

STATE EMPLOYMENT  
RELATIONS BOARD

# Fact Finder's Report State Employment Relations Board

2009 DEC 15 P 3:30

In the Matter Of:

Fraternal Order of Police  
Capital City Lodge, No. 9

And

Franklin Township

Case Number: 09-MED-03-0377

Before Fact Finder: Floyd D. Weatherspoon

Appearances:

For the Fraternal Order of Police  
Capital City Lodge, No. 9

Russell E. Carnahan  
Grant D. Shoub  
Hunter, Carnahan, Shoub & Byard  
For Capital City Lodge No. 9, FOP  
3360 Tremont Road, 2nd Floor  
Columbus, OH 43221

And

For Franklin Township Board of Trustees

Tim Guyton, Chairman  
Don Cook  
Paul Johnson

Franklin Township Board of Trustees  
2193 Frank Road  
Columbus, OH 43223

This fact finding arises pursuant to Ohio Revised Code Section 4117.14 between the Fraternal Order of Police, Capital City Lodge No. 9 (Union or FOP) and, Franklin Township, (Township), Floyd D. Weatherspoon was selected to serve as the impartial Fact Finder, whose report is issued below.

The Fact Finding Hearing was held on November 17, 2009. The parties identified the following issues, and/or contract provisions as being unresolved:

1. Article 15 – Wages
  - A. Section 15.1 - Pay ranges and Rates
  - B. Section 15.5 Annual Service Credit
2. Article 16 - Shift Differential
  - A. Section 16.1 Shift Differential Pay Rates
3. Article 19 - Uniforms, Equipment and Allowances
  - A. Section 19.5 List of Uniforms and Equipment
4. Article 22 - Insurance
  - A. Section 22.1 - Hospitalization, Surgical, Major Medical, Dental, Vision Care Plan and Legal Service Plan

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth 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.

### **Issues**

#### **Article 15.1 Wages**

The parties are in agreement for the amount of wage increase for the first two years of the new agreement. For the first year of the new agreement, effective July 1, 2009, wages will increase by 4%. In the second year of the contract, effective July 1, 2010, wages will increase by 3%. The parties cannot agree on the wage increase for the third year of the contract.

#### Union Position:

The Union proposes a wage increase of 3% for the third year of the contract. The Union maintains that when looking at the comparables in the wage category, Franklin Township is at the bottom of the barrel. The Union contends that when comparing the wage rankings of other law enforcement agencies in Franklin County at the end of 2008, the top step for a Franklin County Township Police Officer is dramatically lower than the other 20 jurisdictions in Franklin County. According to the Union, the only agencies with lower wage rates are Clinton Township and Columbus State Community College.

The Union contends that the 3% is well within the Township's ability to pay. The Union states that a levy passed in 2006, and as a result the revenues have significantly been increasing since 2007. The Union states that the Township's budget records reflect that at the beginning of 2009, there was a surplus in the Police Fund of more than \$115,000. The Union further notes that this surplus does not include the surplus in the Township's General Fund of \$575,000. The FOP states that the 1% difference

in the wage proposals would only cost the Township approximately \$4,700 in total.

Township Position:

The Township proposes a 2% wage increase for the third year of the contract. As its comparables, the Township provides data relating to Southwestern City Schools. Franklin County Township is within Southwestern City Schools.

The Township also provides Exhibit 2 which is its budget information. The Township states that the revenue received to date is 22% under the projection. The Township states that the future revenue of the Township will possibly be impacted by tax abatements. The Township explained that there is a possible redevelopment of Westland Mall. The Township explained that it will be expected to give tax abatements as an incentive for the redevelopment. The Township stated that this means less income for the fire and police departments.

Discussion

The two primary criteria that will impact the recommendation of wages are: the Township's ability to pay and the wages of comparable jurisdictions. Both parties submitted documentation that relate to these factors.

The Township provided comparable information on Southwestern City Schools because Franklin Township is within this jurisdiction. However, the Fact Finder finds that this comparison is overly broad. The data provided lists the median income for residents in the Southwestern City compared to other school districts in Franklin County. Additionally, the data compares property values, percentages of students living in poverty and teachers average salaries. The main point of the exhibit provided by the Township appears to be that the Township sits in a economically depressed area, when compared to the other areas in Franklin County. While this data might indicate that the revenues generated to the Township might be lower than an area that is more economically affluent, the individual data comparisons are not helpful to the Fact Finder. The appropriate comparison is the

employees in this particular bargaining unit to other public and private employees doing comparable work.

The FOP contends that when looking at the comparables, the top step for a Franklin County Township Police Officer is dramatically lower than 20 other jurisdictions in Franklin County. The Union points out that the only agencies with lower wages are Clinton Township and Columbus State Community College. While the FOP submits comparison data on several jurisdictions, including larger city and more affluent suburbs, within Franklin County, the FOP acknowledged at the hearing, that the more appropriate comparison would be township to township. Data was provided for six township jurisdictions, three jurisdictions have higher wages. This data supports the FOP's position. While the comparables support the FOP position, the budget must allow for the wage increase.

In support its position that the Township has the ability to pay, the FOP emphasizes that at the beginning of 2009, there was a surplus in the Police Fund. The FOP also states that the General Fund has a surplus of \$575,000 at the beginning of 2009. The FOP also states that based on information that it received for the Auditor's office, the Township received an increase in the distribution of total tax revenue of \$500,000 from 2008 to 2009. However, the information from the Auditor's office also indicated that the Police revenue decreased during that same period. Moreover, the FOP acknowledged that much of the general increase was attributable to the new Fire levy. Additionally, the evidence demonstrates that the General Fund has been used in the past to supplement or fund the police department. However, since the passage of the levy, the General Fund has typically not been utilized in the funding of the Police Department. Therefore, the Fact Finder cannot rely on a surplus of funds in the General Fund in making his recommendation.

The FOP is right that there was a surplus in the beginning of 2009. Moreover, the projection predicts a surplus for 2010. Since, the parties agree on the wage increase for 2009 and 2010, the issue is the wage increase that will be effective July 1, 2011. There are no revenue projection figures

submitted for 2011. However, a surplus at the beginning of 2009, does not reflect that the money will be in the budget in 2011. Indeed, the Township provided sufficient evidence that a surplus is not likely in 2010 as originally anticipated. The Township explained that the 2010 projection was made in July and is only a projection for the next year's budget. The Township provided financial reports showing the status of the revenues received through November 3, 2009. This report demonstrated that as of November 3, 2009, the total revenue received in the Police Fund is only 78.46% of what was projected. Therefore, the Township anticipates that there will not be a surplus in 2010 as originally projected.

The revenue status report presented by the Township indicates that the majority of the revenue received is from real estate revenue. The FOP noted that in 2010 the Township is due for a revaluation of the real estate and hopefully this will generate more funding. However, this is speculation. Therefore, even though there was a surplus at the beginning of 2009, the Revenue Report demonstrates that as of November 2009, the revenues received are less than what was projected. When the revenues received are 22% less than expected and budgeted, it certainly has a negative impact on the budget. Nevertheless, the Township has agreed to give a wage increase of 2%, the Union wants 3%.

#### Recommendation

A 2% increase for the third year of the contract.

#### **Article 15.5 Annual Service Credit**

##### Union's Position:

The parties' contract currently provides an annual service credit, also known as longevity. Basically, the employees receive an annual bonus based on their years of service. The Union proposes to increase the annual amount received in each category. Currently under the parties contract, employees with 5-10 years of service receive \$400, the FOP seeks to increase that amount to \$600. Employees with 10-15 years of service receive \$550, the FOP wants to increase that amount to \$825. Employees with 15-20 years of service receive \$700, the FOP wants to increase that amount to \$1050.

Lastly, employees with 20 or more years of service receive \$950, the FOP wants to increase that amount to \$1425.

The Union states that the increase is reasonable in light of the budget surplus. The Union contends that a raise is warranted, as there has not been an increase in longevity for many years. The Union further maintains that Franklin Township's current rate is significantly lower than the average across the county.

Township's Position:

The Township proposes the rates stay the same. The Township raises the same argument as it did with regard to the wages. Both parties agree that this is part of the overall compensation package. The Township maintains that longevity was meant as a supplement to wages when it could not afford to provide a decent wage to its employees. Now, the Township contends that its wages are fair, therefore, longevity should not be touched.

Discussion:

The FOP provided comparables. The comparables provided by the FOP include: Bexley, Columbus, Dublin, FCSO, Franklin Twp., Gahanna, Grandview Hts, Grove City, Hilliard, Madison Twp, Perry Twp, Pickerington, Reynoldsburg, Upper Arlington, Westerville, Whitehall, and Worthington. The Fact Finder also notes that Madison Township's rate appears to be one of the most generous on the list of comparables, while Perry Township is the lowest. The Franklin County Township maintains that Madison Township is a richer township than some others. As noted before, while the FOP provided jurisdictions within Franklin County, the more appropriate comparable jurisdictions are the townships. In looking at the townships, Madison Township has a longevity amount of \$2,000 for 20 years and Perry Township has a longevity amount of \$550 for 20 years of service. Thus, Franklin Township's amount of \$950 for 20 years is between the two. The Fact Finder notes that the Township stated that the most comparable jurisdiction would be Clinton Township. There was no

data provided on Clinton Township's longevity amounts. As pointed out by the Township, the longevity numbers are all across the board.

More significant, however, the FOP again points to the Township's current budget surpluses in support of its proposal. The FOP states that the cost for increasing the annual service credit will cost \$2500 in 2010 and \$2500 in 2011. The FOP states that these costs are well within the Township's ability to pay.

The FOP's request is not unreasonable. In looking at the comparables, the Fact Finder would most likely recommend the Union's proposal. However, the Township's budget concerns are also reasonable. If the financial forecast of the budget definitely showed a surplus, I would, again, recommend the Union's proposal. However, the evidence does not indicate that the surplus at the beginning of 2009, will continue into future years.

Recommendation

No increase. I recommend that rates stay as they are.

**Article 16.1 Shift Differential**

Union Proposal:

The parties have agreed that the shift differential will increase to \$0 .75 per hour during year one of the contract. The FOP proposes that the shift differential increase to \$0.85 during the second year of the contract and to \$1.00 during the third year.

The FOP states that even with the increase to \$0.75 during the first year, the shift differential remains below that of most other jurisdictions within Franklin County. Additionally, the FOP explains that shift differentials are in place for a reason. The FOP states that the shift differential recognizes an employee's sacrifice for working a difficult shift that is harder for the body physically and generally hard on family lives.

Township Proposal:

The Township proposes no increase beyond the increase to \$0.75 the first year of the contract. The Township contends that the \$.25 per hour increase will cost it \$3,640 a year. It cannot justify any further financial hit to the taxpayer.

Discussion:

The Fact Finder understands the Township's concern about the financial aspect of the increase. However, the comparables show that Franklin Township's shift differential is drastically lower than other jurisdictions. Thus, an increase is warranted. While the Township agrees to increase the shift differential to \$0.75 in 2009, that will still be considerably lower than other jurisdictions. Even if we just look at townships, Blendon Township is at a \$.90 shift differential, and Perry Township is at a \$1.25 shift differential.

Recommendation:

I recommend the shift differential as proposed by the FOP. The shift differential increase to \$.85 per hour the second year of the contract and to \$1.00 per hour the third year of the contract. The impact of these increases is minimized because they are spread over two years. Therefore, these increases should not be burdensome to the budget.

**Article 19 Uniforms, Equipment and Allowances**

**Section 19.5- List of Uniforms and Equipment**

Union Position:

The FOP proposes including language in the contract that reflects that the Township has historically provided members with an annual allowance of \$80 for the purchase of shoes or boots. The FOP also proposes to increase that amount to an annual allowance of \$120. The FOP states that in order to get a good, quality boot from the leading provider of police uniforms and boots will cost approximately \$150.

Township Position:

The Township's position is that the \$80 allowance is consistent among all of its bargaining contracts and that \$80 is enough to purchase an adequate boot. The Township contends if the police officers want a boot that costs more, they should be responsible for the difference.

Discussion:

The FOP provided sufficient evidence through testimony that \$80 is not sufficient to purchase an adequate boot for the job. The Township contends that \$80 is sufficient; however, the Township did not provide any evidence to dispute the FOP's contention.

Recommendation:

I recommend adding language to the contract that reflects the annual boot allowance. Rather than increasing the boot allowance to \$120 as proposed by the Union, I recommend that the Township increase the an annual allowance from \$80 to \$100. The FOP states that the total additional expense for the Township of increasing the annual allowance to \$120 would be \$400 per year; thus, using these numbers, the total cost to the Township under the Fact Finder's recommendation should be \$200 per year. This modest amount will not have an unreasonable impact on the budget.

**Article 22 Insurance**

**Section 22.1 Hospitalization, Surgical, Major Medical, Dental, Vision Care Plan and Legal Service Plan.**

Prior to the current contract the bargaining unit members did not pay any insurance premiums. The parties have agreed that upon execution of the new agreement, members will begin to pay a premium share of \$42.00 per month for single coverage, and \$84.00 per month for family coverage. The premium amounts are also subject to reductions whereby the monthly premium would be reduced by \$7.00 per month for each of the following participating events: If the member undergoes an annual physical exam, for the completion of an on-line wellness form, and for not smoking. Additionally,

under the family coverage, the premiums would be reduced \$7.00 for the member's spouse and \$7.00 for each child participating in each of the aforementioned events. The maximum monthly reduction to the insurance premium would be \$21.00 for single coverage and \$42.00 for family coverage. As stated, both parties agree to this change in the new contract. The disagreement comes because the Township wants to add what the Union calls an "escalator" clause into the provision. Additionally, the parties initially disagreed regarding an "opt-out" provision.

#### Union Position

The FOP states that the Township wants an "escalator" clause in the provision, whereby, during years two and three of the contract, the member's premium share would increase to a maximum of \$10 per month for each year, based on actual increases in the Township's premiums.

The FOP opposes this increase. The FOP emphasizes that the members have already made a good-faith effort to assist the Township in controlling insurance costs. The FOP argues that any further increase is unwarranted, as the current revenues are more than adequate to sustain the current benefit package. The FOP also emphasizes that this bargaining unit is one of the three lowest paid units within Capital City Lodge No. 9, and thus the fact that the members paid no insurance premiums offset this lower wage somewhat. The FOP states that the Township's proposal does not recognize the significant disparity between the wages paid to other police officers in Franklin County and its own police officers. The FOP argues that the Township cannot continue to pay such low wages, while at the same time expecting its police officers to bear additional insurance premium costs. Additionally, the FOP emphasizes that the premium share already agreed to amounts to a 1% net decrease in the officer's wages. The FOP states that it is unreasonable to expect the members to pay more.

#### Township Position:

The Township proposes that the member's premium share increase for years two and three in the contract, to a maximum of \$10 a month for each year. This increase would be based on any actual

increase in the Township's insurance premiums. The Township maintains that the increase would be capped at \$10 a month. The Township also states this is reasonable because it is only a small portion of the overall health costs. The Township also emphasizes that the total employee premium is still low compared to other premiums paid by employees.

Discussion:

Initially, the Fact Finder notes that the parties originally disagreed on an "opt-out" provision. The Union proposed "opt-out" language, where a member could decline to participate in the health insurance offered by the Township, and the member would receive \$100.00 per month pay supplement. The Township agreed to an "opt-out provision", however the parties did not originally agree to the amount, the Union wanted a flat fee of \$100 and the Township proposed a payment of 25% of the total premium cost. At the hearing, the parties agreed that if a member could demonstrate that he/she had other insurance, he/she could opt-out of the insurance plan offered by the Township and receive a payment of 25% of the total amount that the Township is paying on behalf of the employee for insurance. Therefore, the issue left before the Fact Finder is the increase in premium in year two and three of the contract.

The Fact Finder recognizes the Township's need to control health insurance costs and to maintain its financial footing. The Township has consistently maintained that it has to look at the overall compensation package and anything that costs money adds to the financial hit to the budget. However, under the new provision, there is no additional financial hit to the Township's budget. The financial hit is to the members that will start to pay insurance premiums. While the amount of the premium contributions appear to be reasonable and are a small portion of the overall health insurance costs, the cost to the members are significant, considering they never had the costs previously. While the Fact Finder understands that the Township is anticipating increases in future insurance costs, the membership has already made a substantial contribution to help control those health care costs. A

standard feature of collective bargaining is to offer a quid pro quo. Thus, the employee's contribution becomes even more significant given the Fact Finder's recommendation that the employees receive a 2% wage increase, rather than a 3% in the third year of the contract and the recommendation of no increase in the amount of longevity pay to the employees.

Recommendation

I recommend that there be no increase in the employee's share of the insurance premium in the second or third year of the contract.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC Section 4117.14, the Fact Finder recommends the provisions as provided herein.

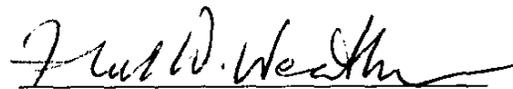
Respectfully submitted and issued this 1st day of December, 2009.



Floyd D. Weatherspoon  
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was served by regular U.S. Mail upon Russell E. Carnahan, Grant D. Shoub, Hunter, Carnahan, Shoub & Byard, 3360 Tremont Road, 2nd Floor, Columbus, Ohio 43221, Attorney for the Union, Capital City Lodge, No. 9, Fraternal Order of Police, and Franklin Township Board of Trustees, Don Cook, Paul Johnson, Tim Guyton, 2193 Frank Road, Columbus, Ohio 43223, and J. Russell Keith, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 on this 1st day of December, 2009.



Floyd D. Weatherspoon  
Fact Finder