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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	SERB Case Number: 10-MED-08-0951
BETWEEN THE	:	
CITY OF VANDALIA, OHIO,	:	
Employer	:	Date of Fact-Finding: February 24, 2011
AND THE	:	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION,	:	
Union	:	Howard D. Silver Fact Finder

FACT FINDER'S REPORT AND RECOMMENDED LANGUAGE

APPEARANCES

For: Ohio Patrolmen's Benevolent Association, Union

Joseph M. Hegedus, Esquire
Ohio Patrolmen's Benevolent Association
92 Northwoods Boulevard, Suite B-2
Columbus, Ohio 43235
jmhege@sbcglobal.net

For: City of Vandalia, Ohio, Employer

Daniel G. Rosenthal, Esquire
DENLINGER, ROSENTHAL & GREENBERG LPA
425 Walnut Street, Suite 2300
Cincinnati, Ohio 45202-3918
rosenthal@drgfirm.com

This matter came on for fact-finding that included mediation at 10:00 a.m. on February 24, 2011 within the administration building of the city of Vandalia, Ohio, 333 James E. Bohanan Memorial Drive, Vandalia, Ohio 45377.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board, including Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations in filing with the fact finder and each other the pre-hearing information required by Ohio Revised Code section 4117.14(C)(3)(a) and Ohio Administrative Code section 4117-9-05(F). The current collective bargaining agreement between the parties for the bargaining unit comprised of twenty-two full-time Police Officers, seven Public Safety Specialists (dispatchers), and one Clerk Typist has been in effect since January 1, 2008, with the negotiated contract term concluding on December 31, 2010.

OUTSTANDING ARTICLES

The Articles that were unresolved between the parties at the time of the fact-finding on February 24, 2011 were:

Article XI – Vacation Leave

Article XVI - Overtime

Article XVII – Other Compensated Time

Article XX – Compensation

Article XXIX – Termination

Elimination or Extension of 12/15/09 Contract Amendment - Application of FSLA Exemption 7(K)

At the fact-finding on February 24, 2011 the parties reached tentative agreement on changes to the language of Article XI, section 11.02(b) and changes to the language of Article XVII, section 17.03. The fact finder recommends that these tentatively agreed changes be included in the parties' successor collective bargaining agreement.

FINDINGS OF FACT

1. The parties to this fact-finding process, the city of Vandalia, Ohio, the Employer, and the Ohio Patrolmen's Benevolent Association, the Union, have been engaged in negotiating a successor collective bargaining agreement to the collective bargaining agreement between the parties that was in effect from January 1, 2008 through December 31, 2010.

2. This fact-finding procedure addresses a bargaining unit comprised of twenty-two full-time Police Officers, seven Public Safety Specialists (dispatchers), and one Clerk Typist, SERB case number 10-MED-08-0951.

3. The city of Vandalia, Ohio is a public employer pursuant to Ohio Revised Code section 4117.01(B).

4. The Ohio Patrolmen's Benevolent Association is the exclusive

representative of the bargaining unit pursuant to Ohio Revised Code section 4117.01(E) and Ohio Revised Code section 4117.05.

DISCUSSION AND RECOMMENDED LANGUAGE

Article XI – Vacation Leave

The parties have tentatively agreed to change the second sentence of Article 11, section 11.02(b) to read: "Vacation shall be requested by December 1 of the previous year and shall be requested in full workweek increments." The parties have also tentatively agreed that the final sentence of Article 11, section 11.02(b) shall read: "An employee may use up to 16 hours of accrued vacation time under the same conditions as provided in Section 10.01(10) of this agreement, provided that such vacation time is scheduled in not less than four-hour increments and at the beginning or end of the shift." The fact finder recommends that these tentatively agreed changes to Article 11, section 11.02(b) be included in the parties' successor Agreement.

The Union also proposes language that would exempt the Clerk Typist within the bargaining unit from the requirements of Article 11, section 11.02(b), language that bears on scheduling vacation. The Union argues that there is no good reason to burden the Clerk Typist with the vacation scheduling requirements intended for police officers working patrol expressed in Article 11, section 11.02(b), and this bargaining unit member should be permitted to schedule vacation with the approval of the Chief of

Police or the Chief's designee.

The Employer opposes the new language proposed to be designated Article XI, section 11.02(e) that would exempt the Clerk Typist from the vacation scheduling requirements of Article XI, section 11.02(b). The Chief of Police at the fact finding spoke of his high regard for the Clerk Typist and expressed his intention to work with the Clerk Typist to accommodate her vacation requests. The Chief pointed out, however, that there are scheduling imperatives involving the Clerk Typist that must be accommodated and the Employer urges that no special exemption be carved from the language of Article XI, section 11.02(b) solely for the Clerk Typist position. The Employer stated that it was willing to withdraw its proposed new language for Article XX, Compensation, in section 20.03 that addresses Acting Watch Supervisor (AWS) if the Clerk Typist proposal were to be withdrawn.

The fact finder recommends that beyond the tentatively agreed language for Article XI in section 11.02(b), no other language be changed or added to this Article, thereby leaving the Clerk Typist subject to the vacation scheduling requirements of Article XI, section 11.02(b). The Clerk Typist position is no worse off and in exchange for this retention of current language the fact finder recommends that the language of Article XX, section 20.03, addressing Acting Watch Supervisor, be retained unchanged.

RECOMMENDED LANGUAGE – ARTICLE XI, VACATION LEAVE

Section 11.01 - Retain current language.

Section 11.02 – a) Maximum Accumulation. Vacation may accumulate to a maximum of an amount equal to forty-five (45) days. On December 31 of each year, any accrued time not taken in excess of the forty-five days shall be lost. An employee shall accrue no vacation leave during a leave of absence without pay.

b) Scheduling the Vacation. The time at which an employee shall take his vacation leave shall be approved by the Chief of Police with due regard to the employee and particular regard for the needs of the City. Vacation leave requested by December 1 of the previous year shall be requested in full workweek increments. Otherwise, vacation time may be taken in no less than half-day increments. Such leave shall be scheduled five (5) calendar days in advance and approved by the Chief of Police. Vacation requests shall not be unreasonably denied. Vacation shall initially be scheduled by seniority up to December 1st of the previous year. The employee with the highest seniority shall be given first preference for his first vacation choice until December 1st. No employee shall be permitted to schedule more than one (1) vacation period until all employees have scheduled their first vacation choice. After December 1st of the previous year, vacation leave for the subsequent year shall be scheduled on a first-request basis. An employee may use up to 16 hours of accrued vacation time under the same conditions as provided in Section 10.01(10) of this agreement, provided that such vacation time is scheduled in not less than four-hour increments and at the beginning or end of the shift.

c) Terminal Vacation Pay. Those employees who have obtained career status and leave the City service shall be paid for

accrued vacation leave. In no case shall payment be made for more than the maximum accumulation. However, vacation payment shall not be released until City property checked out to the individual is returned, any funds due the City are paid, including borrowed sick leave or if litigation or criminal action is pending involving theft or property owned by the City.

d) Transfer of Vacation Leave. When an employee is transferred or appointed to another City department, his vacation credit shall be assumed by the new department.

Section 11.03 – Retain current language.

ARTICLE XVI – Overtime and ARTICLE XVII – Other Compensated Time

Because of their related subject matters, the fact finder addresses Article XVI, Overtime, and Article XVII, Other Compensated Time, together. These Articles have been tentatively agreed to have language added to Article XVII, section 17.03 that would produce a second sentence in this section that reads as follows: "An employee called out shall receive a minimum of three hours time for each emergency call out unless the call out occurs 30 minutes or less before or after the employee's scheduled shift." The fact finder recommends the inclusion of this change to the language of Article XVII, section 17.03 in the parties' successor Agreement.

The remaining proposals concerning Articles XVI and XVII relate to the scheduling of police officers within the bargaining unit on a six days on/three days off basis rather than a five

days on/two days off basis. The police officers prefer the six/three schedule as opposed to the five/two schedule, and very much desire to retain this term and condition of employment. The Employer is amenable to the six/three schedule so long as an exemption agreed by the parties on December 15, 2009 involving an overtime threshold of 171 hours in a twenty-eight day work period, exemption 7(K) of the Fair Labor Standards Act, be extended between the parties for the term of the parties' successor Agreement.

The Union also proposes an overtime adjustment within Article XVII, section 17.06, that would provide overtime status to employees who work more than eight and one-half hours on the day of the Air Show and/or the day of the Air Show parade, and would provide overtime status to employees who had not been scheduled to work either or both of these days but were called in to work either or both of these days.

The fact finder recommends the retention of contract language that would allow bargaining unit members who are police officers to serve on a six days on/three days off basis. The fact finder recommends that the contract amendment agreed by the parties on December 15, 2009 that approved the application of exemption 7(K) of the Fair Labor Standards Act, putting the overtime threshold at 171 hours in a twenty-eight day work period, be extended between the parties for the term of the parties' successor collective bargaining agreement.

RECOMMENED LANGUAGE – Article XVI-Overtime and Article XVII-Other Compensated Time.

Article XVI - Overtime
Sections 16.01-16.04 – Retain current language.

Article XVII – Other Compensated Time
Sections 17.01-17.02 – Retain current language.

Section 17.03 – Emergency Call-out Pay. When employees are called to work because of an unforeseen emergency, they may be paid at their overtime rate. An employee called out will receive a minimum of three hours time for each emergency call out unless the call out occurs 30 minutes or less before or after the employee's scheduled shift. An employee need not report to work if a call-in is cancelled so long as the employee has already acknowledged by phone call receipt of the initial page and that he is responding.

Sections 17.04-17.06 – Retain current language.

The fact finder recommends that the contract amendment entered into by the parties on December 15, 2009, agreeing to the application of exemption 7(K) of the Fair Labor Standards Act that provides for an overtime threshold of 171 hours during a twenty-eight day work period, be extended through the term of the parties' successor collective bargaining agreement. The fact finder recommends that the following language be added to the December 15, 2009 contract amendment:

However, any bargaining unit member who works during the weekend of the Air Show, including the Air Show Parade, from 6:00 p.m. Friday through 6:00 a.m. Monday morning, wherever assigned, shall be paid at a rate of one and one-half times regular pay for any hours worked in cases where the employee was not regularly scheduled to work these days, or shall be paid at a rate of one and one-half times regular pay for any hours worked in excess of eight and one-half hours, at any time during this time frame, in all cases where the employee is regularly scheduled to work.

Article XX – Compensation

To the credit of the Employer and the Union, the bargaining unit has weathered the economic downturn over the past three years without layoffs, furlough days, or reductions in pay. This circumstance has been made possible by good planning and management by the Employer and the cooperation of bargaining unit members.

While the bargaining unit has not been required to suffer reductions in pay or hours of work, the Employer has had to accommodate a reduction in revenue over the last two years.

The fact finder recommends the last best wage offer made by the Employer, a 2.25% wage increase effective the first day of the first pay period after January 1, 2011; a 2.25% wage increase effective the first day of the first pay period after January 1, 2012; and a 2.25% wage increase effective the first day of the first pay period after January 1, 2013. Wage increases among public employees at this time are rare and the wage increases recommended by the fact finder herein are found to be reasonable

and to be within the ability of the public employer to fund. The initial wage increase under the parties' successor collective bargaining agreement is recommended to begin retroactive to the beginning of the first pay period in 2011. The fact finder also recommends the language tentatively agreed by the parties that would compensate hires after the effective date of the parties' successor Agreement through the Employer's compensation plan that was adopted in 2009, and as amended thereafter.

RECOMMENDED LANGUAGE – ARTICLE XX – Compensation

Section 20.01 - 2011, 2012, and 2013 Pay Schedule. Effective the first pay period of 2011, 2011 wages will be increased by 2.25% over 2010 wages; effective the first pay period of 2012, 2012 wages will be increased by 2.25% over 2011 wages; and effective the first pay period of 2013, 2013 wages will be increased by 2.25% over 2012 wages. Employees hired after the effective date of the contract will be compensated under the City's compensation plan adopted in 2009, and as amended thereafter.

Sections 20.02–20.05 – Retain current language.

Article XXIX – Termination

The fact finder recommends a three-year successor collective bargaining agreement to be in effect from January 1, 2011 through December 31, 2013. The fact finder also recommends that the date of August 15 that appears in Article XXIX, section 29.01 be changed to September 15, as tentatively agreed by the parties.

RECOMMENDED LANGUAGE – Article XXIV – Termination

Section 29.01 – This Agreement shall be effective on January 1, 2011 and shall remain in full force and effect until December 31, 2013 and shall be extended for one (1) year periods thereafter unless either party serves written notice by September 15 of subsequent years thereafter, on the other party having decided to terminate or amend this Agreement.

It is also the recommendation of the fact finder that the parties enter into a letter of understanding that includes the following language:

In order to eliminate fluctuation in employee paychecks for those employees on a 6/3 tour-of-duty schedule who are working 8.5 hour days, these employees shall receive bi-weekly paychecks computed on the basis of eighty (80) hours per pay period, at the employee's regular hourly rate of pay.

In making the recommendations presented in this report, the fact finder has considered the criteria presented by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes in the language recommended by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver
Fact Finder

Columbus, Ohio
March 31, 2011

CERTIFICATE OF SERVICE AND FILING

I hereby certify that the foregoing Fact Finder's Report and Recommended Language in the Matter of Fact-Finding Between the City of Vandalia, Ohio and the Ohio Patrolmen's Benevolent Association, SERB case number 10-MED-08-0951, was filed via electronic mail with the State Employment Relations Board, MED@serb.state.oh.us, and served via electronic mail on the following, this 31st day of March, 2011:

Joseph M. Hegedus, Esquire
Ohio Patrolmen's Benevolent Association
92 Northwoods Boulevard
Suite B-2
Columbus, Ohio 43235
jmhege@sbcglobal.net

and

Daniel G. Rosenthal, Esquire
DENLINGER, ROSENTHAL & GREENBERG LPA
425 Walnut Street
Suite 2300
Cincinnati, Ohio 43202-3918
rosenthal@drgfirm.com

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Columbus, Ohio
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