance of nearly \$1.4 million as of August 2009. Although the Township's police department is funded by tax levies, the Township Trustees have not sought increases in the levies to keep up with added health insurance and other expenses and increases in salaries. Money has been used from the general fund in the past and can be used again to keep its employees from falling far behind the surrounding communities.

The Township's desire to remain prudent and solvent is acknowledged. Therefore, the Fact-finder recommends that, for each of the three years of the contract, patrol officers receive a 2% wage increase; investigators receive a 2.25% increase and Sergeants receive a 2.5% wage increase. Sergeants should receive a greater increase than patrol officers because the wage differential between the two is far below the average and should be increased. Increasing it gradually should not be a significant burden on the Township.

As for the 1% per year OPERS pick up, the Union did not present the cost of this proposal. Therefore, it is difficult to judge the financial impact such a recommendation would have on the Township. The Union presented evidence that at least half of the jurisdictions for which data was provided have an OPERS pick-up of between 6% and 10%. However, neither party presented any evidence of an OPERS pick-up for other Township employees. Consequently, the Fact-finder did not feel there was not enough data submitted to recommend this proposal.

As to an increase in shift differential, it is recommended that the shift differential be increased from \$0.30 to \$0.40 for all hours worked on afternoon and evening shifts. Based on the data for the surrounding communities that pay a shift differential, Warren Township pays 76% of the average. In the communities that do not pay a shift differential, either the base salary is much higher than Warren Township or the lack of this compensation is made up in the form of longevity pay or other (firearms proficiency pay).

RECOMMENDED CONTRACT LANGUAGE

The following wage increase are recommended, effective January 1st of each successive contract year

Patrol Officers	2%	2%	2%
Investigators	2.25%	2.25%	2.25%
Sergeants	2.5%	2.5%	2.5%

Section 3. Effective January 1, 2009, employee shall receive a "Shift differential" of forty (\$0.40) per hour for all hours worked on afternoon and midnight shifts.

3. ARTICLE 31 – UNIFORM ALLOWANCE

Union's Proposal:

The Union proposes increasing the Uniform Allowance from \$500 to \$600. The Union argues that the uniform allowance has not kept pace with the cost of uniforms. The other jurisdictions in the area have been increasing the uniform allowance they pay their police officers, while the Warren Township has increased very little. However, the cost of uniforms has been going up the whole time. Officers cannot supplement their uniform allowance, especially when their wages are low.

In response to the Township's proposed additional language to comply with federal and state tax regulations, the Union agrees so long as there is no additional financial burden on the employees. The Township should pay the burden of compliance.

Township's Proposal:

The Township opposes any increase in the uniform allowance for the bargaining unit, based on financial hardship.

However, the Township proposes adding language to Article 31 to comply with the IRS tax rules. It proposes adding to Section 1 of Article 31: "Reimbursement for costs shall comply with all federal and state tax regulations." A tax audit was recently completed, and the IRS found the Township in non-compliance with tax rules in regards to uniform allowances.

Recommendation:

It is recommended that the uniform allowance remain the same. The Union did not present any evidence as to the cost of uniforms currently or over the years. The bargaining unit's uniform allowance is not markedly different from surrounding jurisdictions. With the maintenance allowance of \$200, this bargaining unit's uniform allowance totals \$700. Uniform allowances for other jurisdictions submitted by the Union range from \$500 to \$955, with the average being \$792. The Fact-finder believes that any financial gain to the Union during this contract term should be in the form of wage increases.

As to the language proposed by the Township, the Fact-finder recommends that the uniform allowance be structured in such a way as to not impact the employee financially. Any compliance with tax rules should be born by the Township so as to not erode the benefit to the employee.

In addition, the changes to the language in the contract regarding the purchase of one off-duty weapon are not recommended. The Township's proposal limits the purchase to one weapon for the employee's length of service with the Township, and the current language limits the purchase to one weapon per contract term. Such a significant change in the benefit must be discussed and negotiated.

4. ARTICLE 32 – INSURANCE

Union's Proposal:

The Union proposes increasing the amount of money that the employee receives for opting out of the health insurance program offered by the Township. If the Township would like employees to use their spouses' insurance plan rather than the Townships, it would be prudent to increase the opt-out payment to 50% of the full cost of insurance. Even with the increase in the opt-out rate, it is certainly less expensive for the Employer to pay this rate, as opposed to the full cost rate.

Township's Proposal:

The Township opposes any increase in the opt-out rate for employees who are covered under a spouse's policy.

Recommendation:

It is recommended that this section of Article 32 remain unchanged. The quarterly payment of \$375.00 for employees who opt-out of the Township's health insurance plan is significant incentive to opt-out when another comparable plan is available through a spouse. It is doubtful that an increase in the opt-out payment would persuade more employees to opt-out of the plan. The more significant factors for employees to consider are the coverage benefits, deductibles, co-pays and the health status of the employee and family.

In addition, the Union did not present any evidence of how many employees have the option of choosing coverage through a spouse and how much the savings would be to the employer.

SUMMARY

1. **Article 18 – Compensatory Time**

Keep current contract language.

2. **Article 28 – Compensation and Compensation –Longevity Pay**

Wage increases as of January 1st of each successive contract year:

Patrol Officers	2%	2%	2%
Investigators	2.25%	2.25%	2.25%
Sergeants	2.5%	2.5%	2.5%

Section 3. Effective January 1, 2009, employee shall receive a "Shift differential" of **forty (\$0.40) per hour** for all hours worked on afternoon and midnight shifts.

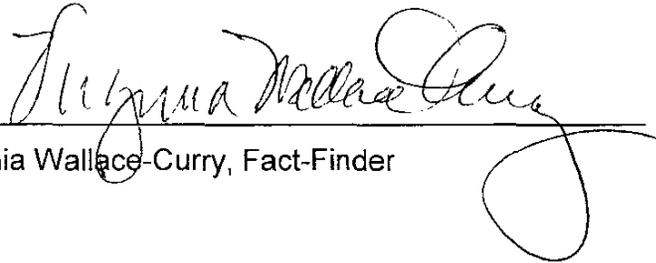
3. **Article 31 – Uniform Allowance**

Keep current contract language.

4. **Article 32 – Insurance**

Keep current contract language

Respectfully submitted,



Virginia Wallace-Curry, Fact-Finder

November 2, 2009
Cuyahoga County, Ohio

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Report for Warren Township Board of Trustees and the Ohio Patrolmen's Benevolent Association was sent to the parties by email and regular mail and to the State Employment Relations Board by regular U.S. mail on this day, November 2, 2009. The Fact-Finding Report was served upon:

J. Russel Keith, Esq.
General Counsel & Assistant Executive Director
State Employment Relations Board
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/s/ Virginia Wallace-Curry
Virginia Wallace-Curry, Fact-Finder

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STATE EMPLOYMENT
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November 2, 2009

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Re: OPBA and Warren Township
SERB Case No. 08-MED-10-1088

Gentlemen:

Enclosed is a copy of my Fact-Finding Award in the above captioned matter, along with the statement for my services and expenses rendered as Fact-Finder.

I enjoyed working with you and hope I will have the opportunity to do so again in the future.

Sincerely,


Virginia Wallace-Curry

cc: J. Russel Keith, Esq., SERB