

STATE EMPLOYMENT
RELATIONS BOARD

2009 JUL 16 P 12: 55

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
July 14, 2009

In the Matter of:)
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The Boardman Township)
Trustees)
)
)
)
and)
)
)
The Ohio Patrolmen's Benevolent)
Association Patrol Unit)
)
)

SERB Case No.
08-MED-10-1153

APPEARANCES

For the Union:

Kevin Powers, Esq. Attorney for the OPBA
Philip Merlo, Patrol Unit Bargaining Committeeman
Charles Mound, Patrol Unit Bargaining Committeeman
Michael Mullins, Patrol Unit Bargaining Committeeman
Michael Sweeney, Patrol Unit Bargaining Committeeman
Daryn Tallman, Patrol Unit Bargaining Committeeman
William Woods, Patrol Unit Bargaining Committeeman

For the City:

Michael Esposito, Esq. Account Manager/Employer Advocate for the Boardman Trustees
Jason Loree, Boardman Township Administrator

Fact Finder: Dennis M. Byrne

Background

The fact-finding involves the members of the patrol unit of the Boardman Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the Boardman Township Trustees (Employer). Prior to the Fact Finding Hearing, the parties engaged in numerous negotiating sessions, but they were unable to come to an agreement. The Fact Finder conducted two mediation sessions before the hearing; and after the mediation effort, the parties conducted further negotiations. However, they were still unable to reach agreement on a new contract and nineteen (19) issues remained on the table: 1) mid-term bargaining, 2) seniority, 3) scheduling and shift bidding, 4) reduction in force and recall, 5) minimum staffing, 6) hours of work, 7) compensation (including ancillary payments), 8) promotions, 9) overtime and court time, 10) insurance, 11) holidays, 12) vacations, 13) sick leave, 14) grievance procedure, 15) attendance incentive, 16) miscellaneous, 17) duration, 18) application of civil service law, and 19) part-time employees.

Prior to the start of the formal hearing, the parties requested that the Fact Finder attempt one more mediation effort and they were able to come to a mediated settlement after another prolonged mediation effort. A two-day Fact Finding/Mediation hearing was held on May 21st and May 22, 2009. The hearing started at 10:00 A.M. on both days in the Boardman Township Administration Building.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria 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.

Introduction:

The negotiations between the parties have been difficult. The Union believes that the Township's financial position is not as bleak as the Employer contends. On the other hand, the Township argues that it is facing a severe financial problem and might be placed on a financial watch list by the State. As a result, the parties had trouble settling the financial issues that are central to any labor agreement. Some resolution to the parties' difference of opinion over the Township's finances will occur when the Township's financial records are audited by the State Auditor's Office. An audit is scheduled for this summer.

During the mediation the Township discussed the fact that its General Fund balance was falling precipitously and that it was facing a cash crisis. The Employer also pointed out that the other Township bargaining units have seen the same evidence that it discussed with the OPBA patrol unit and found the data convincing. (All other Boardman bargaining units, with the exception of the ranking officer unit represented by the OPBA, have settled their contracts with the Township.) The Township stated that it was proposing similar language to the language agreed upon with its other bargaining

units. The Union believes that the Township is not fairly presenting a true picture of its financial position.

The Fact Finder believes that the Township is facing financial problem(s). While the exact magnitude of the situation remains somewhat murky, the information presented by the Employer paints a bleak picture of the Township's fiscal position. The State Auditor's report will go a long way toward clarifying the Township's exact financial status, but the continuing decline in the general fund balance and Township revenues outlined by the Employer leave little doubt that Boardman is facing a growing problem(s). Because the parties reached a mediated settlement, the Union never presented any financial data or/or analysis of the Township's finances.

The second problem facing the parties is that the Employer made numerous demands for changes in the "language" articles of the contract, i.e., the Township wishes to rewrite many sections of the contract. The Employer argues that the contract needs to be updated to 1) reflect current state/federal law, 2) make the contract more grammatically correct, and 3) make the contract more understandable by placing various items relating to the same topic in the same article.

The Union does not understand or see a need for major revisions in contract language that has been in place for decades and that has served the parties well. Therefore, the Union has been suspicious of the Employer's suggested revisions and believes that many of the Employer's proposals are self-serving.

Regardless of which position is accepted, the plethora of suggested changes have bogged down the negotiations. This has contributed to the overall lack of trust and made

achieving a final agreement more difficult than an examination of the issues would suggest.

Factually, there are many situations where the contract language is either unclear or outdated, and the Township's suggested revisions make perfect sense. However, an Employer's attempt to rewrite a large part of a contract that has been in place for decades is sure to cause consternation with the Union, and the old adage of "If it ain't broke, don't fix it" sums up the Union's view of many of the Employer's language proposals.

Note: All of the outstanding issues will be discussed below and the parties' positions on the various issues are taken from their position statements submitted prior to the fact finding/mediation hearing. There is no discussion on issues 18 and 19 listed above because those issues were withdrawn by the Employer during mediation.

Issue 1: Article 1, Section 4, Mid-Term Bargaining (New Article)

Township Position: The Employer wants to add a new section to the existing article dealing with midterm bargaining.

Union Position: The Union rejects the Township's proposal and wishes to maintain the status quo, i.e., no contract language on this issue.

Discussion: The Township's demand to add language to the agreement covering midterm bargaining is the result of the State Employment Relations Board's (SERB) decision in the *Toledo* case. SERB's decision in that matter required the parties to negotiate over matters not covered in the labor agreement. The Township's position is that the new language in Article 4 (2) spells out the conditions under which the parties must negotiate during the term of a valid agreement. The Township also is proposing

minor language adjustments to Article 4 (1) to clarify that the parties will not conduct midterm bargaining over issues that are in the agreement.

The Union contends that the changes are unnecessary and that the conditions under which the parties are required to conduct midterm bargaining are settled in labor law. Consequently, the Union does not see any reason to amend Article 4, and the Union argued that acceptance of the Township's position would "litter the agreement with new and unnecessary boilerplate."

The Fact Finder agrees with the Union up to a point. It is settled that if the Employer wants to change something that would affect wages, hours, terms and other conditions of employment during the term of a valid contract that it must discuss (negotiate) with the Union over the effect(s) that the proposed changes will have on the union membership. In effect, that is what the Township's proposed language requires.

The new language also elucidates that disagreements between the parties will be subject to the grievance procedure. Therefore, the proposed language is unobjectionable and works to protect the Union as well as Management. Consequently, the proposed changes to Article 4 (1) (2) do not present any real problems for either of the parties. The proposed language also acknowledges the current SERB guidelines on midterm bargaining.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

ISSUE 1, NEW ARTICLE 4
AGREEMENT MID-TERM BARGAINING

Section 4.1. ~~Sanctity of Agreement~~ Waiver. *To the extent that the parties have negotiated and reached agreement over an issue, no changes in this Agreement shall be negotiated during the duration of this Agreement unless there is a written accord by and*

between the parties hereto to do so. ~~which~~ *The* written accord shall contain a list of those matters to be subject of such negotiations. Any negotiated changes to be effective and incorporated in this Agreement must be in writing and signed by the parties.

Section 2. Mid-Term Bargaining. *If the Employer is contemplating any changes that would effect wages, hours, or other terms and conditions of employment for bargaining unit members not otherwise provided for in this Agreement, then the Employer, prior to making such change, shall inform the Union of the proposed change and negotiate with the Union over such action. In the event that the parties are unable to reach agreement over the effects of such change, the Employer may implement and the Union shall have the ability to grieve the reasonableness of the Employer's decision.*

Issue 2: Article 6, Section 1, Seniority

Parties' Positions: The parties agreed on the definitions of seniority.

ARTICLE 6 SENIORITY, SECTION 1

Section 1. ~~Seniority~~ Definitions.

A. Total Seniority. *Total seniority is the total service of a member as a sworn police officer with the Township, including such other service mandated under the statutes of the State of Ohio. Total service shall include all periods during which a member was in full time service, and all periods during which a member was in part time service, but prorated to the equivalent of full time service. (For example: a member working twenty (20) hours per week for one (1) year will accrue one half (1/2) year of seniority.)*

B. Departmental Seniority. *Departmental seniority is the total full-time service of a member as a sworn police officer with the Township.*

C. Classification Seniority. ~~Seniority by job~~ *Classification seniority shall be computed in the same manner, but shall include only the total full-time service within a job classification from the date of most recent entry into the job classification.*

Issue 3: Article 6, Section 2, 3, 6, & 7, Scheduling/Shift Bidding (New Article)

*Note: Many minor title changes were mutually agreed to. The parties' main focus on this issue was that of new language in Section 5 dealing with accumulated time scheduling and cash out. They also agreed to language in Section 7 addressing the opportunity to work holidays.

Section 5: Accumulated Time Scheduling/Cash-out

Township Position: The Employer demands that language be added to Article 6 (5), clarifying the fact that the Employer has the right to manage the administration of accumulated (compensatory) time under applicable law.

Union Position: The Union demands language guaranteeing that an employee has the right to use earned accumulated (compensatory) time.

Discussion: The parties' disagreements on this issue have a common root. The Union pointed out that the membership often had problems trying to schedule the use of earned accumulated time. According to the Union, the Employer often claims that it is unable to schedule accumulated time because of staffing problems. Consequently, the Union demanded language specifying a time frame for the use of accumulated time when the original use request was denied. The Employer was against this demand because it claimed that acceptance of the Union's demand might mean that it was forfeiting the right to "manage the labor force," i.e., an inherent management right.

This is an issue of competing and reasonable claims. An officer should have the right to use his earned accumulated time. At the same time, the Employer must have the right to manage the labor force; therefore, a compromise is reasonable in this situation. Language spelling out the union member's rights along with language protecting the rights of the Employer would meet the stated needs of both parties.

Finding of Fact: The parties reached a mediated settlement on this issue. The language is set forth below.

Section 6: Holiday Scheduling

Township Position: The Employer demands that the current language remain in the contract.

Union Position: The Union demand is that all patrol officers have the opportunity to work three (3) holidays.

Discussion: The Union contends that some of the patrol officers do not have the opportunity to work holidays because the current language states that holiday work is determined by classification seniority, where the most senior officers have the right of first refusal to any holiday work. According to the Union, this means that less senior patrolmen do not have the opportunity to work holidays. The Employer agrees with the Union's analysis. To correct this inequity, the Union demands that all officers have the right to work three (3) holidays. The Fact Finder agrees with the parties that the current language has led to an inequitable situation with regard to holiday work (pay).

Finding of Fact: The parties reached a mediated settlement on this issue. The language is set forth below

Suggested Language:

ARTICLE 6

~~SENIORITY, SECTION 2, 3, 6, & 7~~ **SCHEDULING/SHIFT BIDDING**

Section 3 1. Assignments Shift Bidding. The bidding of shifts will be done by departmental seniority for all officers assigned to the Patrol Division, excluding Traffic, K-9 and Crime Scene Technicians. Officers assigned to these units will also bid their shifts by departmental seniority separately from the Patrol Division. The bidding will be completed every six (6) months with rotating slots.

Section 2. Bid/Schedule Adjustments. The union recognizes the right of the Chief of Police to adjust an officer's schedule to meet the operational needs of the Department. The union requests that when the need arises, the Chief of Police use the officer(s) with the least amount of departmental seniority to make these adjustments.

Section 3. Schedule Posting. The final schedule shall be posted no less than thirty (30) days prior to its effective date.

Section 6 4. Scheduling Officers/Compensatory Time Approval. The union recognizes the right of the Township to schedule officers for work. Ideally, the desire is to schedule as many officers as practical in order to maintain a prompt response to calls for service and for proper support for those officers working. This effort, however, is often diminished by factors such as IOD leave, vacation, sick time, training and, in particular, the use of accumulated time.

In consideration for the continuation of the practice of accumulating time, the union agrees that: (a) Minimum staffing levels have been established to maintain prompt response to calls for service and for proper support for those officers working, so minimum staffing levels may be grounds for denying the use of accumulated time off; and (b) The Township may establish staffing requirements, higher than current minimum staffing standards, to maintain prompt response to calls for service and for proper support for those officers working, that may be grounds for denying the use of accumulated time off. The union agrees that this practice will not be viewed as setting new minimum staffing standards and this matter will not be a subject for grievances as long as they are uniformly applied.

Section 5. Compensatory Time Scheduling/Cashout. ~~(e)~~ Where the use of accumulated time off has been denied because of staffing levels, the employee shall be offered an alternative day within the next thirty (30) days for use of the requested accumulated time off, or shall be offered cash payment for the number of hours denied at the employee's regular rate of pay, and those hours will be deducted from the member's AT balance or the employee may withdrawing the AT request. *The parties agree that thirty (30) days constitutes a "reasonable time period" for the granting of a request for A/T under the Act. Except as otherwise specifically restricted by this Agreement, the Employer retains all its rights to manage the administration of compensatory time under Federal Law.*

~~(d) The Township agrees not to artificially inflate or adjust staffing requirements unless such actions apply to the temporary operational needs of the department. However, the current standard requiring eight (8) officers during the designated hours of 2:00 PM to 2:00 AM Wednesdays through Saturdays shall be maintained unless mutually agreed upon.~~

Section 6. Vacation and Compensatory Time Requests. For the purpose of vacation weeks, members with the greatest seniority in his respective rank and division shall be given priority of preference. For the purpose of vacation days and A/T days, it shall be granted on a first come first served basis, regardless of seniority.

Section 7. Holiday Staffing Scheduling. ~~If during a Holiday, The Chief of Police decides that not all of the members who are otherwise scheduled to work a holiday shift are needed, he~~ shall determine the number of members who will work the *holiday* shift on the basis of *classification* seniority ~~by job classification~~ by providing the most senior member the first opportunity to select or reject such work, *except that all officers shall*

~~*be afforded the opportunity to work 3 holidays annually. This section shall apply to those officers not working a fixed schedule. Seniority shall be applied to those officers who are normally scheduled to work on a given holiday by the rotation of the work schedule only and shall not apply to those officers who have not been originally scheduled for holiday work. Those officers working a fixed schedule shall work holidays on a rotating basis as the Chief of Police may reasonably require.*~~

Issue 4: Article 6, Section 4, Reduction in Force & Recall (New Article)

Township Position: The Township proposes adding a new article to the contract detailing how it will conduct any potential layoffs and recalls.

Union Position: The Union rejects the Township's demand and desires to maintain the status quo on this issue.

Discussion: This was a contentious issue. The current situation in the Township is that the Ohio Revised Code (R.C.) and local Civil Service law are followed in situations where a layoff (recall) is contemplated. The Employer wishes to put the relevant language into the labor agreement because it believes that the contract is the agreement between the parties and that it should cover all eventualities that might affect their relationship.

Moreover, there has been case law that states that if the parties' labor agreement is silent on these issues, then the Ohio Administrative Code could allow a Union to mount a court challenge to any job action taken by the Employer. The Employer wishes to avoid potential conflict between the parties if a layoff should become necessary and has proposed contract language that makes the parties' labor agreement the document that controls layoff and recall procedures.

The Union membership is suspicious about the intent of the Employer. The Union believes that the current system has worked fine (although there has never been a

layoff in the Department). Furthermore, the Union believes that adherence to the relevant sections of the R.C. is the best way to deal with any layoff situation. Given the fact that the Union does not believe that the Township's financial position is nearly as dire as the Employer contends, the Union is loath to change the current system and add a new article dealing with layoffs to the contract.

The question actually turns on the wording of the proposed article. The Township's representative stated that the proposed language was fashioned after the language in the R.C., and that all other Township bargaining units had agreed to essentially the same verbiage. The Township further stated that it was not contemplating a layoff in the Department, but given the financial pressures that the Township was facing a layoff was possible. The Employer emphatically denied that the proposed language would harm the employees.

The Fact Finder has studied the cited sections of the R.C. and the Administrative Code listed in management's proposal and finds that the language put forth by the Employer is essentially the same language found in the two documents. Therefore, the Fact Finder believes that the Employer's proposal cannot be read as a backdoor attempt to harm the employees. The Employer's proposal contains the same information found in the R.C. and the A.C. and delineates the employees' rights with regard to layoffs and recalls.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

NEW ARTICLE 6
SENIORITY, SECTION 4 REDUCTION IN FORCE & RECALL

Section 1. *It is the intent of the parties, through this article, to establish an objective*

procedure by which a reduction in force may be accomplished, should the need arise, and supersede the provisions of ORC 124.321 to 124.328, 124.37, OAC 123: 1-41-01 to 123: 1-41-22, and all local rules and regulations of the Boardman Township Municipal Civil Service Commission governing work force reductions.

Section 2. Notice. *Whenever the Employer determines that a lack of work, lack of funds, or reorganization in the operations of the Employer requires a reduction in force (i.e., layoff or job abolishment), the Employer shall notify the affected employee(s) in writing at least thirty (30) calendar days prior to the date of the reduction. Upon the request of the OPBA or Association, the Township agrees to discuss, with representatives of the OPBA or Association, the impact of the layoff on bargaining unit employees. (MOVED FROM END OF ARTICLE)*

Section 3. Procedure. *Whenever the Employer determines that a lack of work or lack of funds exists or that a reorganization in the operations of the Employer a reduction in force is necessary, a reduction in force (i.e. layoff or job abolishment) may occur. ~~the Township shall follow the applicable rules outlined in the Ohio Revised Code, with~~ If initiated, the bargaining unit member with the least departmental seniority within the affected classification/rank shall be the first to be laid off. ~~The employer shall notify the affected employees in writing at least thirty (30) days in advance of the effective date of the layoff.~~ Departmental seniority is calculated in accordance with Article ___, Section 1, Seniority.*

Section 4. Bumping Rights. *Provided that such is provided for in the Boardman OPBA Rank Contract, an officer residing in a higher classification/rank within the Boardman Township Police Department, who is subject to reduction, may utilize his departmental seniority, if possible, to displace the unit member with a lesser amount of departmental seniority residing in a lower classification/rank.*

Section 4. Recall Rights. ~~Such~~ *Members on layoff shall remain on a layoff list for three (3) years, and the Township shall recall from that list in the reverse order in which members were laid off, before hiring anyone else in the classification from which members are on layoff. Employees shall be given fourteen (14) calendar days advance notice of recall and such notice shall be sent to the employee's last address on record. It shall be the responsibility of the employee(s) to keep the Employer advised of his current address and maintain any required licensure or certification required for his position. Employees who refuse recall shall lose all seniority and recall rights. Employees who fail to remain qualified to perform the duties of their position will lose all seniority and recall rights.*

~~Upon the request of the OPBA or Association, the Township agrees to discuss, with representatives of the OPBA or Association the impact of the layoff on bargaining unit employees. (Moved to Section 2)~~

Issue 5: Article 6, Section 5, Minimum Staffing (New Article)

Township Position: The Township demands a change in the minimum staffing provision of the contract.

Union Position: The Union demand is for the status quo.

Discussion: This was another contentious issue, and the parties had prolonged discussions over this matter. The Employer, citing high overtime costs, argued that it must have the ability to efficiently schedule the workforce to save money at a time when its revenues are falling. The Township states that under the current language Article 6 (5), it must schedule an officer at an overtime rate of pay when a patrolman calls off his/her shift. The Employer stated that it was not concerned with vacations or other planned absences; but rather, it was trying to get relief when a scheduled officer calls off on short notice. The Union states that, in its opinion, safety concerns are paramount for both the patrolmen on duty and the citizenry and that the current compliment of four (4) patrol officers is the minimum number of officers that is needed on each shift.

The Employer contends that it is not attempting to trade off the safety of the patrolmen or citizens of Boardman by cutting the number of on-duty patrolmen for cash savings. The usual compliment of patrolmen is four (4), but there are always a number of supervisors who are sworn officers on duty also. The Employer is attempting to gain the ability to use a supervisor to replace a patrolman at off peak times. This would save the Township money and not adversely impact the provision of police services to the community.

Given the discussion(s) surrounding this issue, the parties agreed that the Employer should get some type of relief from overtime charges in situations where a

scheduled officer calls off duty. This will also benefit the union membership because it will help stretch the Department's budget.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

ARTICLE 6
SENIORITY, SECTION 5 MINIMUM STAFFING

~~**Section 5.1. Minimum Staffing:** Effective January 1, 2006, at all times there shall be a minimum of six (6) officers, including four (4) patrol officers, which will constitute Minimum Staffing. When staffing falls below six (6), the call out process shall be put into effect unless the time to meet minimum staffing is four (4) hours or less, then any reasonable means to fill the minimum staffing may be used. The Township agrees that officers' schedules will not be changed for purposes of minimum staffing with less than thirty-two (32) hours of notice. All shifts will be staffed with a minimum of one (1) supervisor and four (4) patrol officers. However, if patrol staffing falls below four (4) due to call-offs such vacancies need not be filled so long as there are five (5) sworn officers on duty.~~

Issue 6: Hours of Work/Call-Out: Article (New)

Township Position: The Township proposes adding a new article to the contract concerning hours of work and call out hours.

Union Position: The Union does not understand the need for the new article and opposes unneeded changes to the contract.

Discussion: The Employer has proposed a new article concerning hours of work and call out hours. Many of the sections of the proposed article are taken in their entirety from existing language found in various places throughout the contract. Management argues that it is simply streamlining the contract and putting items that logically should be grouped together in the same place. The Union does not disagree with the language per se, but believes that there is no need for a wholesale rewriting of the labor agreement.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language: Hours of Work/Call Out

NEW ARTICLE 7, SECTIONS 2, 3, 4, 6, 7
COMPENSATION HOURS OF WORK/CALL-OUT

Section 2 1. Normal Workday/Workweek Periods. Eight (8) consecutive hours per day, which shall include a thirty (30) minute paid lunch period shall constitute a normal workday. Forty (40) hours per week shall constitute a normal workweek based on five (5) eight (8) hour work and two (2) days off.

By mutual agreement of the Township and the Association, a work schedule plan involving four (4) ten (10) hour work days can be placed into effect and the Association agrees to forego the overtime provision of the Agreement with respect to the final two (2) hours of such shift.

~~**Section 3. Hours of Work.** A bargaining unit member shall be paid one and half times the appropriate rate of pay for any time in excess of eight & one quarter hours per day. The parties hereby agree that the current contract language in effect as of this date is acceptable and the current work schedule meets or exceeds the Fair Labor Standards Act for hours of work. Should the F.L.S.A. standards change during the life of this Agreement, the parties do hereby agree to meet and re-negotiate replacement language pursuant to Section 4117 of the Ohio Revised Code. (SEE ARTICLE 8, SECTION 1)~~

Section 4 2. Work Schedule Posting. The Township shall conspicuously post at least seven (7) days in advance the regularly assigned hours, work days and shift assignments of all members. Changes in work schedules shall be made only to meet the operational needs of the Township and as soon as practical when the change is discovered or realized, and shall not be made arbitrarily.

~~**Section 6 3. Reporting to Work Call-Out Minimum.** Members who report to work within two (2) hours of the start of their shift, or are held over at the end of their shift, will receive compensation at time and one half of their hourly rate for all time in excess of 8.25 hours. A bargaining member who reports to work beyond the two hours before the start of a shift, shall be paid a minimum of 2.66 hours at time and one-half at the hourly rate of pay. A member called out beyond the two hours of the start of their shift will be excused after completing the task they were called out for, and may request that their time be credited in their accumulated time bank.~~

Section 7 4. Substituting Time or Trading Shifts.

1. The bargaining unit agrees to disregard any other provision of the Agreement, including and without limitation, Article 7 ____, "Compensation" and Article 8 ____, "Overtime", in relation to the enforcement of this provision.

2. The bargaining unit and township agree that employees may agree solely at their option and with the approval of their supervisor to substitute for one another during regularly scheduled hours of work.
3. The bargaining unit also agrees that the work performed by the substituting employee will be excluded by the township in the calculation of hours worked for that employee.
4. The bargaining unit agrees that where one (1) employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.
5. The bargaining unit agrees to waive any overtime that would be caused by the substituted time.
6. The bargaining unit recognizes and agrees that the township is not required and will not keep record of the hours of the substituted work.
7. The bargaining unit understands and agrees that the substituted time is a voluntary agreement between the two employees.
8. The bargaining unit understands and agrees that when employees substitute for one another they do so at their own risk and that the township will not be responsible for any time not repaid.

Issue 7: Article 7, Section 1, Compensation
New Article, Longevity
Side Letter, Signing Bonus

Township Position: The Township has offered no general wage increase for the life of the agreement. In addition, the Township is demanding that a bifurcated wage schedule be added to the agreement whereby newly hired officers will be paid less than the current patrolmen.

Union Position: The Union demand is that wage rates increase by three (3.0%) percent per year of the proposed agreement. Moreover, the Union rejects the Employer's proposal for a bifurcated wage scale.

Discussion: The wage issue is the most contentious issue separating the parties. The Union believes that the Township has funds available to pay a wage increase. The Township, on the other hand, is adamant that it has almost no money for raises.

The financial data discussed during the mediation effort(s) shows that the Township's revenues have fallen precipitously over the last few years from over twenty (\$20.0) million dollars to an estimated sixteen (\$16.0) million dollars. Therefore, the Township administrator estimates that the general fund revenues have fallen by approximately twenty (20.0%) percent over the past few years. The Township stated that it expected revenues to continue falling for the next few years.

There was also discussion about the impact of a tax levy that was passed to fund the police and fire departments had on the Township's financial condition. Both sides agree that the levy was passed in light of layoffs in the fire department and that the funds were used to bring laid-off firefighters back to work. However, the levy failed to generate the expected revenue because of the declining overall economic conditions in Boardman and the Mahoning Valley. Consequently, while the levy helped the overall financial situation in Boardman, it did not generate the expected revenue stream.

Furthermore, the State Auditor is scheduled to examine the financial situation in Boardman to determine if the Township should be placed in financial emergency status. That is, the State of Ohio has criteria that it uses to determine the financial health of local entities, and it will audit Boardman's finances to see if it is covered by those criteria. Boardman believes that it will be placed on a financial watch and that the State will determine that its finances are insufficient to meet its needs. Therefore, the Employer argues that it cannot meet the Union's wage demands.

The Union does not believe that the Township's finances are as bad as the Employer portrayed. However, because the parties reached a mediated settlement, the Union did not present witnesses, etc. in its discussion of the issue.

The parties also discussed a bifurcated wage scale. Bifurcated wage scales have a checkered history, but having the same job performed by different individuals who are paid different salaries has not been shown to work well. However in their discussions, the parties did agree that the current wage scale is overly generous for newly hired officers and that the scale should be changed to bring the starting wage and the rate for junior officers into conformity with other departments in the local labor market.

The Township recognizes that it has gained operational efficiencies from proposed changes in a number of issues and concessions by the Union on a number of other items and that these operational efficiencies will lead to lower operating costs. During the discussions/mediation on the wage issue, the Union raised the issue of "gain sharing." In response to this argument, the Township offered to use part of the money saved by changes in other parts of the contract to increase the take home pay of the employees. That is, the parties agreed to "gain share."

The Employer and the Union discussed the issue and came to an agreement that each current employee will move up the tenure scale by five (5) years. That is, a five-year employee will be slotted into a ten-year wage rate, etc. This has the effect of increasing the pay of the patrolmen, while keeping the same wage schedule, and addresses an outstanding grievance. This grievance is concerned with the accrual of seniority benefits by an employee from other public sector, i.e., not with Boardman Township employment. Grievances are often settled during negotiations. The Fact

Finder recommends that the parties memorialize their agreement on this issue. If the Township is able to reduce its overall expenditure on police services and, at the same time, increase the take home pay of the officers; then this is a win-win situation.

The changes in the wage scale coupled with the movement of the patrolmen by five (5) steps on the scale, has the potential to cause problems for the parties. The Fact Finder recommends that a side letter be appended to the contract specifying where each patrolman now falls on the wage scale. The letter should also specify when each patrolman reaches Step 14 and moves onto the new longevity scale (see below).

Finding of Fact: The parties reached a mediated settlement on this issue.

New Article, Longevity

Township Position: The Township rejects the Union's demand that a new longevity scale be added to the contract for all patrolmen and counters with a new longevity scale for officers hired after January 1, 2009.

Union Position: The Union demands that a new longevity scale for all patrolmen be added to the contract.

Discussion: The parties initially disagreed on the longevity issue. The Township's position is based on two factors. During the time that the Trustees and the Union have conducted negotiations, the contract has contained two different longevity scales; and both were ultimately folded into the base rate. Moreover, the Township contends that it cannot afford the demand given the state of the Township's finances.

The Union agreed that the then existing longevity scale was folded into the base rate during the last round of negotiations. However, the Union argues that the Township

negotiating team agreed to the proposed change and that the Township is responsible for the position in which it finds itself with regard to the longevity payment.

The parties are cognizant of the fact that the wage scale was lowered for new hires and that the current wage scale in the agreement tops out at Step 14. Therefore, both very junior and very senior patrolmen are placed in a different position than other patrolmen by the new pay system, and the five-year bump given to all currently employed officers will have little impact on either group. Consequently, they agreed to a new longevity scale for officers hired after January 1, 2009. In addition, the Fact Finder is recommending a side letter that specifies that any officer who reaches the top end (Step 14) of the pay scale be covered by the new longevity scale regardless of his/her date of hire. This will ensure that every patrolman in the department gets at least some portion of the "gain sharing" agreement.

Finding of Fact: The parties reached a mediated settlement on this issue.

Side Letter, Signing Bonus

Township Position: The Township rejects the Union's demand.

Union Position: The Union demands a five hundred dollar (\$500.00) signing bonus payable when the contract is ratified.

Discussion: This issue is an outgrowth of the parties' inability to come to an agreement on the Township's financial condition. The Union demanded a signing bonus as part of its demands. The Union noted that a signing bonus is a one-time payment and argued that the Township could afford the payment. The Employer rejected the Union's demand. However, after some discussion the Employer agreed to pay the bonus if it is

not put on fiscal watch or into fiscal emergency by the State Auditor's office. Therefore, the question of the Township's financial health has a direct bearing on the amount of money received by the patrolmen. This agreement is unusual. However, the Fact Finder believes that it shows the flexibility of the collective bargaining system. In many ways this agreement is an all or nothing proposal, and the Fact Finder is recommending its inclusion into the contract.

Finding of Fact: The Union membership will receive a five hundred dollar (\$500.00) signing bonus if the State Auditor's Office does not put Boardman Township on fiscal watch or into fiscal emergency. The parties reached a mediated settlement.

***Note:** The Fact Finder is recommending that this agreement be appended to the contract as a Letter of Understanding rather than a part of the body of the contract because the payment is contingent.

Suggested Language:

ARTICLE 7, SECTION 4
COMPENSATION

Section 1. Pay Ranges and Rates. The following pay schedule will be effective for bargaining unit members *hired after January 1, 2009*, effective January 1, 2009, to December 31, 2008 11:

<i>Step</i>	<i>Years of Service</i>	<i>A</i>	<i>Annual Salary</i>	<i>B</i>	<i>C</i>
<i>1</i>	<i>Entry</i>	<i>\$14.90</i>	<i>\$31,000</i>	<i>\$15.40</i>	<i>\$15.55</i>
<i>2</i>	<i>After 1 yr.</i>	<i>\$16.11</i>	<i>\$33,500</i>	<i>\$16.61</i>	<i>\$16.76</i>
<i>3</i>	<i>After 2 yrs</i>	<i>\$17.31</i>	<i>\$36,000</i>	<i>\$17.81</i>	<i>\$17.96</i>
<i>4</i>	<i>After 4 yrs</i>	<i>\$18.51</i>	<i>\$38,500</i>	<i>\$19.01</i>	<i>\$19.16</i>
<i>5</i>	<i>After 6 yrs</i>	<i>\$19.71</i>	<i>\$41,000</i>	<i>\$20.21</i>	<i>\$20.36</i>
<i>6</i>	<i>After 8 yrs</i>	<i>\$20.91</i>	<i>\$43,500</i>	<i>\$21.41</i>	<i>\$21.56</i>
<i>7</i>	<i>After 10 yrs</i>	<i>\$22.12</i>	<i>\$46,000</i>	<i>\$22.62</i>	<i>\$22.77</i>
<i>8</i>	<i>After 12 yrs</i>	<i>\$23.32</i>	<i>\$48,500</i>	<i>\$23.82</i>	<i>\$23.97</i>
<i>9</i>	<i>After 14 yrs</i>	<i>\$24.52</i>	<i>\$51,000</i>	<i>\$25.02</i>	<i>\$25.17</i>
<i>10</i>	<i>After 16 yrs</i>	<i>\$25.72</i>	<i>\$53,500</i>	<i>\$26.22</i>	<i>\$26.37</i>

11	After 18 yrs	\$28.51	\$59,301	\$29.01	\$29.16
12	After 20 yrs	\$28.80	\$59,904	\$29.30	\$29.45
13	After 22 yrs	\$29.09	\$60,507	\$29.59	\$29.74
14	After 25 yrs	\$29.38	\$61,110	\$29.88	\$30.03

SIDE LETTER
WAGE SCHEDULE ADMINISTRATION

Section 1. The parties agree that upon execution of this agreement, retroactive to January 1, 2009, bargaining unit members hired prior to January 1, 2009 will be placed at the appropriate step of the wage schedule or rate, identified in Article ____, Compensation as listed below.

	<u>Employee Name</u>	<u>Step</u>		<u>Employee Name</u>	<u>Step</u>
1.	Charles Mound	14	20.	Jeffery Lytle	11
2.	Michael Mullins	14	21.	Patrick Klingensmith	11
3.	Michael Longo	13	22.	Heather Englert	11
4.	Mark Jacobs	13	23.	Matthew Gilbert	11
5.	Jack Neapolitan	13	24.	Jonathan Martin	11
6.	Anthony Ciccotelli	13	25.	Michael Salser	11
7.	Gregory Stepuk	13	26.	Stephen Dubos	11
8.	Timothy Hughes	12	27.	Jamison Diglaw	11
9.	Robert Spater	12	28.	Joseph O'Grady	11
10.	Glen Patton	12	29.	Matthew Sell	11
11.	Darrell Wagner	12	30.	John Gocala	11
12.	Michelle Glaros	12	31.	Michael Sweeney	11
13.	Benjamin Switka	12	32.	Michael Dado	11
14.	Brian Cionni	12	33.	Phillip Merlo	11
15.	Douglas Flara	11			
16.	Gerald Kamensky	11			
17.	Richard Romeo	11			
18.	William Woods	11			
19.	Daryn Tallman	11			

Section 2. Step Placement. All bargaining unit members covered by this side letter, notwithstanding the years of service requirement contained in the Article ____,

Compensation, shall advance to the next step of the wage schedule (e.g. 12, 13, 14, etc.) upon each anniversary date of the Agreement.

Section 3. Longevity Eligibility. *Bargaining unit members covered by this side letter are not eligible to receive longevity payments provided in Article ____, Longevity, until such time as they occupy Step 14 of the wage schedule. Once a bargaining unit member is elevated to Step 14, he will be eligible to receive longevity pay, in accordance with Article ____, Longevity, based on his individual years of continuous, full-time service with the Employer, notwithstanding the time based step of the wage schedule in which he resides.*

SIDE LETTER
SENIOR PATROL OFFICER GRIEVANCE

Section 1. *During the previous contract term, a grievance was filed alleging that under the previous contract language “continuous service as a Police Officer” used to measure previous eligibility for Senior Patrol Officer 1-4 should have been read to include service with other Employers and allowed members to bypass steps of the wage scale accordingly.*

Section 2. *As part of this side letter, that grievance and the remedy requested is hereby deemed resolved and settled through this negotiations.*

ARTICLE ____
LONGEVITY

Section 1. Eligibility. *Effective upon execution, bargaining unit members hired after January 1, 2009 shall be eligible for longevity pay. Bargaining unit members hired prior to January 1, 2009 will not be eligible to receive longevity pay, under the terms of this section, until such time as they achieve Step 14 of the Wage Schedule. Longevity pay is based on years of continuous full-time service with the Boardman Township Board of Trustees. No bargaining unit members shall receive longevity pay until they have completed the required amount of continuous full-time service with the Employer.*

Section 2. Longevity Schedule. *Longevity pay shall be given to eligible bargaining unit members in the form of an hourly supplement according to the following schedule:*

<u>Years of Continuous Service with the Employer</u>	<u>Longevity Supplement</u>
<i>After 5 years of completed service</i>	<i>\$.25</i>
<i>After 10 years of completed service</i>	<i>\$.30</i>
<i>After 15 years of completed service</i>	<i>\$.35</i>
<i>After 20 years of completed service</i>	<i>\$.40</i>
<i>After 25 years of completed service</i>	<i>\$.45</i>

SIDE LETTER
CSB FISCAL WATCH/EMERGENCY DECLARATION

The parties agree that bargaining unit members will be entitled to a five hundred dollar (\$500.00), one-time contingent signing bonus (CSB) to be paid by December of 2009. However, such signing bonus shall not be paid if the Township is placed in fiscal watch or fiscal emergency either by declaration of or as a result of the scheduled fiscal analysis from the Local Government Services Section of the State of Ohio Auditor's Office.

Issue 8: Article 7, Section 5, Promotional Opportunities (New Article)

Township Position: The Township demands that the number of promotional opportunities within the Department be reduced.

Union Position: The Union demands that the Department maintain eight (8) sergeant positions in the Department.

Discussion: The parties' labor agreement currently states that the Department has seventeen (17) promotional opportunities. The Township argues that given the current size of the Police Department that there is no need for seventeen (17) officer positions; and in order to save money, some of the positions should be abolished. The Union disagrees and contends that the Department will have to grow in the future and there will be a need for qualified senior officers. The Union also objects to any reduction in the number of sergeants.

There is a problem with the current language in that it addresses positions that are not covered by the patrol contract. For example, the current language discusses Captain and Lieutenant positions, and these job titles are covered in another contract. During the mediation, the parties agreed that the patrol officer contract should only cover the Sergeant positions because the individuals who fill these positions come from the ranks of the patrolmen, i.e., promotions to Sergeant directly affect the patrol officers.

During mediation, the parties also agreed that eight (8) sergeants is an adequate number of front line supervisors based on a department of thirty-five (35) patrolmen, and they further agreed that given the Department's budget that the prospects of hiring a significant number of new officers in the near future is remote. Therefore, they agreed that eight (8) Sergeant positions is a reasonable number at this time. During the discussions on this issue, the Union argued that it would be unfair to return an incumbent Sergeant to the patrol ranks, and it demanded that everyone currently serving as a Sergeant remain in that position until retirement, promotion, etc. The township agreed with this point.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

NEW ARTICLE 7 _____
COMPENSATION, SECTION 5 PROMOTIONAL OPPORTUNITIES

Section 5 1. Preservation of Sergeant Rank Structure. The Township agrees to maintain ~~seventeen (17) promotional opportunities with a guaranteed minimum of two (2) Captains, four (4) Lieutenants, and eight (8) Sergeants~~ *positions*. ~~The three (3) remaining promotional opportunities can be of any of the three listed ranks. The Township reserves the right to establish such other ranking positions as may be necessary for the organizational needs of the department, as determined by the Township, but those positions will not be counted as part of the seventeen (17) promotional opportunities in this section.~~ *To the extent that there exist persons occupying positions in the rank of sergeant exceeding the baseline structure, those positions shall be deemed abolished upon the departure of the current incumbent. Further, any vacancies that existed as of May 21, 2009, that have yet to be filled, need not be filled. It is the intent of the parties to preempt R.C. 124.44, R.C. 124-321-124.328, R.C. 124.37, and any other applicable civil service statute or rule having to deal with the filling and abolishment of positions above the rank of patrolman with this language. However, in no event shall the number of sergeant positions and minimum provided in this section restrict the Township's ability to implement a layoff in accordance with Article ___, Reduction in Force and Recall and the order of layoff provided therein. This language only restricts the Employer from abolishing positions in the sergeant rank, not initiating a layoff, where a temporary vacancy may be created.*

Section 2. Promotional Procedure. *After the composition of the promoted ranks in the police department reaches the baseline rank structure, as set forth in Section 1, the parties agree that future promotions will be conducted in accordance with the local civil service law*

Issue 9: Article 8, Section 1, 2A, & 3-5, Overtime/Court Time (New Article)

The parties agreed on numerous editorial changes that are incorporated as set forth below. As was the case with Issue 3, the discussion below focuses on the issues under this heading that were of primary importance.

Township Position: The Township demands that if it determines that an overtime situation exists and no one agrees to fill the position, then the position will be filled by the least senior employee on the previous (next) shift.

Union Position: The Union proposes that the Employer may fill overtime positions with the least senior officer if no one volunteers for the position.

Discussion: The positions of the parties are similar. The main difference is that the Employer has submitted language that allows it to determine 1) if an overtime position will be filled and 2) how it will be filled if no patrolman volunteers for the hours. The Union's position is that an overtime slot must be filled. Both sides agree that if the position needs to be filled, that the Employer can assign the least senior member of the preceding or subsequent shift to work the overtime hours.

This situation can arise when there is a call-off, and no member of the patrol unit volunteers to fill the shift. The current language specifies that the overtime hours will be offered to the patrolmen according to seniority, and both sides agree to that provision. The main difference in the parties' positions is that the Employer's proposal allows the Township the right to not fill the overtime slot. That is, if the Employer determines that

there is no need for a patrol officer on the shift then it has the right to leave the slot open. This seems like a problem but the parties have agreed to maintain at least five (5) sworn officers on duty at all times. Moreover, for the language in question to become binding, all eligible employees must decline the overtime hours. Furthermore, the Employer must also make a determination that the patrol officer's position can safely be allowed to remain open for the shift. Consequently, there will be times when an overtime position is not filled, but that result should not become the norm.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

~~ARTICLE 8, SECTIONS 1, 2A, 3-5~~ _____
OVERTIME /COURT-TIME

Section 1. Overtime. Overtime shall consist of any time worked in excess of ~~a normal workday~~ *eight and one-quarter (8.25) or ten and one-quarter (10.25) hours in a workday, as may be applicable*, or normal workweek as defined in this Agreement.

Section ~~1A~~ 2. Overtime Increments. Overtime will be computed after fifteen minutes, the entire actual amount of overtime will be computed at time and one-half.

Section ~~2A~~ 3. Overtime Compensation. Each bargaining unit member shall be paid an amount equal to one and one half (1 1/2) times his normal hourly base pay rate or, if the member works four (4) hours or is called-*out* to work ~~under Article 7 Section 5~~, at the option of the member, shall receive credit for compensatory time equal to one and one half (1 1/2) times the number of overtime hours actually worked.

Section ~~3~~ 4. Overtime Scheduling. The Township shall maintain a separate overtime ledger for ~~each bargaining unit, which shall include all overtime offered to, or worked by a member of the bargaining unit.~~

The ledger will include all hours worked by the bargaining unit member in excess of the workday or workweek. This ledger shall be posted in a conspicuous place and the total hours shall continue to be tracked for the duration of this contract. Effective upon the execution of this Agreement, all bargaining unit members' totals will revert to zero and will be tracked for the duration of this Agreement.

When the Employer determines that overtime is necessary, it shall be offered to a bargaining unit member in the following manner if the hours to be worked are greater than four (4) hours.

- A. A member with the lowest number of hours in the overtime ledger shall be offered first opportunity to work the overtime.
- B. In the event that more than one member has the same number of hours in the overtime ledger, then seniority shall prevail.
- C. Once the call out list has been exhausted and no members agree to work the shift, then ~~the Road Supervisor shall be afforded the opportunity to work the overtime hours. In the event the Road Supervisors turn down the overtime, it will be offered to the Plain Clothes Supervisors. In the event that the Plain Clothes Supervisors turn down the overtime, then the member with the least seniority on the prior and following shifts shall be ordered to work the overtime, four (4) hours respectively.~~ *any contractual manning requirement, if applicable, shall be suspended for the duration of that shift, and the Employer, at its sole discretion may choose to fill the overtime in the manner that it determines best suites its operational needs, which may include mandating the members with the least seniority on the prior and following shifts to work the overtime.*
- ~~D. A shift will always be staffed with a supervisor. If after an overtime call out for a supervisor, none is available, the supervisor with the least seniority on the shift preceding the vacancy will be required to fill the open shift.~~
- D. **Plain Clothes Division Overtime.** If ~~an~~ overtime position within the Plain Clothes Division ~~must~~ *will* be filled, it will be filled with an officer assigned to that division *in a manner as determined by the Employer/designee.* ~~An overtime call out made for reasons not clearly investigative or patrol related will be made on the basis of entire ranking officers call out list; the overtime going to the officer with the least amount of hours. The Township will make an effort to equally and fairly distribute scheduled overtime. Before an individual may file a grievance under this section he must show a pattern of a failure to follow the written rules and regulations to that specific individual filing the grievance. A pattern is defined as two (2) or more instances in a two (2) year period. The burden rests with the grieving party to prove he was harmed.~~

Section 4 5. Court Time. Police officers, as a part of their employment, must appear in court. When an officer is required to appear in court outside his/her regular working hours, the bargaining unit member will be paid time and one-half with a three-hour minimum. Payment of court time is limited only to appearances resulting from the actions of a member while on duty as a Boardman police officer. Payment of court time excludes appearances for arrests resulting from other employment.

At any court appearance longer than three (3) hours in off duty status the member will receive time and one half (1½) hours paid time for that court appearance. Officers may opt to take payment of paid court time for court appearances as compensatory/accumulated time in accordance with ~~Article 12 Section 1~~ of this agreement.

Members agree to follow departmental rules regarding checking before attending court. Members must also follow instructions on any subpoena. Failure to follow the instructions on a subpoena, failure to check as required or failure to attend court in appropriate and professional attire will result in the loss of compensation for court and/or other disciplinary action.

Section 5.6. Overtime Compensation Restriction. An employee who works an additional shift will not receive overtime compensation if the employee fails to work an assigned shift sixteen (16) hours before or sixteen (16) hours after the starting or ending of the overtime shift. The use of accumulated time, sick, IOD or vacation time is not considered working unless the employee had properly requested and had obtained approval for vacation or accumulated time prior to being contacted for the overtime shift. Employees working in excess of eight consecutive hours will be compensated at overtime rate for time in excess of 8.25 hours.

Issue 10: Article 10, Insurance

Township Position: The Township demands that medical insurance language found in all other labor agreements throughout Boardman be placed in the contract.

Union Position: The Union agrees in principle with the suggested language but made counter offers on some sections of the article. (The counters will be discussed below.)

Discussion: This issue is one that is determined by internal comparability. In this instance all other Township employees are covered by the same medical plan language, and the OPBA unit recognizes that it will be covered by the same plan. That is, it is not reasonable that the Township have different medical plans for different bargaining units. Therefore, the Union attempted to make minor modifications that it believed protected its membership's rights, but in general the Union recognizes that all Township employees will be covered by the same language.

The Union objected to the language that the Employer submitted for the insurance committee, Article 10 (3). The Union did not understand why the Township Clerk was placed on the Insurance Committee, and the Employer agreed to amend the language in its proposal on this issue. The Union also argued that fifteen thousand (\$15,000.00) dollars of life insurance was too little insurance for police officers. The Employer agreed to change the life insurance amount to twenty-five thousand (\$25,000.00) dollars in light of the Union's arguments.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

ARTICLE 10 **INSURANCE**

Section 1. Medical Insurance. The Employer shall make available to all full-time bargaining unit members comprehensive major medical/hospitalization health care and ancillary insurance *as currently in effect unless changed pursuant to section 3, below.*

Section 2. Contribution Rates. For the year 2008, bargaining unit members will contribute to health insurance in the same manner as was in effect December 31, 2007. Effective *June* 1, 2009, the Employer shall contribute ninety percent (90%) and bargaining unit members shall contribute ten percent (10%) for the premium cost of health care and ancillary coverage under the applicable plan.

Eligible employees may elect any available coverage (e.g., single, two-party, family, etc.) subject to the plan offerings. Employee participation costs, as may be applicable, shall be made through payroll deduction. Each employee responsible for any health plan costs shall sign a payroll authorization form for the applicable deduction in order to participate in or continue coverage. Upon enrollment/application of an eligible employee, coverage will commence in accordance with the provisions of the plan, plan provider, or administrator, as applicable.

Section 3. Insurance Committee. The Union agrees that the Employer ~~may~~ *shall* create and maintain an insurance committee for the purpose of controlling costs, reviewing usage, and setting benefit levels. The Union agrees to participate in the committee, if created. The committee shall be comprised of one (1) representative from each employee bargaining unit within the Township, one (1) representative for the non-bargaining unit employees, ~~the Administrator/designee, and the Township Clerk/designee~~ *two (2) representatives of the Employer.*

The insurance committee shall have the authority to make program coverage changes, benefit levels, and/or increases/decreases to employee contribution rates through coverage changes by majority vote. Decisions of the committee are final and binding on all parties involved and shall not be subject to the grievance procedure or any other avenue of appeal.

Section 4. Life Insurance. The Township shall provide and maintain in force, by payment of the necessary premiums, life insurance in the amount of ~~fifteen thousand dollars (\$15,000.00)~~ *twenty-five thousand dollars (\$25,000)* for all bargaining unit members.

Section 5. Coverage Continuation.

- A. Individual and family coverage terminates after the end of the month of the last day of work when an individual ceases to be an employee of the Township. When an individual ceases work because of a leave of absence, individual and family coverage terminates on the last day of the month which was last worked. A former employee has the privilege of continuing Medical Insurance coverage for the number of months prescribed by the COBRA law.
- B. If an employee ceases work because of layoff, the following provisions will be applicable to coverage under the benefit programs. Individual and family medical insurance will be continued during such layoff up to a maximum of six (6) months from the end of the month which was last worked. If a layoff employee has not returned to work at the end of such period, individual and family medical coverage terminates subject to the "continuation" and "conversion" as described in A.
- C. If an employee ceases work because of a non-occupational disability, individual and family medical insurance will be continued during absence due to such disability up to a maximum of six (6) months from the end of the month which was last worked.
- D. If an employee ceases work because of an occupational disability, individual and family medical insurance will be continued during absence due to such disability up to a maximum of twelve (12) months from the end of the month which was last worked, but in no circumstance beyond the end of the month for which statutory compensation payments terminate.

Section 6. Coverage Reinstatement. If an employee returns to work following an absence on account of layoff, leave of absence, or disability during which coverage under the insurance programs shall have terminated, all coverages under the insurance programs will be reinstated on the date the employee returns to work.

Section 7. Insurance Waiver.

- A. Any member of the bargaining unit who elects to waive health and medical insurance coverage in its entirety (including dental and optical) as described in Section 1 for a (12) twelve month period will be awarded a bonus in an amount equal to fifty (50) percent of the established premium under which the employee would have been or is covered by the employer. Employees must make such waiver request in writing prior to November 1st of the calendar year, and must provide proof of insurance to the employer before choosing to waive the employer's current policy. All bonuses shall be paid in June of the following calendar year following the waiver request.
- B. Newly-hired employees as of 11-1-98 must make request for waiver of insurance within fifteen (15) days of hire, and will receive said bonus within ninety (90) days after insurance coverage is waived. The bonus of 50% will then be awarded and prorated, based upon the number of full months remaining in that year. Examples: 11 months = 11/12 of the annual bonus; 10 months = 5/6 of the annual bonus; 9 months = 3/4 of the annual bonus, etc.
- C. Existing and newly-hired employees must provide proof of insurance to the employer before choosing to waive the employer's current policy. If any employee who has exercised this option desires at a later date to return to the employer's current coverage, such request shall be made in writing and in accordance with the requirements of the employer's health and medical insurance provider/carrier. Upon choosing this option, the employee shall be required to produce evidence/documentation of ongoing health and medical care coverage. If requested by the health and medical insurance provider/carrier, the employee shall submit to a physical exam as a condition of re-entry. All other requirements for re-entry of the employee by the insurance provider/carrier shall apply.

Issue 11: Article 13, Holidays

Township Position: The Township demands that the roster of holidays be reduced by two (2) and that pay for holidays worked be time and one-half (1½) times the officer's base rate. That is, the Employer proposes to reduce holiday pay from the current double (2x) time to time and one-half (1½).

Union Position: The Union rejects the employer's demand and counters with current contract language.

Discussion: The Township argues that the number of holidays enjoyed by the Union membership is high compared to other jurisdictions. Moreover, the Employer believes that double time for time worked is unreasonable given the Township's finances. In general, the Township's position(s) on this issue are driven by cost considerations. The Employer believes that the combination of paid days off (holiday pay for all patrolmen) coupled with the double time rate paid to employees who work holidays is too costly for the Township to pay in light of its financial problems.

The Union disagrees with the Township's position on two grounds. First, the Union stated that it does not think that there is any evidence to support the contention that eleven (11) holidays is overly generous. Instead, the Union believes that an argument can be made in support of a position that twelve (12) holidays is the standard in police contracts. Moreover, the Union contends that double time for hours worked is the standard for holiday pay in contracts throughout the State. Therefore, the Union rejects the Employer's arguments.

During the mediation effort, the parties discussed various proposals for lowering the cost of paid time off. In this instance, they discussed deleting one holiday and replacing it with a personal day. This trade would mean that a patrolman would have the same amount of time off, but that time would cost the Township less because a personal day is paid at straight time. This solution benefits both parties. The Employees have the same number of "holidays," but one is a day that they can schedule at their convenience and/or out of necessity. That is, rather than having a fixed holiday, they get what is, in effect, a floating holiday. The Employer gains because the cost of the holiday benefit is reduced. The Fact Finder believes that this is a reasonable compromise on this issue.

Finding of Fact: The parties reached a mediated settlement on this issue.

Suggested Language:

**ARTICLE 13
HOLIDAYS**

Section 1. Holidays. All holidays provided to Township police officers under Ohio law are designated as paid holidays for all bargaining unit members. For the purposes of this section, the following holidays shall be recognized as paid holidays by the Township:

- | | |
|---------------------------|-----------------------------------|
| 1. New Years Day | 7. Columbus Day |
| 2. Martin Luther King Day | 8. Veteran's Day |
| 3. President's Day | 9. Thanksgiving Day |
| 4. Memorial Day | Day After Thanksgiving |
| 5. Independence Day | 10. Christmas Day |
| 6. Labor Day | |

Section 2. Holiday Pay. Holiday pay for those officers working on a holiday shall be double time for all hours actually worked in addition to regular holiday pay; a maximum of eight (8) hours may be credited to accumulated time. Those not working the holiday will be paid at the regular holiday pay rate with no option of accumulated time.

Members who are on vacation the week of a holiday and would have been scheduled to work the holiday will be docked four (4) vacation days and be paid for five (5) days. If they are scheduled off on the holiday, members will be docked five (5) vacation days and will receive eight (8) hours additional compensation pay for the holiday.

Section 3. Holidays worked will be computed during the calendar year from January 1 through December 31.

Section 4. Holiday Restriction. Members must complete six (6) months employment with Boardman Township to be eligible for holiday compensation.

Section 5. Personal Day. *In addition to those holidays listed above, all unit members will be afforded one (1) personal day. Scheduling of the personal day is subject to the operational needs of the Employer, however, a minimum of three (3) days notice must be provided for any personal day request.*

Issue 12: Article 14, Vacations

Township Position: The Township demands a bifurcated vacation schedule that would have a lower accrual rate for officers hired after January 1, 2009 be added to the contract.

In addition, the Employer wishes to add language clarifying how vacations are scheduled because the Employer contends that the current language has created scheduling problems.

Union Position: The Union rejects Management's demands and wishes to maintain the status quo on this issue.

Discussion: The parties discussed vacation scheduling for a number of hours. The main issue was whether the scheduling practice added to the contract during the last round of negotiations created staffing problems for the Township leading to increased overtime charges. The current practice mandates that vacation weeks will start at the end of the last shift on Friday and end at the start of the first scheduled shift on Monday. This ensures that a patrolman will have nine (9) days off. The Employer states that this is causing staffing problems and that these problems are increasing overtime payments.

The Union adamantly opposes any change in the current practice. The Union states that without the current practice that many of its members would be forced to take their vacations with the first day and the last day falling in the middle of the week, and that family trips by car would be hard to schedule (a trip to Disneyland was used as the example). The Union believes that this is a valuable benefit to its members and should not be changed. Both parties stated that they recognize that mandating vacations must abut weekend days is somewhat unusual.

Given the fact that it is impossible for any five-day workweek to not run up against an employee's days off, i.e., a workweek begins on an individual's first workday. The question is about the fact that the eighth and ninth days off may not be included in the vacation period because it is possible that a weekend would fall in the middle of the

vacation period if a patrolman did not work a Monday through Friday schedule. In a twenty-four seven, three hundred and sixty-five day operation, some workweeks begin on Tuesday, Wednesday, etc. This would undoubtedly cause problems for some patrolmen.

However, it must be noted that the same situation often occurs in other jurisdictions, and it is not a major problem. If there are scheduling/vacation problems, officers can trade shifts with other patrolman or use AT time to gain extra vacation time. Both of these options are available in Boardman.

Given the fact that the old vacation scheduling practice worked (albeit imperfectly from the Union's point of view) and in light of the parties' discussions about the scheduling/overtime nexus, the parties agreed that the current vacation scheduling practice should be changed.

The second part of the vacation issue concerns the accrual rate. The Township has proposed a bifurcated schedule whereby newly hired patrolmen will accrue vacation days at a slower rate than current employees. The Township argued that the current vacation accrual rate is overly generous when compared to other police departments and that comparables data justifies its position. Moreover, the Employer stressed that it was not asking for a change in the accrual rate for current employees, only for new hires. The Township stated that this was an attempt to spare the current employees from the need to make a concession on this issue. The Union argued against a bifurcated schedule and claimed that the two parties' bargaining history justified the current vacation schedule.

The Union and the Employer finally were able to come to an agreement on the vacation schedule. They agreed that members hired after January 1, 2009, will have the accrual rate shown in Section 2 (below) and the current employees will accrue vacation

time according to the schedule contained in the contract. In this instance the parties are attempting to control costs by changing the vacation accrual rate for new hires. Moreover, if the new accrual rate presents problems for the Union and/or the Township, then future negotiations are the forum to correct the problem.

Finding of Fact: The parties reached a mediated agreement on this issue.

Suggested Language:

ARTICLE 14 _____ **VACATIONS**

Section 1. Entitlement Eligibility. *It is the intent of the parties to supersede R.C. 9.44. Vacation eligibility is based on years of continuous full-time service with the Employer, and shall include credit for active military service undertaken after the onset of employment. Full-time employees are entitled to vacation leave after one (1) year of continuous full-time service with the Employer. Members hired prior to 10-1-93 will continue to have their service credit calculated to include prior active military service and other full-time employment as a police officer.*

Section 2. Accrual. *For those employees hired after January 1, 2009, bargaining unit members shall accrue vacations according to the following schedule:*

<u>Years of Service</u>	<u>Annual Vacation</u>	<u>Days/Hours</u>
<i>Less than one (1) year</i>	<i>None</i>	<i>None</i>
<i>1-7 years</i>	<i>2 weeks</i>	<i>10 days/80 hours</i>
<i>8-15 years</i>	<i>3 weeks</i>	<i>15 days/120 hours</i>
<i>16-24 years</i>	<i>4 weeks</i>	<i>16 days/160 hours</i>
<i>25 years or more</i>	<i>5 weeks</i>	<i>25 days/200 hours</i>

Employees will be credited with the applicable amount of vacation leave upon their anniversary date for use during the following year.

Section 3. Usage. Bargaining unit members may take vacation leave to which they are entitled beginning with the first full pay period following the date they complete the required years of service. ~~Years of active service shall be computed to include credit for active military service and other full time employment as a police officer. Members~~

~~hired after 10-1-93 will only have their employment time with Boardman Township used to compute their vacation time. (SEE SECTION 1)~~

Section 3 4. Vacation Schedule Requests. Calendar weeks of vacation time requested by members of the bargaining unit shall be submitted to the Chief of Police or his designee ~~per the existing written policy.~~ Two (2) weeks of vacation and any individual days earned up to four (4) may be taken a day at a time, with all remaining vacation time being used by calendar weeks. Full week vacation requests shall take priority over single day requests.

~~Calendar weeks of vacation time requested by members of the bargaining unit shall be submitted to the Chief of Police or his designee per the existing written policy. All weeks of vacation scheduled will start with the end of the last scheduled shift on Friday and end with the first scheduled shift on Monday. If shift staffing permits, weeks of vacation will be scheduled to start with the end of the last scheduled shift on Friday and end with the first scheduled shift on Monday. Where staffing, does not so permit such an adjustment, employees may request A/T days or uses shift trades in conjunction with vacation days.~~

Section 5. Vacation Approval. *All vacation requests are subject to the operational needs of the Employer and may be denied if determined necessary by the Chief of Police/designee.* Requests by members for vacation weeks that coincide will be granted on the basis of *classification* seniority, ~~if granting less than all such requests is necessary for the efficient and effective operation of the department as determined by the Chief of Police or his designee.~~ *Once approved, the weeks selected by the members shall be locked in and used at that selected time, unless the member is on sick leave or I.O.D.*

Section 6. Required Usage/Conversion. All vacation scheduled for the calendar year shall be completed in the calendar year. Officers selecting the last week of the year shall complete their vacation within the first week of the new year and in any case will not go past the following dates:

For calendar year ~~2006~~ **2009**, by January 7, ~~2006~~ **2009**

For calendar year ~~2007~~ **2010**, by January 6, ~~2007~~ **2010**

For calendar year ~~2008~~ **2011**, by January 4, ~~2008~~ **2011**

All unused vacation time after the last pay period of the year will be cashed out and paid to the employee by February 1.

Section 4 7. Accumulated Vacation Time/ Eligibility/Proration. Members may accumulate vacation time in accordance with the requirements of the Ohio Revised Code. For purposes of computation of vacation benefits under Article 14, Section 1, in addition to years of service, employees must have worked the previous 12-month period to earn vacation credit. For employees who are absent from work and are not earning PERS credit for a period in excess of thirty (30) consecutive calendar days and/or twenty (20) consecutive working days, time in excess of these periods absent from work shall not be

calculated for purposes of earning vacation credit. This provision will only take effect after an employee has missed more than the periods defined, inclusive of the initial twenty (20) and/or thirty (30) day periods.

This provision shall not apply to members of the bargaining unit who are absent from work and are not earning PERS credit as outlined above as a result of an injury that occurred in the line of duty.

An employee who has vacation scheduled while off on workers compensation will not be required to use the vacation time during that period. If time permits, employees will schedule and use vacation upon their return to work. If the employee has not returned to work or time does not permit the use of vacation in the calendar year, the employees' vacation time may carry into the next year upon written request to the Board of Trustees.

~~As applicable to Section 4,~~ All vacation benefits earned and/or not earned based upon time worked in a previous 12-month period shall be computed on a pro-rated basis when calculating vacation time available to an employee.

Section 5 8. Unused Vacation Time when Separated. Unused accumulated vacation time prorated to the date of separation will be paid at the time of such separation to any member who leaves the employ of the police department for any reason or is laid off. Unused accumulated vacation time will be paid to the surviving spouse or estate of any member who dies, prorated to the date of his death. ~~Any member, who transfers to another agency within the Township, shall also have transferred to his credit any unused accumulated vacation time.~~

Section 6 9. Vacation Pay. Vacation pay will be computed at the appropriate rate earned by the member at the time vacation is actually taken.

Section 7 10. Prior Unused Vacation Time. Unused vacation time accumulated prior to the effective date of this Agreement shall be retained and taken at such times and in such amounts as provided in this Agreement.

Section 8 11. Selling One Week Vacation Time (5 days). A member may submit in writing between May 1 and May 15 of each year a request to sell one weeks vacation. The member will receive a check between June 1st and the 10th of each year for the week's vacation.

SIDE LETTER

VACATION ACCRUAL SCHEDULE FOR CURRENT FULL-TIME EMPLOYEES

Section 1. *The parties agree that full-time employees hired prior to January 1, 2009, shall receive vacation leave in accordance with the following schedule:*

Completed Years of Active Service

1

Paid Days Off

10

<i>6</i>	<i>15</i>
<i>12</i>	<i>20</i>
<i>13</i>	<i>21</i>
<i>14</i>	<i>21</i>
<i>15</i>	<i>22</i>
<i>16</i>	<i>23</i>
<i>17</i>	<i>24</i>
<i>18</i>	<i>25</i>
<i>19</i>	<i>26</i>
<i>20</i>	<i>27</i>
<i>21</i>	<i>28</i>
<i>22</i>	<i>29</i>
<i>23</i>	<i>30</i>
<i>24</i>	<i>31</i>
<i>25</i>	<i>32</i>
<i>26</i>	<i>33</i>
<i>27</i>	<i>34</i>
<i>28</i>	<i>35</i>

Issue 13: Article 15, Sick Leave

Township Position: The Township has proposed a number of editorial revisions to the sick leave article. In addition, the Township demands that language relating to the patterned abuse of sick leave be added to the contract. The Employer also wants to include new language stating that only time worked for the Boardman Police Department counts toward an officer's sick leave bank.

Union Position: The Union demands that an addendum to the contract dated 9/9/08 be inserted into the body of the contract.

*Note: The Employer withdrew its demand for inclusion of patterned abuse of sick leave language.

Discussion: There is very little difference in the parties' positions on this issue. The two major points are 1) the inclusion of language that specifies that sick leave earned with another public employer cannot be transferred to Boardman Township, and 2) the

inclusion of an addendum to the expiring contract concerning sick leave buyout into the body of the prospective agreement. The first issue is intended to limit potential grievances and reduce the Township's exposure to large sick leave buyouts for short-term employees. That is, it is possible that a person will come to work for Boardman after he/she has worked for another public employer and accumulated a large number of hours of sick leave. That employee can then retire after a few years and without the protection of the Employer's proposed language, the Boardman Trustees could be facing a substantial payment to buy out accumulated sick leave. The Employer also stated that its proposal was consistent with long-standing practice in Boardman.

The Union's position is related to an arbitration award (the Mound Agreement) that relates to how accrued sick leave can be bought out. The Union believes that this language should be added to the agreement because it is now part of the parties' agreement with respect to sick leave.

Finding of Fact: There is no substantive dispute between the parties on Article 15 and they reached a mediated settlement on this issue.

Suggested Language:

ARTICLE 13, SECTION 1 _____
SICK LEAVE

Section 1. ~~Sick Leave. A Accrual.~~ All bargaining unit members shall earn sick leave at the rate of four and six-tenths (4.6) hours with pay for each eighty (80) hours of service. Unused sick leave shall be cumulative without limit. Sick leave shall be charged to a member on the basis of actual time (hour-by-hour) absent. An employee, who sustains a service connected injury shall not be required to exhaust accumulated sick leave before being entitled to apply for benefits under Workers Compensation (subject to any requirements of the laws of Ohio).

Section 2. ~~C~~ Previously Accrued Leave/Sick Leave Transfer. Unused sick leave accumulated prior to the effective date of this Agreement shall be retained and taken at such times and in such amounts as provided in this Agreement. *Sick leave accumulated*

with another public entity or political subdivision is not transferrable to Boardman Township for any member hired after December 31, 2008.

Section 3. D. Usage. Such leave shall be granted, to members for absence from regularly scheduled hours of employment for the following reasons:

1. sickness, illness or injury of the member;
2. pregnancy of a member;
3. exposure to contagious disease that could be communicated to other persons;
4. sickness, illness or injury to a member of the immediate family of the member;
5. *examination including medical, psychological, dental, or optical examination by an appropriate practitioner that cannot reasonably be scheduled during non-work time.*
6. *examination including medical, psychological, dental, or optical examination of a member of the employee's immediate family by an appropriate practitioner where the employee's presence is reasonably necessary.*

Section 5. B. Conversion Options. *The following options for the conversion of unused accumulated sick leave may be exercised by bargaining unit members. The options may be exercised in conjunction with one another. For purposes of illustration, the parties have included a hypothetical example of the conversion options in Appendix _____.*

Option 1. Unused accumulated sick leave shall be paid to a member or his designated beneficiaries or estate, upon his death or retirement, in a sum equal to fifty per cent (50%) of all unused accumulated sick leave hours. Current employees are entitled to take the following percentages of sick leave as indicated on the following table upon retirement or separation:

1-10 years:	2% per year (20% total upon 10 years)
11-20 years:	3% per year (30% for next 10 years, total accumulation 50%)
Over 20 years:	50%

For all new hires effective ~~with execution date of contract~~ **January 1, 2009**, state minimum requirements upon death and/or retirement only (25%, maximum 120 days pay-out).

Sick Leave Retirement Buy-Out. Employees may make request for the following distribution of the remaining sum of accumulated sick time as follows, which shall be predicated upon:

1. written request to the Township Clerk at least ninety (90) days in advance of the beginning of the three (3), two (2), or one (1) year option period selected;
2. written request which indicates the specific retirement date which distribution of sick time hours are calculated upon; and,
3. letter of understanding signed by the employee and Township Clerk that specifies, upon selecting option, the final distribution (including all related payroll taxes and retirement deductions, etc.), of remaining accumulated sick time hours calculated at current dollar value at time of request.
4. ***accumulated sick time sold as part of this buyout will be on a first in-first out basis.***

~~Option 1~~ Three (3) Years Advance Notice of Retirement

With Three (3) Years Advance Notice of Retirement: 60% of ***the specified amount of*** remaining sum of accumulated sick time entitlement, to be divided over three (3) year payroll, at current dollar value at time of request.

~~Option 2~~ Two (2) Years Advance Notice of Retirement

With Two (2) years Advance Notice of Retirement: 40% of ***the specified amount of*** remaining sum of accumulated sick time entitlement, to be divided over two (2) year payroll, at current dollar value at time of request.

~~Option 3~~ One (1) Year Advance Notice of Retirement

With One (1) Year Advance Notice of Retirement: 20% of ***the specified amount of*** remaining sum of accumulated sick time entitlement to be divided over one (1) year payroll, at current dollar value at time of request.

Upon notice from an employee ~~for~~ ***of the desire to sell a specific amount of their remaining sick time and*** selecting the desired option, the following procedure will apply:

1. The Township Clerk will value accumulated time hours at the current effective rate;
2. Applicable percentages will be applied based upon the option selected;
3. The buy-out value will be divided by ***and paid to the employee in the*** appropriate remaining payrolls;

4. The employee and Township will enter into an Agreement ~~setting~~ **reducing** the accumulated hours to "0" ~~and agree to increase wages based upon the calculation by the amount converted;~~
- ~~5. any sick time required by employee subsequent to "notification date" will be taken from subsequent sick time earned by employee;~~
- 6 5. The Township will purchase unused sick time at date of retirement at 50% times the then prevailing wage rate.
- 7 6. In the event of catastrophic illness, extenuating medical circumstances, or any depleted use of the remaining, earned sick time hours calculated prior to the retirement date given in the original notification:
- A. the Agreement between the employee and Township shall be suspended;
 - B. the Township shall restore sick time distribution back to the beginning date of notification;
 - C. payments already made under the original Agreement shall be subtracted.

~~E. Option 2. Sick Time Buy Back Option:~~ By November 1st of each year, all employees ~~who have at least three hundred (300) hours of banked sick time accumulated~~ are eligible to participate in a sick leave buy back option. ~~Eligible~~ **Eligible** Employees shall be permitted to sell back sick time hours they have not used, on a form provided by the Employer, on a 2:1 ration (50% pay).

- ~~1. A minimum of three hundred (300) accumulated hours must remain in the bank upon execution of a buy back option.~~
- 2 1. Buy back options shall not exceed a maximum of the one hundred twenty (120) hours accumulated in the previous twelve (12) month period.
- 3 2. Buy back options and related hours of payment are ~~not~~ subject to PERS for ~~either~~ **both** the Employer ~~or~~ **and the** employee.
- 4 3. For employees who are eligible and have exercised this buyback option, payments shall be provided in the ~~first-last~~ regular payroll period of ~~December~~ **June of that year.**

Issue 14: Article 21, Grievance Procedure

Township Position: The Township demands that the forfeiture provision contained in the grievance procedure be dropped. The Township also desires to add the term “designee” to the language in Sections 4 and 5 of the procedure.

Union Position: The Union demand is for the status quo.

Discussion: The addition of the contested phrase to Sections 4 and 5 allows the Trustees to designate someone to work on grievances for them. In a time where labor relations professionals often are involved in negotiations and arbitrations, it is reasonable to have the same individuals become involved in the last steps of the grievance procedure. The suggested language does not force the Trustees to appoint someone to represent them in the final steps of the grievance process, but it does allow them the opportunity to do so if they believe that it is in their best interests. The insertion of the term “designee” allows the Trustees to remain apart from grievance adjudication if they so desire, and is therefore unobjectionable.

The second part of the Township’s demand is that the forfeiture provision of the contract be deleted from the grievance procedure. The Township claims that the phrase “remedy sought by the grievant shall be awarded immediately” has caused and continues to cause problems for the parties, sometimes ending with an arbitration hearing over procedural issues. The Township contends that the Union has on occasion used procedural tactics to advance issues to arbitration that are outside the bounds of the contract and/or used procedural tactics to win awards that are “not supported by any reasonable reading of the contract language.” The Employer believes that there are problems inherent with the language that should be rectified.

The Union is against this change and claims that if the Employer acts according to the wording of the contract, then there should be no problems. The Union does not think that a standard part of most grievance procedures should be removed from the contract.

A grievance procedure is the heart of a labor agreement. This process allows an individual(s) who believe that they have been unfairly disciplined by the employer or who believe that the Employer is violating the contract to present their case to an impartial third party. It is the grievance procedure more than any other part of the collective negotiation process that ensures labor peace. It should not and must not be used as a weapon against either party or the entire bargaining process is at risk.

Procedural safeguards are in grievance procedures to ensure that one side or the other, usually management, does not short circuit the process by simply refusing to act on a grievance. That is, if the Employer (Union) never answers the grievance and no timelines (procedural safeguards) are in the contract, then no resolution ever occurs. The use of timelines and forfeiture provisions insures that grievances are adjudicated.

Most arbitrators have been involved in numerous situations where a procedural question is raised prior to the substantive issue at the bar; and, in general, they attempt to hear the grievance based on the facts of the matter. However, if the procedural problem is so serious that it has tainted the process, then one party or the other may have the issue decided in their favor on strictly procedural grounds. Arbitrators believe that the words in a contract were placed there for a reason and that the words should be followed.

Procedural problems are minimized by good procedures. If the Township believes that the Union is abusing the contract on procedural grounds, that is, in many ways, the Township's problem. The timelines in the contract specify that responses must

be given in so many calendar days, and that is simply a matter of counting. Therefore, it is hard to see why the deletion of the forfeiture language would strengthen the procedure.

Finding of Fact(s): The insertion of the term “designee” into Sections 4 and 5 of the agreement is recognition of the fact that Employers often hire outside firms to do labor relations work. The deletion of the timelines and forfeiture provision of the contract weakens the concept of a grievance procedure, and the Township did not prove that this demand is necessary.

***Note:** The Township also added the phrase “deny the grievance” to the language of Section 4. This wording makes Section 4 logically complete and is recommended for inclusion into the agreement.

Suggested Language: The phrase “deny the grievance” shall be added to Section 4 of the agreement. The term “designee” shall be added to sections 4 and 5 of the agreement.

ARTICLE 21

GRIEVANCE PROCEDURE

Section 1. Definition. A grievance is any dispute between a police officer and the Township or its duly authorized representative not amenable to appeal by the employee to the Civil Service Commission, involving the interpretation or application of this Collective Bargaining Agreement. Disputes arising in contract negotiations, including resolution of wage packages, are not grievances subject to the arbitration provision. ~~Any reference in these provisions to Trustees shall be considered to mean the Trustees or their authorized representatives.~~

A grievance may be started by the employee or the Association representative starting at Step One, or by the Association starting at Step Two. Grievances must be started within seven (7) days of when the grievant knew or reasonably should have known of the occurrence that initiated the dispute. Nothing in this Article shall be interpreted as discouraging or prohibiting informal discussions of a dispute by the employee and the Township prior to the filing or starting of the grievance. In the event the Township believes itself aggrieved because of any matter in connection with this Agreement, or because of failure of members of the Union to comply with the terms of this Agreement, it shall, through its authorized representatives, reduce its complaint or grievance to writing and present it to the Union’s designated representative. Thereafter, the Township shall follow the procedures for advancing the grievance and will commence to Step

Three. The parties believe that it is in the best interest of all concerned to resolve day-to-day problems as quickly as possible, in accordance with established procedures and the applicable provisions of the collective bargaining agreement.

Section 2. Step One. If a police officer has a dispute with the Township, he may elect to discuss said matter with his immediate supervisor. The supervisor shall respond to the police officer within seven (7) days from the date that the supervisor was made aware of the grievance.

Section 3. Step Two. If a police officer is not satisfied with the response of the supervisor given at Step One, the police officer or the Association may submit the grievance in writing to the Chief of Police, or his designated representative, within seven (7) days of the date of receipt of the supervisor's response in Step 1.

When the Chief of Police receives the grievance, the Chief or his authorized designee shall arrange a meeting with the grievant and the Association within seven (7) calendar days to discuss the grievance. The Chief shall render his decision in response to the grievance no later than seven (7) days after the above prescribed meeting. This decision must be in writing and signed by the Chief of Police or his authorized representative.

If the police officer or the Association is not satisfied with the decision of the Chief of Police or his authorized representative, within seven (7) calendar days, the grievant or the Association may then process the grievance to the Township Trustees.

Section 4. Step Three. Within twenty (20) calendar days from receipt of the grievance, the Trustees/*designee* shall either grant the remedy requested by the employee, *deny the grievance*, or the Trustees/*designee* shall hold a hearing to evaluate and decide the grievance. This hearing shall be attended by the grievant and/or representative of the Association, the Chief of Police or his authorized representative, and any other person so designated by the Trustees. Within seven (7) calendar days of this hearing, the Trustees shall make a decision in writing and transmit a copy of same to the Association and the affected police officer.

Section 5. Arbitration. Within thirty (30) calendar days from the receipt of the decision of the Trustees/*designee*, the grievant may appeal said decision to arbitration by notifying the Trustees/*designee* in writing. This appeal to arbitration is conditioned on the signed approval of the President of the Association. Within twenty (20) days from the receipt of the request for arbitration, the parties shall mutually confer for the selection of an arbitrator. Such selection shall in accordance with the rules of the American Arbitration Association.

The arbitrator shall conduct a hearing on the grievance within sixty (60) days after he is selected as arbitrator. The hearing shall be in Boardman, Ohio. The hearing shall be attended by the Trustees or their representatives, the Association and its representatives, and the grievant. Attendance of the parties at any meeting or arbitration may be waived by the arbitrator, if requested in writing, and approved by the adverse party. The waiver

of attendance request shall be made part of the record.

If the question of the arbitrability of the issue is raised, the arbitrator shall rule first on this question. If the arbitrator rules that the grievance is arbitrable, he then shall proceed to conduct a hearing on the merits. The arbitrator shall make his written decision on the grievance within thirty (30) days after conclusion of the arbitration hearing process.

The arbitrator's fees and other expenses shall be borne equally by the Township and the Association, except the cost associated with the appearance of the witnesses, attorneys, the production of documents, or other fees, whether they be for consultants or otherwise, shall be borne solely by the party which calls the witnesses or employs the attorneys or consultants. The arbitrator's decision shall be binding of the Township, the Association, and the grievant.

Section 6. Time Limits and Forfeitures. If the grievant fails to advance his grievance to the next Step within the times limitations provided in this Article, the decision by the Township's representatives at the previous Step shall then be conclusive. If the Township, through its representatives and agents, fails to hold a meeting, hearing or file a decision within the time limits provided herein, the remedy sought by the grievant shall be awarded immediately. Grievances resolved for the reason that either party failed to act within the prescribed time limitations shall not be considered precedents.

In all Steps of the above grievance procedure the grievant shall be required to prepare the copies of the grievance and the Township shall be required to receipt said copies of the grievance and present said receipted copies to the Association or the grievant.

The grievant may, at any time, withdraw his grievance. Time limits may be extended at any time, by mutual agreement of all parties. All references in this Article to "days" and/or "calendar days" shall mean "business days", which shall be interpreted to exclude Saturdays, Sundays and holidays.

Issue 14: Article 22, Attendance Incentive

Township Position: The Township proposes the status quo on this issue.

Union Position: The Union demands that the present \$150.00 compensation be changed to eight (8) hours of comp time.

Discussion: The Union believes that eight (8) hours of A/T (comp) time is more valuable to its membership than the \$150.00 bonus. However, the Township opposes adding another source of A/T (comp) time to the contract. Given that the Township is

willing to pay the bonus in cash, the present system does not harm the Union membership is in anyway. This is especially true given the fact that the bonus is paid quarterly and the membership does not have to wait for their checks.

Finding of Fact: The parties came to a mediated settlement on this issue.

Suggested Language:

**ISSUE 15, ARTICLE 22
ATTENDANCE INCENTIVE**

Section 1. Each member subject to this agreement shall be paid, in first pays in January, April, July and October. The parties agree that members shall receive their hourly rate of pay at time and one-half for the remainder of the Agreement. Quarterly incentive awards for work attendance as follow:

Perfect Attendance = Perfect Attendance/No sick days as defined in Article ~~15~~ 15, Section 1 and in accordance with ~~Article 22~~, Section 2, following.

Perfect attendance quarterly incentives shall be paid at 5.7 times the member's hourly rate at one and one-half (1-1/2) times or one hundred fifty dollars (\$150.00) whichever is greater for perfect attendance.

Periods of attendance are to be: January – March, April – June, July – September, October - December.

Section 2. Employees absent from work due to vacation, holiday, bereavement leave, military leave, attendance at seminars, training functions or other duty-related absences from normal work schedules shall not be considered as absent from work for the purpose of this benefit. Employees absent from work after the day of a duty related injury who are on I.O.D. or Workman's Compensation will not be eligible for the Attendance Incentive ~~as listed in Article 22~~

Issue: Article 24, Miscellaneous

Township Position: The Township desires to maintain the status quo on this issue.

Union Position: The Union demands that the K-9 officer receive an extra eight hours of comp time per month for working with and caring for the department's dog.

Furthermore, the Union demands that the number of kennel days be increased by seven (7) from fourteen (14) to twenty-one (21) days.

Discussion: During the mediation effort, the parties discussed the issue and agreed to increase the A/T hours for the K-9 handler by four (4) hours. In addition, the parties also agreed to increase the number of kennel days from fourteen (14) to twenty-one (21) days.

Finding of Fact: The parties came to a mediated settlement on this issue.

Suggested Language:

ARTICLE 24

MISCELLANEOUS

Section 1. Upon the prior approval of the Captain and Shift Supervisors, members shall be allowed by mutual agreement to trade days off on the same shift or shifts within the same week where the employees are assigned to different shifts.

Section 2. The Township agrees to pay for all long distance telephone calls employees are required to make in the performance of their assignments.

Section 3. Time Changes. When a member works the midnight shift in the Fall, and works a nine (9) hour shift, the member shall be compensated one (1) hour overtime at the appropriate rate of pay.

When a member works the midnight shift in the Spring of the year, it shall be the members responsibility to report for work one (1) hour early for the midnight shift. Failure to report to work one (1) hour early shall result in the member being paid seven (7) hours pay for that shift.

Section 4. Field Training Officer. The Township and the Association desire to encourage police officers to volunteer to participate as Field Training Officers.

1. Officers must request, in writing, that they be considered for FTO positions, which shall include their supporting rationale in serving as an FTO;
2. Selected officers shall receive training as FTOs;
3. Officers entering the FTO training program agree to remain as FTOs for a minimum period of three (3) years, or the completed training of four (4) individuals, which ever comes first; this requirement shall not preclude an individual from choosing to continue as an FTO beyond the three year minimum period or completed training of four (4) individuals.

4. Officers that become trained as FTOs agree to accept and properly train all new officers assigned to them by the administration of the department;
5. FTOs shall be required to maintain and complete all required documentation regarding the progress of the individual they are training as provided by the administration of the department;
6. FTOs agree to complete a final report regarding the status of each individual they have trained which lists the strengths and weaknesses of the individual;
7. Compensation shall be based upon each 8-hour block of training that an FTO completes with any new officer assigned to them and shall include two (2) hours of compensation for every eight (8) hours of training; and,
8. Officers will not be compensated as an FTO unless they have been designated as an FTO and have completed the required documentation.

Section 5. Use of Unmarked Vehicles. Members assigned unmarked vehicles may take their vehicles home with the following restrictions.

1. Vehicles shall only be used for to and from township work and other duty related details.
2. Any member who changes his/her place of residence shall be reviewed by the township for continued use of the vehicle.
3. All existing departmental rules and/ or directives controlling this use of vehicle shall remain in full effect.

Section 6. Dog Handlers. It is the intent of this provision to provide full compensation as required by the Fair Labor Standards Act to those members who are responsible for the care, feeding, exercising and boarding of a Township-owned dog.

~~Once Every calendar month each canine officer will be provided with a paid day off twelve (12) hours of A/T time. This day off will be connected if compatible with scheduling to the beginning or ending of the canine officers other two days off during a normal workweek.~~

~~The scheduling of this day off will be done at the discretion of the Captain of the Patrol Division or his designee.~~ Canine Officers may request a certain day off to fulfill this requirement but the ultimate decision to schedule the day off rests with the Administration of the Police Department. This is necessary for the effective and efficient operation of the Police Department. As further compensation, the Township agrees to provide a marked police unit that the officer may use to transport his canine to and from work. It is agreed that the use of this vehicle off-duty is restricted and can only be used

when the officer is involved in a duty related function.

Additional Township Responsibilities:

1. Township agrees to purchase the necessary type and amount of dog food needed to maintain a healthy dog.
2. Township agrees to pay any and all necessary medical expenses for the dog.
3. Township agrees to provide initial training of officer and dog. Any mandated certification or re-certification for officer or dog will be conducted on departmental time.
4. Township agrees that after a dog has been judged, by mutual agreement, to be unfit for continued police service, the dog handler will be sold the dog for \$1.00.
5. Township agrees to pay for housing the dog in a kennel in the event the officer goes on vacation out of town up to ~~14~~ 21 days per year.

Officers' Responsibilities:

1. Officers agree to house dogs at their residences.
2. Officer agrees to be responsible for health, safety and supervision of the dog both on and off duty.
3. Maintenance of the dog to include regularly scheduled veterinarian visits, grooming and bathing will be conducted on the extra day off provided each month in this agreement.
4. Officers agree to stay employed with the Boardman Police Department for at least five years from the date of completion of basic dog training.
5. Canine Officers agree that if they voluntarily leave employment with Boardman Township with the exception of a disability leave, or decide that they no longer wish to be a canine handler prior to the end of the five-year period, the officer will be held financially liable for the cost of the dog based on a pro-rated formula. The formula will be computed in the following manner. The cost of the dog and the initial training would be added and then divided by 60 to equal 5 years. If an officer leaves early, then the number of months remaining from the sixty (60) month commitment would be multiplied by the cost per month. An example of this formula would be the following: The dog cost \$6,500.00 and the initial training cost \$500.00. The total cost would be \$7,000.00 divided by 60 = \$116.66 per month for every month left on the 5 year commitment. The officer will be exempt from this condition if the dog can be satisfactorily retrained to be used by another officer.

6. In the event that a dog must be retried with less than 5 years service, then the handler agrees that if the animal is able it will be used for stud services, the proceeds will be surrendered to Boardman Township.
7. Officers agree to see that the vehicles assigned to them for canine use are properly cleaned and maintained.
8. The Township agrees to provide K-9 Officers with \$300.00 per year for cleaning and/or maintenance purposes related to housing dogs, upon submission of appropriate receipts for reimbursement.

Section 7. Weapons. The Township will provide each member with a duty weapon. Officers may purchase their duty weapon for \$1.00 upon retirement.

Section 8. Employee Discipline. An employee who feels that he or she has been disciplined without just cause shall have the option to either appeal the discipline to the Boardman Township Civil Service Commission or to an impartial third party who shall be selected by mutual agreement of the Union and the Township.

Section 9. Employee Status Update Requirements. All members of the bargaining unit who are on injury leave, workers compensation, sick leave or any other leave provision of this agreement who are absent from work for a period greater than two (2) consecutive/continuous work weeks are required to maintain communication with departmental supervisors regarding their personal leave status and potential return to work. Members of the bargaining unit shall accomplish this maintenance of communication and status update by, health permitting, reporting to the police station at least one (1) time every two weeks for purposes of, but not limited to, checking electronic mail and messages, obtaining information related to any new work rules or regulations issued to members of the department, etc.

Section 10. Crime Scene Technicians. Officers who are trained as Crime Scene Technicians will bid their shifts by department seniority as otherwise provided in Article 6, Section 3. However, at least one officer trained as a Crime Scene Technician will be assigned to each shift (0600-1400, 1400-2200, and 2200-0600). If those three shifts are not filled in the course of the regular bidding process, then the department reserves the right to assign a Crime Scene Technician to fill the vacant shift(s) by reverse order of seniority from among those who enter the program after 01/01/03. However, anyone trained as a Crime Scene Technician may be utilized to perform Crime Scene Technician duties as needed.

Section 11. Range Time. All members of the bargaining unit shall receive two (2) hours per month of paid range time, to include only fees incurred at a range, with receipts submitted for reimbursement. The Township reserves the right to select the appropriate range(s) for purposes of this provision.

Section 12. Random Drug & Alcohol Testing. Effective July 1, 2006, the bargaining unit agrees to fully cooperate and support a program of random drug and alcohol testing among the membership. Through a qualified entity and/or contractor of which services shall be retained by the Township, the bargaining unit agrees to allow the periodic selection of employees from the total employment pool of bargaining unit members of the OPBA/Boardman Patrolman to be tested on a quarterly basis. The contractor will ensure that all members of the bargaining unit have an equal, statistical likelihood of being directed for this mandatory random drug and alcohol testing. The quarterly drug and alcohol testing will constitute no less than ten percent (10%) of the average number of the bargaining unit members annually and will remain as such throughout the life of this Agreement on a quarterly basis.

In order to implement quarterly random drug and alcohol testing, the Township will provide employee identification to the contractor for use in the random selection database. The contractor will, in turn, furnish the Township with a list of individuals to be tested at the beginning of each selection period.

The Township and the Union agree to establish a working committee by May 1, 2006 comprised of any number of members from each party that shall meet to discuss and agree upon all testing parameters and implementation of the program to begin effective July 1, 2006. Such meetings may include meetings with the contractor selected by the Township.

For purposes of this section, alcohol testing parameters and/or limits utilized shall be those currently established by the Ohio Department of Transportation (ODOT) for Commercial Driver's License (CDL) holders.

Issue 17: Article 28, Duration

Parties Position: The parties agreed on a three-year contract beginning on January 1, 2009 and ending on December 31, 2011.

Suggested Language:

**ARTICLE 28
DURATION**

Section 1. This Agreement shall be effective as of January 1, ~~2006~~ 2009, and shall continue in full force and effect until December 31, ~~2008~~ 2011. The parties shall commence negotiations for a new contract no later than November 1, ~~2008~~ 2011.

Issue 18: New Article, Bargaining Unit Application of Civil Service Law

Township Position: The Township proposes to add a new article to the contract regarding Civil Service Law and its relation to the labor agreement.

Union Position: The Union rejects the Township's demand.

Discussion: None

Finding of Fact: The Employer withdrew its demand.

Suggested Language: None

Issue 19: New Side Letter, Part-time Employees.

Discussion: The Employer discussed the use of part-time employees with the Union. The Union is against the proposal, but claimed that if any part-time employees are hired they are part of the bargaining unit. Management disagrees. Therefore, the Employer wishes to add a side letter to the proposed agreement addressing the issue of part-time employees. The letter will state that that the Employer is interested in looking into the use of part-time employees, but that before anything concrete can be decided upon, SERB will have to make a Unit Clarification decision. The Employer intends to file a Unit Clarification request with SERB in the coming months. Since there has not been a determination as to what the status of part-time personnel would be, the parties agree that adding specific language at this time would be premature.

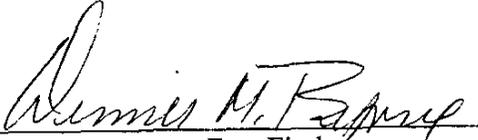
Finding of Fact: The Employer withdrew its demand, indicating that it would resolve the issue of part-time status with SERB prior to proceeding further.

Suggested Language: None

Conclusion

Finally, the Fact Finder is recommending that all Tentative Agreements and agreed upon language changes, etc., be added to the contract, and these items are included in the Fact Finder's recommendations by reference.

Signed this 14th day of July 2009 at Munroe Falls, Ohio.


Dennis M. Byrne, Fact Finder



Dennis M. Byrne

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July 14, 2009

Mr. Edward Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

STATE EMPLOYMENT
RELATIONS BOARD
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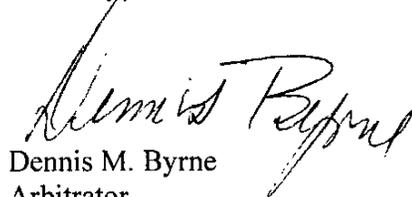
Re: Case No. 08-MED-10-1153 (OPBA v. Boardman Township)

Dear Mr. Turner:

I am enclosing the report in the above referenced matter. The parties were able to come to a mediated/negotiated agreement and they wished to have a report outlining their agreement. However, this has been an extremely rancorous negotiation and I am not sure that this report will end the matter. In my experience, a mediated settlement usually is a sign that the parties are on the road to an agreement. However, I am not sure that is true in this instance. Hopefully, this matter is settled, and both parties will ratify the agreement.

If you have any questions about this matter, please contact me.

Sincerely,



Dennis M. Byrne
Arbitrator