

**STATE OF OHIO**  
**STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT  
RELATIONS BOARD

2010 MAY 13 P 4: 54

<b>In the Matter of</b>	)	
<b>Fact-Finding Between:</b>	)	
	)	
	)	
<b>CHESTER TOWNSHIP TRUSTEES</b>	)	<b>Case Nos. 09-MED-10-1208</b>
	)	<b>09-MED-10-1209</b>
	)	
	)	
<b>-and-</b>	)	
	)	<b>Jonathan I. Klein,</b>
	)	<b>Fact-Finder</b>
	)	
<b>OHIO PATROLMEN'S BENEVOLENT</b>	)	
<b>ASSOCIATION</b>	)	

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**FACT-FINDING REPORT  
and  
RECOMMENDATIONS**

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Appearances

For the Union:  
Kevin Powers, Esq.

For the Employer:  
Thomas M. Hanculak, Esq.

Date of Issuance: May 11, 2010

**I. PROCEDURAL BACKGROUND**

This matter came on for hearing on April 21, 2010, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on February 26, 2010. The hearing was conducted between Chester Township (“Employer”), and the Ohio Patrolmen’s Benevolent Association (“Union”), at the Chester Township Hall located at 12701 Chillicothe, Ohio 44026. The bargaining unit represented by the Union in this fact-finding process is comprised of three (3) full-time sergeants and nine (9) patrol officers.

As of the fact-finding hearing, the following issues remained open and are properly before the fact-finder for resolution:

1. Medical Insurance - Article 17
2. Uniform Allowance - Article 20
3. Wages - Article 24

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement not otherwise modified during negotiations and the fact-finding process. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

## **II. FACT-FINDING CRITERIA**

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS**

#### **Introduction**

The Employer is a township located on the western border of Geauga County, Ohio with a population of approximately 11,000. The revenue for township government is generated by levies, with the occasional addition to the income stream from estate tax proceeds.

In general terms, the Employer argues that due to a failed levy in 2001 it was forced to close its police dispatch unit and lay off three to four employees, including the part-time police officers. The Employer further reasons that it is still suffering the effects of the theft of over four million dollars by the township's former fiscal officer resulting in his indictment in September 2003. The Trustees will be going back to the voters for the renewal of another police levy in November 2010, and must exercise fiscal restraint for these reasons and given the economy as a whole. The Employer is proud of the excellent work performed by its police department.

The Union maintains in its pre-hearing position statement that the negotiations for this agreement have been protracted, but few meetings between the parties have taken place. Further, while the country's economic situation as a whole has been difficult, this Employer is in sound fiscal condition, and the evidence warrants a recommendation of the Union's position on all open issues.

**Issue 1: Medical Insurance**

Article 17, Section 17.2 currently provides: “Employees shall pay ten percent (10%) of the appropriate monthly premium including any changes in the premiums as they occur.” Two to three years ago the Employer had health insurance through a large, private insurer, but due to catastrophic losses in other departments the insurance premium skyrocketed. The parties’ labor-management health insurance cost containment committee reviewed various plans and elected to join an insurance pool with other townships. The result was a decrease in premium and an increase in coverage with no copays.

According to the Employer, at the next insurance policy renewal date an increase in premiums is expected ranging from a minimum of 10% up to 16%. The new estimate of insurance premium costs shall be discussed publicly after the fact-finding hearing, but it was not anticipated it would result in any significant impact in the next two to three years. The Employer proposal is for the employee monthly premium contribution to remain at 10% for 2010, and increase to 12% for 2011 and 2012. In support of its position, the Employer called Judith Caputo, a second term township trustee, to testify.

Ms. Caputo described the Employer’s position with respect to wages and insurance, and the general impact the economy is beginning to have on Geauga County. In particular, Caputo expressed the fear that the Union’s proposed 4% across-the-board wage increase would cause the November 2010 levy seeking \$290,000 in revenue to go down to defeat. The revenue for the general fund is generated from “three inside mills.” Historically, two of the three mills are given

to the road department for its operations, whereas the police department is self-sufficient. This assignment of millage has caused the Employer's general fund revenue to be limited to estate tax, and gas and motor vehicle taxes.

Caputo emphasized that in the last year the county auditor has established the appraised property values at the same level as the previous appraisal, and tax delinquencies have increased. As to health insurance, the Employer switched health care brokers, and it is currently advised by Burnham & Flower Insurance Group. Burnham moved the Employer into an insurance pool with other townships as part of the Ohio Township Association, and together with township administration a health care reimbursement policy was established. The Employer currently sets aside \$2,850 for single coverage, and \$5,600 for family coverage for each employee into a health reimbursement account ("HRA"). In essence, the Employer is self-insured up these amounts. Those funds in the HRA account which are not utilized are returned to the Employer. An employee simply visits his or her physician or emergency room, and United Health Care receives the bill and draws down from that individual employee's HRA. Any expenses in excess of the HRA are covered by United Health Care at 100%. With prescriptions an employee pays the cost of the medicine and is reimbursed for the cost within 14 days. Once the deductible is met, United Health Care pays the full cost without the need for the employee to pay at the pharmacy and then seek reimbursement.

When asked about the Employer's contract proposal to bump up the employee premium contribution to 12% in the second and third year of the contract, Trustee Judith Caputo testified

this was “due to fear of an increase in health care costs” based on potential increases forecast by the Employer’s agent at Burnham. Moreover, it is the Employer’s plan after May 1, 2010 to no longer require the employees to pay 10% of the HRA initial amount, *e.g.*, on the \$2,850 for the single coverage HRA the employee pays \$285. By raising the premium contribution to 12% the net result would have no financial impact on the employees as they would no longer have to pay 10% of the HRA amount, according to Caputo. The precise numbers were not available for the fact-finder at the time of hearing. On cross-examination, Caputo again asserted the change in the HRA funding would not add any additional cost to the bargaining unit employees – it would be a “wash.” She also agreed that there is no law prohibiting the Employer from subsidizing the police department from its general funds.

The actual 2009 rates were provided in Employer Exhibit No. 1. For coverage of an employee, spouse and children, the employee cost is \$106.56 per month for the insurance premium, and \$46.66 per month for the employees’ 10% share of the HRA, or a total of \$153.22 per month. (Township Ex. 1).

The Union points to the fact this amount is three times higher than the average monthly health insurance premium for townships throughout the rest of the state. (Union Exhibit 1). The SERB 2008-2009 Report on the Cost of Health Insurance in Ohio’s Public Sector states that in townships with populations from 10,000 - 29,000, the average monthly health insurance premium contribution for single and family coverage is 4% and 3.2%, respectively. Ten percent is also the contribution level in the police contracts between Chardon and the Union, and

Bainbridge Township and the FOP, Lodge No. 67. (Union Exs. 2 and 3). The contract between Russell Township and the Union concerning the patrol officers suggests that the monthly insurance premium is fully paid by the township, subject to a mid-term insurance re-opener provision with no evidence that the re-opener was ever exercised by the township.

Final Recommendation

Based upon the evidentiary record presented regarding the issue of the bargaining unit employees' contributions to health insurance premiums, it is the recommendation of the fact-finder that the language in Article 17, Section 17.2 should remain unchanged in the parties' new contract.

There is no question that the Employer has legitimate reasons to closely watch the cost of health insurance. However, there was no probative evidence that the Employer's proposal is warranted at this time. It has taken aggressive and highly successful measures to reduce premium costs and maintain or even improve coverage by joining an insurance pool with other townships. The Employer's proposal, which Township Trustee Caputo referred to as a "wash" in terms of costs to employees, is based primarily on speculation as to events two or three years from now. Further, the Employer is in the process of eliminating employee contributions of 10% to the HRAs – and shifting to premium contributions only by employees. This move appears, at least on the surface, to undermine any claim by the Employer of a demonstrated need for economic relief. In the meantime, the entire system of health care delivery in this country is in a

state of flux, and without a clearly demonstrable need warranting a change in current contract language, the Employer's proposal must be rejected.

Finally, when comparable jurisdictions in Geauga County are taken into consideration, the Employer's proposal gains no ground. The same holds true when the state-wide averages for townships are reviewed, including those townships within the Employer's population range. For each of the foregoing reasons, the fact-finder recommends current contract language.

### **Issue 2: Uniform Allowance**

The Union has proposed modifications to the language on uniform allowance contained in Section 20.2 of Article 20. The police department never had a true uniform allowance, but "a rag bag uniform policy." Instead of items of clothing and equipment requiring replacement upon request of the employee and approval by the Chief of Police, the employees should receive an \$800 uniform allowance payable in June of each year. As a group, the bargaining unit is paid approximately 5% below the average for their total compensation. In addition, they must secure badges, ticket book tins, flashlights, leather and duty bags. Finally, the members of the detective bureau should receive an increase in their civilian clothing allowance from \$600 to \$800.

Chief of Police Mark Purchase testified that the Employer had a uniform allowance in the past, and while the allowance was distributed twice a year, it was not spent on uniforms. Further, all new, full-time police officers receive brand new body armor. It is the current part-time officers who may have to select from used uniform items. Further, Chief Purchase uses a single

supplier for uniforms which eliminates different styles of pants and shirts. The Employer's final proposal states that the voucher system be changed from a request and approval method, to a program employing a \$500 voucher per year to be used on department approved items with no carryover at year's end, and no advances from the next year's stipend.

Final Recommendation

The evidence of comparable jurisdictions is the controlling factor on this issue. Neither side presented the fact-finder with documentation as to the annual cost for uniforms to support either the Employer's \$500 voucher program proposal, or the \$800 outright allowance payment in the Union proposal.

The evidence of comparables on this issue tendered by the Union and Employer indicates that Bainbridge Township provided a \$975 allowance in 2009 and \$1,000 in 2010; Chardon pays a \$900 allowance; Russell Township had a \$900 uniform allowance in 2009; and the Geauga County Sheriff's Office provided a uniform allowance in the amount of \$1,000.00. (Union Ex. 5). It is also clear to the fact-finder that while the Employer is seriously concerned about costs, on this issue it is also interested in maintaining quality control and uniformity, particularly with officers other than those assigned to the Detective Bureau.

The fact-finder concludes that there is sufficient evidence to warrant an increase in the uniform allowance to \$800 consistent with the dollar amount in the Union's proposal. The parties have also been operating under language which permits employees to purchase approved

items at the store of their choice without evidence of any substantive difficulties. However, the fact-finder recognizes the need for the Employer to keep control over the quality and appearance of its police officers, and therefore recommends that while the allowance be implemented, the actual payment shall be made through purchase orders without carryover and advances.

Article 20 shall be modified, as follows:

**Section 20.1** - Current contract language

**Section 20.2** - All uniform items shall be as designated by the Chief of Police and each officer shall be responsible for maintaining his or her uniform and equipment in a condition acceptable to the Chief of Police. Each non-probationary officer shall receive an annual uniform allowance of \$800.00, payable through purchase order. Employees may purchase approved items at the store of their choice. Although the Chief of Police may designate the types and brands of all items of clothing and equipment, full body armor shall be an exception thereto and the brand thereof may be chosen by the individual employee in order to fit his or her particular needs and preferences. New body armor will be purchased at the Employer's expense as needed.

**Section 20.3** - Members assigned to the Detective Bureau shall receive an initial civilian clothing allowance of One Thousand Dollars (\$1,000.00). Each year thereafter, the civilian clothing allowance shall be Eight Hundred Dollars (\$800.00) A civilian clothing allowance account shall be established at a mutually agreed upon retailer.

**Section 20.4** - There shall be no carryover of the uniform allowance from year-to-year, and no advances from the next year's allowance.

**Issue 3: Wages**

The Union's pre-hearing position statement remarks that the police officers' wages historically lag behind the market. Despite the country's economic situation, the Employer is in sound financial shape. The Union proposes a 4% wage increase in each year of the agreement, plus a boost in longevity pay by eliminating the step levels based on years of service and replacing it with a \$100/year increase commencing with each successive year of service.

In support of its proposal, the Union produced the Amended Certificate of the County Budget Commission to Chester Township for the beginning of fiscal years 2007, 2008, 2009 and 2010. (Union Exs. 6-10). These documents show the upward trend in the monies held by the Employer in the general and special revenue funds from the unencumbered sum beginning January 1, 2007 in the amount of \$1,052,358 and \$1,887,692, respectively, to the sums of \$2,833,871 and \$2,925,118 as of January 1, 2010.

The SERB Annual Wage Settlement Report indicates that the average wage increase for 2009 was 2.82% for townships, and for police bargaining units it was 2.43%. (Union Ex. 11). A pay freeze as proposed by the Employer cannot be justified by external comparable jurisdictions, or an inability to pay. Bainbridge Township patrolmen are scheduled to receive a 3.5% increase in 2010, and Chardon's officers are to receive a 2.85% increase. (Union Exhibit 5). The evidence is compelling that the Employer has not suffered from an economic downturn and cannot justify its wage proposal of 0%-1%-2%.

The Employer disagrees with the Union's position. It reasons that there is only one jurisdiction where a 4% wage increase was awarded and that was the Employer. Simply because the money is available does not warrant three years of 4% increases. This Employer's revenue, unlike a municipality, is driven by real estate and estate taxes, and as Trustee Caputo testified the property valuations have either remained flat or are subject to revision through the appeal process of the county auditor's appraisals.

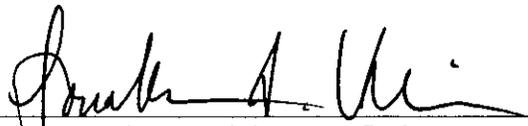
Moreover, all three mills of the general fund are subsidizing the road department and are simply not available for the police department. The trustees' proposal is based upon the concerns expressed by the township's residents who are out of work, working under concessionary packages or working part-time. This is what the trustees have agreed upon. The Employer's firefighters are all working part-time and at a wage rate approximately \$3 less per hour than firefighters in Chagrin Falls. The Employer emphasizes that there is a delay in the recessionary effects of the economic downturn hitting Geauga County. It notes that in Russell Township the wage increase for 2010 was 0% as part of a one-year contract extension (Employer Ex. 3), and Bainbridge's wage rates are high due to its receipt of an extremely large portion of estate tax beginning in 1998. The Employer urges the fact-finder to recommend a 0%, 1% and 2% wage increase.

Final Recommendation

It is the fact-finder's recommendation that the wage schedules contained in Articles 24, Section 24.1 should be adjusted to reflect annual wage rate increases of 2% commencing January 1, 2010, 2% effective January 1, 2011, and 2.5% effective January 1, 2012. For the following reasons, the fact-finder determines that these wage rate increases combined with the recommendation on health care premiums to be paid by bargaining unit members results in an economic package which is fair and reasonable for the employees under all the facts and circumstances, while at the same time recognizing that the Employer's financial position may not be as favorable as it has been in the past.

The fact-finder further determines this recommended wage increase to be consistent with the average wage increase for 2010 for Bainbridge, Chardon and Russell of 2.12%. The recommendation takes into consideration the strong economic health of the Employer's finances without ignoring its stated concern as to the potential for less revenue generation due to the overall economy, and flat or lower real estate appraisals upon which a great deal of its revenue is dependent. Moreover, this recommendation would not allow the bargaining unit employees to "pole vault" over comparable jurisdictions, but will permit it to hold its position relative to comparable jurisdictions.

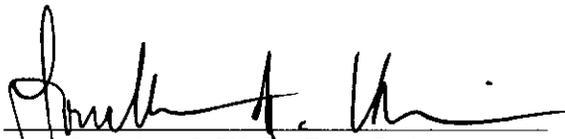
The fact-finder further determines that there is insufficient evidence to warrant an increase in the amount of longevity payments. Section 24.5 shall retain current contract language.

  
Jonathan I. Klein, Fact-finder

Dated: May 11, 2010

**CERTIFICATE OF SERVICE**

Originals of this Fact-finding Report and Recommendations were served on Kevin Powers, Esq., Ohio Patrolmen's Benevolent Association, 10147 Royalton Road, Suite J, P.O. Box 338003, North Royalton, Ohio 44133; Thomas M. Hanculak, Esq., Joseph W. Diemert & Associates Co., LPA, 1360 S.O.M. Center Road, Mayfield Heights, Ohio 44124; and upon J. Russell Keith, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, each by priority mail, sufficient postage prepaid, this 11<sup>th</sup> day of May 2010.



Jonathan I. Klein, Fact-finder

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ALSO ADMITTED IN  
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May 11, 2010

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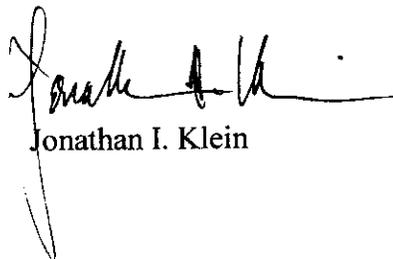
2010 MAY 13 P 4:54  
STATE EMPLOYMENT  
RELATIONS BOARD

Re: *OPBA -and- Chester Township Trustees*; SERB Case Nos. 09-MED-10-1208, 09-MED-10-1209

Gentlemen:

Enclosed please find the Fact-finding Report and Recommendations issued this date in the referenced matter, together with an invoice for my services and expenses.

Very truly yours,



Jonathan I. Klein

cc: J. Russell Keith, Esq. (w/awd) ✓