

STATE EMPLOYMENT  
RELATIONS BOARD

2010 MAY -3 A 11: 19

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of Fact-Finding Between:

Fraternal Order of Police,  
Ohio Labor Council, Inc.

-And-

Perry Township Trustees

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09-MED-09-1002,

Fact-Finder:

John T. Meredith

**REPORT AND RECOMMENDATIONS  
ISSUED APRIL 29, 2010**

**APPEARANCES**

**Present for the Union:**

Charles Wilson, FOP Staff Representative  
Brian Cabenia, Committee  
Bill Watson, Committee  
Brian Henne, Committee

**Present for the Employer:**

Robert Tscholl, Esq., Labor Counsel  
Joyce Fetzer, Administrator  
Michael Pomesky, Police Chief  
Joe Schlegel, Township Fiscal Officer  
Charles Hall, Esq., Township Law Director  
Robert Fisher, Insurance Broker

**INTRODUCTION**

The parties to this Fact-Finding proceeding are the Fraternal Order of Police, Ohio Labor Council and the Trustees of Perry Township, Stark County, Ohio. The bargaining unit consists of all full-time Perry Township employees in the classifications of Patrol Officer and Detective. The subject Agreement will be a successor to the January 1, 2007 – December 31, 2009 Agreement between the parties.

The parties initiated collective bargaining for the successor Agreement but were unable to resolve all issues. The State Employment Relations Board, by letter dated December 1, 2009, appointed the undersigned, John T. Meredith, to serve as Fact-Finder.

At the parties' request, a Mediation session with the Fact-Finder was held on March 3, 2010. During the mediation session, the parties reached agreement on sections 28.2 (Light Duty), 23.1 (limitation on consecutive work hours), and 39.3 (residency). These agreements are attached hereto and incorporated herein as Appendix A to this Report. The Employer also agreed to drop a proposed change which would have eliminated an 8 hour/40 hour work guarantee in Article 22.

A hearing was held on April 8, 2010 to take evidence on the remaining unresolved issues. Prior to the hearing, the parties timely submitted their Position Statements to the Fact-Finder. The hearing was conducted in accordance with Ohio Collective Bargaining Law and applicable SERB Rules and Regulations. The unresolved issues, and the Fact-Finder's recommendations for resolution of each, are fully discussed in the Unresolved Issues section of this Report.

In making his recommendations, the Fact-Finder has given consideration to the following criteria prescribed by Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;

- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **BACKGROUND**

### **1. Township Profile and Financial Overview**

Perry Township is located in western Stark County, Ohio. It is predominantly a blue collar residential community with some industry and some commercial properties. It's population is approximately 30,000. Perry Township surrounds most of the City of Massillon on the west. To the east are the City of Canton and Canton Township. The Village of Navarre and Bethlehem Township are to the south, and Jackson Township is to the north.

Perry Township does not have an income tax. Rather, its principal source of revenue is from local property taxes. Most Police Department revenues come from three levies which were passed in 2006 (1.25 mils), 2007 (0.50 mils) and 2009 (3.90 mils) for the specific purpose of funding the Police Department. Each levy must be renewed at five-year intervals, and one (1.25 mils) is due for renewal in 2011. The Fire Department similarly receives much of its funding from a dedicated fire-specific levy which must be renewed in 2010. Assuming these levies are renewed without any increase, revenue available to finance the Township's Police and Fire Departments is expected to be relatively constant for several years, though it may decline slightly due to a projected decline in secondary revenue sources.

For a number of years, revenue for the Police Department exceeded expenditures, which enabled the Township to set aside a reserve. However, in 2009, for the first time

expenditures exceeded revenue. Projecting this pattern forward, it appears that the Township will need to dip into its reserve and to control insurance and labor costs in order to maintain the current levels of service and employment through 2013.

## **2. Workforce, Labor Issues**

Perry Township's Police Department has 24 full-time officers, most of whom are in the Patrol Officers' bargaining unit. (Ranking officers and Dispatchers are also represented by the FOP in separate bargaining units, which are not directly involved in these proceedings.) The Township has a small Fire Department, and the IAFF represents its employees. Like the Police Agreements, the IAFF Agreement expired December 31, 2009. At the hearing, the Employer represented that the IAFF recently negotiated a one-year extension, with a wage freeze and an agreement that employees would pay eight percent (8%) of the cost of insurance premiums. However, this tentative agreement had not been ratified by the parties as of the date of this Report. Perry's road and maintenance employees are represented by the Perry Organized Workers. They are currently covered by a collective bargaining agreement which will expire on December 31, 2010. Pursuant to that Agreement, the road workers received a 3% wage increase effective January 1, 2000. Other Township employees are non-union.

The Unions currently are presenting a united front in a dispute with the Township regarding interpretation of the insurance provision of the prior Agreements. These Agreements provided that the Township would pay the first 8% of any insurance premium increases, but that, if rates increased more than 8% in any year, the employees would bear the portion of the increase which exceeded 8%. In 2007 and 2008, rates did not increase more than 8%, and thus employees did not have to share the burden of

premium increases. However, in 2009 there was a substantial increase which led to a substantial increase in employees' share of premium payments. The Township continued to deduct this amount from employee paychecks after January 1, 2010, and the Unions filed grievances claiming that the employees' obligation to pay the increase was limited to the year in which it occurred. These grievances are still pending, though they may be mooted if the FOP and IAFF negotiate new insurance language for 2010 and beyond.

### **UNRESOLVED ISSUES**

#### **1. Section 24.1 - Holidays**

Positions of the Parties: The Union proposes to add Easter and Christmas Eve as paid holidays, raising the total number of paid holidays from ten to twelve. The Union notes that the Perry Organized Workers Agreement (covering street and maintenance employees) provides for paid time off on the day after Thanksgiving and four hours paid time off on Christmas Eve in addition to the ten paid holidays enjoyed by the Police and other Township employees. The Employer opposes additional paid holidays. Except for the minor deviation in the Organized Workers Agreement, it notes that the ten holidays now listed in Section 24.1 of the Police Agreement are consistent with the holiday benefit provided to other Perry Township employees. Adding additional holidays would be an unwarranted additional expense.

**RECOMMENDATION: No additional holidays, no change in the language of current Section 24.1.**

Rationale: Most Township employees receive the same ten holidays provided in the current Police Agreement. Increasing the Township's paid holiday expense in the current economic climate is not warranted.

## 2. Section 25.1 - Vacation

Positions of the Parties: Currently, the Police Agreement states that covered employees are eligible for two weeks vacation after one year, three weeks vacation after five years, and four weeks vacation after ten years of service. The Union proposes to add a fifth week of vacation for employees after fifteen years of service.

Justification for this proposal is based largely on past bargaining history. Prior to the 2007-2009 Agreement, Police Officers were granted a fifth week of vacation after fifteen years service. The Union agreed to give up this benefit in negotiations three years ago. The concession was based on representations that other employee groups also would be giving up a fifth year of vacation. It was qualified by a "grandfather" provision, which exempted one named Officer and two named Sergeants who already had more than fifteen years service. These three employees were allowed to continue receiving five weeks vacation. According to the Union, the City did not in fact take the fifth vacation week away from other represented employee groups on the same terms that it was taken away from them. Although the IAFF gave up the fifth week prospectively, a Memorandum of Understanding grandfathered in all firefighters with seniority dates on or before January 1, 2004, even though most of these firefighters were not then receiving the fifth vacation week. Further, the Organized Workers Agreement still contains vacation provision authorizing five weeks after fifteen years and six weeks after twenty years.

The Employer disputes the Union position. It argues that the IAFF Agreement provisions are substantially equal to those in the Police Agreement. Further, the Employer stated that it made every good faith effort to change the vacation provision in

the Organized Workers Contract, but was unable to get Agreement to the change as part of a the final contract settlement. It states that it obtained other concessions in the Organized Worker negotiations which had more value than the vacation concession would have had. In fact, due to the seniority distribution of the workforce, a vacation concession with grandfather clause would not have saved the Township any money at all during the term of the Agreement.

**RECOMMENDATION: No change in current language of Section 25.1.**

Rationale: The bargaining history makes this a closer issue than it otherwise would be. The Union position is entitled to serious consideration because its members apparently voted for the vacation concession in the 2007 Agreement with the reasonable expectation that other groups would agree to a similar concession. The Fact-Finder believes the Township acted in good faith in past negotiations, and also agrees that the Organized Workers Agreement is distinguishable. Nevertheless, it does appear that the IAFF Memorandum of Understanding gives more favorable terms to firefighters than the terms offered the police. Specifically, incorporation of the IAFF grandfather language in the Police Agreement would enable several officers to qualify for additional vacation time in the future. Thus, the IAFF language is better than, not substantially equal to, the Police provision.

However, reinstating the vacation benefit would be inconsistent with current bargaining trends. 2009 was a year in which public sector employees showed a willingness to give up some benefits, such as extra vacation for long-service employees, in order to protect jobs and/or find money for wages that more uniformly benefit the entire workforce. The Fact-Finder believes this approach should be followed in this case.

### 3. **Section 26.1 – Sick Leave Bonus**

Positions of the Parties: The Union proposes a \$500 bonus for employees who use five or fewer sick days in a year, and a \$250 bonus for employees who use only six or seven sick days in a year. This sick leave bonus provision is already in the Dispatchers' Agreement, and should be extended to other Police Department employees.

The Employer opposes adding a sick leave bonus. It acknowledges that the Dispatchers sick leave bonus was proposed by a prior Township administration and included in their Agreement, but it states that the bonus has failed to accomplish its stated objective of improving Dispatcher attendance.

**RECOMMENDATION: The sick leave bonus should not be added to the Agreement. No change in current Section 26.7**

Rationale: Absent compelling evidence that it will save money by reducing absenteeism, there is no sound reason for adding the cost of a sick leave bonus under current economic conditions.

### 4. **Section 33.1 - Insurance**

Current Situation: Section 33.1 of the 2007-2009 Agreement states:

**Section 33.1** The Employer will provide and pay for hospitalization, major medical, dental, prescriptive, optical and other medical services coverage on behalf of each member of the bargaining unit, their spouse and dependent children. The major medical, hospitalization, insurance benefit package shall be the Aultcare Group Purchasing Plan I, or equivalent. Any premium increase greater than eight per cent (8.0%) during any one premium year shall be paid by all bargained and non-bargained for plan participants. Employer reserves the right to open negotiations, pursuant to ORC 4117.14, on this Article if the present coverages are not available or become prohibitively expensive. So long as it remains available and financially feasible, the level of benefit coverage shall be equal to or greater than coverage provided under the Plan in effect at the date of the ratification of this collective bargaining agreement. Any changes in providers or third party administrators shall be first approved by the Union. Such assent and approval shall not be unreasonably withheld.

Pursuant to this section, the Township paid the full insurance premiums in 2007 and 2008, when rate increases did not exceed 8%. However, in 2009, there was a very substantial rate increase, and employees covered by the 90/10 Plan began paying 20% of the premium as a result. For employees on the family plan, the increase in the premium contribution offset the 3% wage increase received on January 1, 2009 per Section 32.2 of the Agreement. (The effect was a partial offset for employees with single, employee + spouse, or employee + child coverage.) As negotiations for successor Agreements were not completed by January 1, 2010, the parties continued to operate under the 2007-2009 Agreements. The Township continued to make the same payroll deductions for employee insurance premiums. The Unions, including the FOP, filed grievances claiming that the employee obligation to make premium contributions was limited to the year in which the rate increase occurred. These grievances are still pending and may proceed to arbitration unless settled or mooted by language of successor Agreements.

Employer Position: In its Pre-Hearing Statement, the Employer proposed a revised insurance program, with a 20% employee premium contribution, subject to caps set for each year of a three-year contract. This proposal was modified during mediation and again at the hearing, at least in part to coordinate with ongoing separate discussions with the Unions over possible settlement of pending grievances. The Employer's final position at the hearing was for a 90/10 plan, with 92% of premiums paid by the Employer and 8% of premiums paid by employees. This proposal is consistent with the pending tentative agreement with the IAFF. It was presented orally at the hearing in conjunction with a proposed 2010 wage freeze, and a reopener for 2011 and 2012. The Employer notes that an 8% contribution is less than the 20% contribution required from employees

in 2009, and thus each employee's take-home pay would increase even without a wage increase. The Employer also urges the Fact-Finder to consider SERB's 2008-2009 17<sup>th</sup> Annual Report on the Cost of Health Insurance in Ohio's Public Sector, ("SERB Insurance Report"), which contains extensive comparability data supporting an 8% employee contribution to insurance premiums.

Union Position: The Union proposes to continue current contract language. This presumably implies acceptance of its interpretation of that language, which is at issue in the pending grievances discussed above. At the hearing, the Union expressed willingness to consider an insurance compromise, provided it was accompanied by an acceptable wage package. The Union agrees that the SERB Insurance Report is an authoritative source of comparability data, and included this Report as one of its Exhibits.

**RECOMMENDATION: Extend 90/10 Plan to all covered employees as proposed by the Employer, and amend the Agreement to provide for a 92% Employer premium contribution and an 8% employee premium contribution. Insurance issues could be considered again as part of wage and insurance reopener for 2012. Revise Section 33.1 to state:**

**Section 33.1 The Employer will provide hospitalization, major medical, dental, prescription, optical and other medical services coverage for each bargain unit member and his/her spouse and dependent children. All participants will be covered by the current 90/10 Plan effective 2010. Also, effective retroactive to January 1, 2010, the Employer will pay ninety-two per cent (92%) of the monthly premium cost and the employee will pay the remaining eight per cent (8%) of the monthly premium. Employer reserves the right to open negotiations, pursuant to ORC 4117.14, on this Article if the present coverages are not financially feasible. The level of benefit coverage shall be equal to or greater than coverage provided under the Plan in effect at the date of the ratification of this collective bargaining agreement. Any changes in providers or third party administrators shall be first approved by the Union. Such assent and approval shall not be unreasonably withheld.**

Rationale: Comparability data convincingly supports the Employer's 90/10, 92%/8% premium contribution proposal. The vast majority of Ohio public employees now contribute a portion of the premium for their insurance coverage. The most recent, reliable and comprehensive data available is SERB's 2008-2009 Insurance Report. A comparison of the proposed 8% contribution share with the 2008-2009 data reported by SERB shows:

<u>Group</u>	<u>\$ Single</u>	<u>\$ Family</u>	<u>% Single</u>	<u>% Family</u>
All Ohio public	\$37	\$121	9.1%	10.3%
Townships, 30,000+	\$22	\$72	7.0%	7.5%
Akron Region	\$29	\$79	7.1%	7.5%
Perry Twp. 2010	\$37	\$121	8.0%	8.0%

-SERB Report, Tables 3.1 & 3.2, and Employer Exhibit 9.

-Monthly, rounded to nearest whole number.

Perry employees also have separate categories for "employee + child" and "employee + spouse," for which the 2010 premium contributions will be \$59 and \$79, respectively.

Clearly, the proposed 90/10 Plan, with a 92%/8% split on premium contributions, is consistent with state and regional averages. On the other hand, the current 20% employee contribution is an outlier, and reverting to "no premium contribution" similarly would be out of line with benefits provided by most Ohio public employers. Therefore, the Fact-Finder recommends the 90/10 Plan, with 8% employee premium contribution.

## **5. Article 32 – Compensation**

Union Position: The Union proposes a three per cent (3%) wage increase in each year of a three-year contract. The first year wage increase would be retroactive to January 1, 2010.

Employer Position: The Employer proposes a wage freeze for 2010, with a reopener for wages in 2011 and 2012. The Employer states that this is consistent with its

tentative (not ratified) agreement with the IAFF. It states that public employees should not be granted wage increases during a recession, as the Township's predominantly blue collar residents are experiencing difficult economic times. Further, the Township asserts that a wage freeze is dictated by its financial condition. Although the Township does have some reserve, its expenditures exceeded revenues in 2009, and it expects to continue to spend down its reserve over the next several years just to maintain current levels of employment and service, even if wages are not increased.

**RECOMMENDATION: Wage freeze 2010. 2.5% wage rate increase effective January 1, 2011. Reopener for wages and insurance for 2012, negotiations to be scheduled by the parties after October 1, 2011. Amend Section 32.2 to include wage scale attached hereto as Appendix B. Modify Article 40, Duration of Agreement, to reflect January 1, 2010 effective date, December 31, 2012 expiration date, and 2012 reopener for wages and insurance, language included in Appendix B hereto.**

Rationale: A wage freeze in 2010 is justified for several reasons. First, current levels of spending caused the Township to dip into its reserve in 2009, and therefore it must carefully control expenditures and manage its remaining reserve to avoid future reductions in services or employment levels. Second, under the recommended insurance provision, the effective employee premium contribution will be reduced from 20% in 2009 to 8% in 2010. This, in conjunction with a modest rate increase, will cause the Township's insurance expense for the Police Department to increase approximately 20%, not the 8% which it originally budgeted. Third, because of the adjustment in the

insurance premium contribution, each employee's take home pay will materially increase in 2010 even without an increase in wage rates.

However, the Township's economic projections do not support a wage freeze for more than one year, and reopening for 2011 is not, in the Fact-Finder's view, the best solution for the Police Department and its employees. While the Township needs to continue its conservative fiscal management practices, it is not on the verge of running out of money during the term of this Agreement. There are, of course, ongoing uncertainties, relating to the general state of the national and local economies and to the future magnitude of insurance cost increases (which will be shared by both employer and employees). However, a 2011 reopener would lead to negotiations again in only six or seven months, and there may not be much more information available then than there is now. By the Fall of 2011, when negotiations for a 2012 reopener would commence, more information should be available. If the Township's economics take a turn for the worse and/or insurance rates skyrocket, the Township will be able to propose appropriate changes then; conversely, if the economy improves, the Union can make proposals to take advantage of the improving conditions.

Meanwhile, the Fact-Finder recommends locking in a wage scale for 2011 which is consistent with comparability data. Unfortunately, the parties do not have a group of comparable local employers to which they normally compare themselves. If surrounding governmental units are considered, Perry Township would be generally in the middle of salary rankings. This mid range ranking generally is commensurate with its relative ability to pay and its socioeconomic ranking when compared to the same area communities.

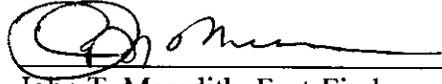
Several area communities have negotiated increases in the past sixteen months. The parties did not submit detailed, confirmed information about these negotiations in other area communities, but they agreed that police employees in the City of Canton, City of North Canton, and Jackson Township had received annual increases in the 2% to 2.5% range, and that to some extent the employees in these communities had paid for part of their own raises by making benefits concessions. This 2.0% to 2.5% range is consistent with statewide data reported by SERB in its Annual Wage Settlement Report for 2009. The SERB Report states that the average wage settlement for public employees in Ohio in 2009 was 2.15%. For police employees, it was 2.43%. For all employees in the Akron-Canton Region, it was 2.38%, and for all Township employees statewide it was 2.82%.

The Fact Finder is generally aware that some area employees, including the Township's own Organized Workers, are receiving increases in the 3.0% range, and conversely, some other Ohio public employees are facing wage freezes or wage cuts. The former group, however, is comprised mostly of employees whose contracts were negotiated two or three years ago before the national and local economies began a precipitous decline in the Fall of 2008. The latter group generally is comprised of governmental units whose finances are in more dire shape than the finances of Perry Township. This data is less relevant, therefore, than the averages reported by SERB and the more recent data from several neighboring communities, discussed above.

For these reasons, the Fact-Finder believes that a 2.5% increase, effective January 1, 2011, fairly reflects comparability data.

**SUBMISSION**

This Fact-Finding Report is submitted by:

A handwritten signature in black ink, appearing to read "John T. Meredith", written over a horizontal line.

John T. Meredith, Fact-Finder

Shaker Heights, Ohio  
April 29, 2010

**APPENDIX A**

**Agreements Reached During Mediation**

1. Residency, Section 39.3:

Replace current language with:

“The employee shall be permitted to retain residency as permitted by law.”

2. Section 28.2, Light Duty:

Replace current language with:

“Light or limited duty may only be authorized by the Chief for an employee injured on or off-duty subject to the limitations set by the employee’s physician, and provided the Employer has suitable work available. Such light duty may not be unreasonably denied should the Employer have necessary and suitable work at the station (excluding the evidence room). In the event of multiple light duty occurrences at the same time, those injured as a result of on-duty activities shall first be granted light duty prior to any off-duty injury light duty requests.”

3. Section 23.1, limitation on consecutive work hours:

Revise current language to state:

“Employees shall be paid overtime pay for all hours worked in excess of eight (8) hours per day or forty (40) hours per week. Employees shall receive overtime pay at a rate equivalent to one and one-half (1½) their regular hourly rate. No employee shall be required to work more than twelve (12) hours during a twenty-four (24) hour period, except during an emergency or upon prior approval of the Chief or designee. This restriction does not apply to extra duty jobs.”

4. Article 22: City withdrew proposal to eliminate 8 hour/40 hour guarantees.

**APPENDIX B****Wage Scale for Section 32.2**

<u>Classification</u>	<u>2010</u>	<u>2011</u>
A. Probationary	\$17.05	\$17.48
B. 1-2	\$19.81	\$20.31
C. 2-3	\$21.32	\$21.85
D. 3+	\$22.74	\$23.31
E. 5	\$23.19	\$23.77
F. 10	\$23.31	\$23.89
G. 15	\$23.54	\$24.13
H. 20	\$23.65	\$24.24

**Revised Article 40****DURATION OF AGREEMENT**

**Section 40.1** This Agreement shall be effective January 1, 2010, and shall remain in full force and effect until December 31, 2012.

**Section 40.2** If either party desires to make any changes in the Agreement for a period after December 31, 2012, then notice of such desire shall be given prior to October 1, 2012. If such notice is given, this Agreement shall remain in effect until the parties reach Agreement on a new contract.

**Section 40.3** Upon reasonable notice by either party, this Agreement may be reopened on or after October 1, 2011 to negotiate changes in compensation (Article 32) and/or insurance (Article 33) for 2012.

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Fact-Finding Report was sent to the State Employment Relations Board by Regular U.S. Mail and was served upon the parties listed below by overnight mail this 29th day of April, 2010:

Charles L. Wilson FOP  
Senior Staff Representative  
FOP/OLC  
2721 Manchester Road  
Akron, OH 44319-1020  
  
Union Representative

Robert J. Tscholl, Esq.  
220 Market Avenue South  
Suite 1120  
Canton, OH 44702  
  
Attorney for the Employer

  
\_\_\_\_\_  
John T. Meredith, Fact-Finder

**John T. Meredith  
Attorney, Arbitrator, Mediator**

**3349 Ardmore Rd.  
Shaker Heights, OH 44120  
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meredith.john@sbcglobal.net**

STATE EMPLOYMENT  
RELATIONS BOARD

2010 MAY -3 A 11: 19

April 29, 2010

***Delivery Via Overnight Mail and Facsimile***

Robert J. Tscholl, Esq.  
220 Market Street South  
Suite 1120  
Canton, OH 44702

Mr. Charles L. Wilson  
Senior Staff Representative  
FOP/OLC Inc.  
2721 Manchester Road  
Akron, OH 44319-1020

**RE: SERB No. 09-MED-09-1002  
Fraternal Order of Police, Ohio Labor Council  
and Perry Township Trustees**

Dear Messrs. Tscholl and Wilson:

I am enclosing the Fact-Finder's Report and Recommendations in this case, along with my bill for services. Thank you for your cooperation in this matter.

Very truly yours,



John T. Meredith  
Fact-Finder

CC: Mary Laurent (SERB)