

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 10-MED-09-1065
	:	
Between:	:	
	:	
Miami Township Trustees,	:	
Clermont County, Ohio	:	Date of Hearing: January 11, 2011
Employer	:	Date of Report: February 10, 2011
	:	
And:	:	
	:	
Fraternal Order of Police,	:	Felicia Bernardini, Fact Finder
Ohio Labor Council, Inc.	:	
Union	:	

Fact Finder Report and Recommendation

Appearances:

For Miami Township, Clermont County, Ohio

Laurence Fronk, Administrator, Fact Finding Spokesperson

R. Steven Bailey, Chief of Police

Jeff Wright, Assistant Administrator

For Fraternal Order of Police, Ohio Labor Council Inc.

Ross Rader, Staff Representative, Fact Finding Spokesperson

Matthew Davila, Officer

Keith Bullock, Detective

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as Fact Finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on November 19, 2010 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Miami Township, Clermont County, Ohio (here after referred to as the “Employer” or the “Township”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (here after referred to as the “Union” or “FOP”).

Prior to the hearing, the parties engaged in contract negotiations on four scheduled dates, September 28, October 6, 13 and 27. Although brief, the negotiations resulted in 17 tentative agreements (TA’s). Seven issues remained unresolved. The current contract expired on December 31, 2010. After an initial contact with the parties, a time extension was filed. A hearing was scheduled for January 10, 2011. Both parties timely filed the required pre-hearing statements.

The day of the hearing, the Fact Finder proposed mediation of the outstanding issues prior to moving to the evidentiary hearing. The parties accepted the offer to mediate; however, no resolution was forthcoming and the parties proceeded to hearing.

Laurence Fronk, Township Administrator, along with R. Steven Bailey, Police Chief, and Jeff Wright, Asst. Administrator, represented the Employer.

Ross Rader, Staff Representative for FOP, along with unit members Officer Matthew Davila and Detective Keith Bullock, represented the Union.

Issues

At the outset of the hearing, the Union withdrew its Article 15 proposal concerning shift differential, and its Article 22 proposal concerning health insurance. The remaining open issues addressed by both parties at the hearing are as follows:

Article 4: FOP Representation, Section 2

Article 15: Wages, Sections 1-3

Article 15: Wages, New Section – Longevity

Article 17: Holidays, Section 1

Article 18: Vacation, Section 1

General Background Information

The Employer, Miami Township, is a suburban community on the northeast side of Cincinnati. I-275, the Cincinnati outerbelt, runs through the Township, and the Township sits in proximity to the cities of Milford and Loveland. The Township has a full service government providing police and fire safety services, public works to maintain Township infrastructure, parks and recreation services, community development and zoning operations, as well as typical governmental administrative functions. All of these services support a population of approximately 42,000 in the fastest growing township with the highest household income and per capita income in Clermont County, and a median housing value of over \$180,000.¹ The greatest part of the Township's revenue comes from property taxes.

The Police Department is a 24/7 operation with 40 fulltime and one part-time sworn employees, and 3 fulltime and one part-time civilian employees. The bargaining unit is 32 sworn officers (i.e., Officer, Specialist, Corporal, PFC). The Department is accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) and has also been designated as a Flagship Agency by this same Commission – a high honor achieved by very few police departments nationally. The Department handles approximately 30,000 calls for service each year.² The Department's staffing level is 0.85 officers per capita. The Department is funded by three revenue sources – The Police Fund, Safety Fund 1, and Safety Fund 2.

Positions, Discussion and Recommendations

At the hearing the parties agreed to present each unresolved proposal in numeric order based upon the number of the contract article. Therefore the format of this report will follow the same progression. On an issue-by-issue basis, the position of each party is briefly summarized, position summaries are followed by a brief analysis and discussion, which is followed by the recommendation of the Fact Finder.

In analyzing the positions of the parties and making recommendations the Fact Finder is guided by available, relevant evidence and the criteria set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;

¹ Miami Township, Clermont County, Ohio, Government website, Community Profile web page

² Inside Miami Township, Fall 2010, page 4

- (b). 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;
- (c). The interests 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;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 4, FOP Recognition, Section 4.2

Union Position

The Union seeks to add two paid days off per contract year for each of two unit member FOP representatives for the purpose of training. Trained local union representatives results in a better run unit, fewer grievances and improved labor/management outcomes. The proposed language requires the unit representative provide more than adequate notice for scheduling purposes. The proposal also gives the Police Chief the ability to deny any such request in the case of an emergency or if the request would result in an overtime expense. Many other surrounding FOP units have this type of contract language and it works well.

Employer Position

At the hearing the Employer agreed to the Union's proposal with the provision that the Police Chief's decision to approve or not approve these requests for union training leave would be final and not subject to the grievance procedure.

Discussion and Recommendation

At the hearing, the Union accepted the Employer's caveat.

Recommendation

Based on the agreement of the parties, the Fact Finder recommends that the language of Article 4, Section 2 read as follows:

Section 4.2 The Employer shall recognize two (2) employees, designated by the FOP to act as FOP Associates authorized under this agreement. Alternate representatives may be designated by the FOP to perform the duties of a regular representative in the absence of said representative for the purposes of this agreement. **Two (2) employee FOP/OLC representatives each shall be granted up to two (2) days of time off per contract year without loss of pay or benefits to attend FOP/OLC conferences or conventions. The employees shall submit a request for such leave to the Employer not less than fourteen (14) days in advance of the date the leave is requested to begin. The Employer reserves the right to deny such leave in the event of an emergency situation and/or the leave would create overtime. The Employer's decision to deny a leave request pursuant to this section of the contract is not subject to the grievance procedure.** When a bargaining unit has not designated an Associate, the Employer shall communicate with the FOP Business Agent for matters relative to that bargaining unit.

2. Article 15 Wages, Sections 1-3

Union Position

The FOP seeks the following pay raises during the term of the contract.

4% January 1, 2011

4% January 1, 2012

5% January 1, 2013

The Union offers as comparables seven FOP units in jurisdictions within close proximity to Miami Township.³ All seven have higher hourly rates for patrol officers than does this Employer. In fact, the average hourly rate in these comparable units is \$2.39 higher than Miami Township. Even with the Union's current wage proposal the unit will not catch up with surrounding jurisdictions. Given the disparity, the Union's proposal is modest and designed to help move the unit in the right direction, but not actually meet the wage levels of other units. For a comparable within the Township, the Union identifies the Fire Fighter contract wherein the IAFF and Township Trustees arrived at a three-year wage package of 3% in 2010, 3% in 2011, and 1% in 2012. A 7% wage increase over three years is far better than the meager 3% over three years being offered to the FOP.

The FOP also offers as comparison, information on the unit's workload and quality of work. Using officers *per capita* as a measure of relative staffing across jurisdictions the Township is staffed

³ FOP referenced Blue Ash, Fairfield, Montgomery, Sharonville, Springdale, Springfield Township and West Chester Township as its comparables for all economic proposals in this fact finding proceeding.

far below the national average, the Ohio average, the County average, and all of the comparable units used in this fact finding proceeding.⁴ The Township's *per capita* staffing level is 0.85, whereas national and state averages are over 2.0 and locally the *per capita* levels range from 1.14 – 2.64. Based on this staffing level, the Township already enjoys savings by virtue of the fact that the unit fulfills its mission with minimal staff. In addition, the unit not only fulfills its mission at an acceptable level of efficiency, it has achieved extraordinary levels of professionalism and quality in its service delivery. The Police Department is CALEA accredited and has earned Flagship status, a level of professional recognition that is earned by less than 1% of all police agencies.

According to 2010 mid-year reports, the Township is economically fairing better than other government jurisdictions in the area. In an August 2010 community newspaper report the Township Fiscal Officer noted that foreclosures had not been as high as expected, revenues were exceeding expectations, and the Township's carryover at the end of the year was on track to be higher than expected.⁵ In the same report the Township attributed its relatively stable position to a reliance on property taxes as its primary revenue source, as opposed to sales or income tax. As recently as December 2010, the Township expected to end the coming year with a larger cash reserve in the general fund than it did in 2010.⁶

The budget projections for the Township show multi-million dollar carryovers for the past several years including the carryover to 2011. In budget documents prepared by the Township the carryover from 2009 to 2010 was approximately \$4.2 million.⁷ At the end of 2010 the carryover in Police Funds for 2011 was projected at over \$3.75 million.⁸ Historically, the Township budgets conservatively and the practice serves the Township well. Consistently projecting gloomy revenue forecasts and then experiencing actual revenue collections above projections, and consistently projecting Police Department expenses high and then spending only 90% of the budget has resulted in significant carryover balances from year to year. Clearly, the Employer has the ability to pay for the wage proposal sought by the Union.

Employer Position

The Employer offers the following pay raises during the term of the contract.

⁴ Blue Ash, Fairfield, Montgomery, Sharonville, Springdale, Springfield Township and West Chester Township

⁵ Milford-Miami Advertiser, Wednesday, August 4, 2010, Union Exhibit

⁶ Communitypress.com, December 11, 2010, Union Exhibit

⁷ Budget Narrative for Projected Revenues 2010, Union Exhibit

⁸ 2010 Budget Summary, Part 1- Financial Analysis of All Funds, Carry-Over Analysis, Union Exhibit

1% January 1, 2011

1% January 1, 2012

1% January 1, 2013

The Township is no different than any other employer; it is feeling the effects of the slow economy. The residents and businesses of the Township who fund government operations with their taxes are going through a time of economic hardship. Income for people who live in the Township has been flat; few people have seen raises in the past couple of years. When taxpayers do not receive raises in their own work situations, they certainly see no reason for government workers to be given raises funded by the taxes they pay. The same is true with businesses. When sales revenue is down due to consumer cutbacks and business owners struggle to stay afloat, they too do not want to see their tax dollars going to raises for government employees. To address this concern, the Township has planned to cut spending in 2011 by 2.7%.

The Township relies primarily on property taxes. The real estate tax valuation provided by the Clermont County Auditor is \$5 million lower in 2011 than it was in 2010. This means that property tax revenue will be down in 2011. In addition, the Clermont County Auditor will conduct a desktop appraisal in 2011 that is expected to result in lower valuations and less tax revenue. The Police Department revenue history for 2008-2010 shows the start of this decline. In 2008 revenue was up a mere 1.7%, in 2009 revenue was down by 0.8%, in 2010 revenue was higher than 2009, but only by 0.14%. Meanwhile, Police Department expenses were up significantly over the same period. In 2008 expenses grew by 9.1%, 16.1% in 2009, and 2.7% in 2010.⁹ This pattern of deficit spending cannot be sustained. Expenses must be curtailed and brought in line with revenue projections.

When budget projections for the Police Department assume revenue growth at 1%-1.5% over the next 4 years, a 4% increase in expenses results in a \$2.19 million deficit by 2013. Recalculating the projection at a 3% increase in departmental expenses results in a \$1.83 million deficit by 2013. 2% and 1% projected increases in expenses result in \$1.5 million and \$1.2 million deficits respectively by 2013.¹⁰ Since staff salaries are the largest single expense for the Police Department, these budget projections show what would happen to the departmental budget if it adopted such a wage proposal.

Property taxes are collected by and paid to the Township by the Clermont County Auditor. The largest payments arrive in March/April and September/October following the semiannual

⁹ Miami Township Fact Finding position paper, page 32

¹⁰ Miami Township Fact Finding Position Paper, page 33

collection schedule. This being so, the minimum year-end balance for each of the Township's funds must be equal to the first four months operating expenses for the coming year. The Police Department is supported by three funds. 100% of the Police Fund is dedicated to funding the Police Department, whereas 43% of Safety Fund 1 and 50% of Safety Fund 2 is directed to Police Department funding. The percentage of the Safety Funds directed to the Police Department is discretionary and subject to change. Given current departmental expenses, the required funding balance needed as carryover for the first four months of 2011 is \$1,816,954.¹¹

As for comparisons with other jurisdictions in the area, the Township offers news reports documenting a two-year wage freeze for Clermont County deputies and proposed layoffs for the City of Cincinnati Police Department.

Discussion and Recommendation

Given the depth and breadth of the U.S. recession, it seems fair to say that no community in the country has gone unscathed. Although lower than a year ago, Ohio's unemployment rate at the end of 2010 was 9.3% (not seasonally adjusted), higher than the national rate of 9.1% (not seasonally adjusted).¹² Clermont County's unemployment rate, at 9.3%, is the same as the statewide average – higher than neighboring counties, Hamilton, Butler, and Warren at 8.5%, 8.8%, and 8.4% respectively; but lower than neighboring Clinton County at 15.0% and Brown County at 11.3%.¹³ In the ten years prior to 2009, the Clinton County unemployment rate was never higher than 5.5% and averaged 4.8%.¹⁴

Residential building permits in Clermont County dropped from 1472 in 2002, to 506 in 2009. Even so, in 2009 Clermont County ranked 8th among all 88 Ohio counties on residential building permits – a key indicator of economic development.¹⁵ Over the same time period, the value of these housing permits dropped from \$187,727 to \$64,030.¹⁶ Taxable value of real property in Clermont County increased from \$2.75 billion in 2001 to \$4.14 billion in 2008.¹⁷ However, the rate of growth over that period of time declined. According to documents from the Clermont County Auditor's Office, provided by the Employer at the fact-finding hearing, Miami Township appears to

¹¹ Miami Township Fact Finding Exhibits, Exhibit A

¹² Ohio Labor Market Information, www.lmi.state.oh.us

¹³ Ohio Labor Market Information, www.lmi.state.oh.us

¹⁴ Ohio Labor Market Information, www.lmi.state.oh.us

¹⁵ Ohio Department of Development, County Indicators Report, July 2010, Table 30

¹⁶ Ohio Department of Development, County Indicators Report, July 2010, Table 31

¹⁷ Ohio Department of Development, County Indicators Report, July 2010, Table 32

account for approximately one-fourth of the County's total taxable value of real property. The fact finding documents also show that the Township's taxable value of real property has declined slightly (four-tenths of one percent) from 2009 to 2010 and is expected to decline again in 2011 after the County Auditor completes its desktop audit. Given data such as these, and well-researched and publicized economic reports of a slow and sluggish economic recovery, it is reasonable to assume nearly flat revenue projects for the term of this labor agreement. The Employer's modest 1%-1.5% growth assumption¹⁸ for budgeting purposes seems grounded in reality. This Fact Finder also respects the Employer's earnest desire to hold fast on its promise to taxpayers to make its 2005 tax levy last for 10 years. Bringing expenditures in line with growth assumptions is prudent fiscal management.

One of the difficulties for this Fact Finder is that an important set of the budget projections submitted by the Employer showed a 33% increase (\$1.23 million) in Police Department salaries and benefits between 2009 and 2010. These numbers are inconsistent with the numbers reported in the Employer's Position Paper, which cites a 16% increase in departmental expense in 2009 and a 2.7% increase in 2010. The Employer was unable to explain the 33% increase rendering those budget projection spreadsheets unreliable and unusable. However, other documents provided by the Employer and consistent with current salary information provided by the Union allow the Fact Finder to calculate proposed wage increases on 2010 salaries¹⁹. The Employer's proposal of 1% in each of three contract years adds \$69K in salaries over the three-year term of the contract. Using a 30% calculation for related increases in benefit expenses tied to salary growth, the Employer's proposal adds just under \$90K in personnel costs over the three-year term of the contract. The Union's proposal of 4%, 4%, 5%, adds \$449K in salaries. Applying the same 30% roll-up for increased costs in benefits, the Union's proposal costs \$583K over the term of the contract.

The Employer also provided Revenue & Expense – Four Year Projection spreadsheets.²⁰ These spreadsheets are calculated on the Employer's wage proposal and Union wage proposals as they were prior to fact finding. This set of spreadsheets assumes flat revenue in 2011 and 2012, and 1% revenue growth in 2013 and 2014. This projected growth is even lower than what the Employer assumed in its Position Paper. The spreadsheets show that the Employer's proposal allows the Township to stretch its fund balance carryover to 2014. The Union's proposals result in a carryover

¹⁸ Miami Township, Fact Finding Position Paper, page 33

¹⁹ Miami Township, Fact Finding Exhibits, Exhibit B

²⁰ Miami Township, Fact Finding Exhibits, Exhibit E

deficit by 2012. The Union's wage proposal at Fact Finding was different than its earlier proposal, however the total three-year wage increase proposed by the Union is 13%, an increase that would deplete fund carryover and have the Department operating at a deficit by the second year of the contract.

The Fact Finder is to take into consideration comparables. The Union provides hourly wage comparisons between Miami Township and seven surrounding jurisdictions – five municipalities and two townships. All seven jurisdictions have higher hourly rates for their FOP unit, the range being from \$1.20 to \$2.85 higher than Miami Township. There is no standard when applying comparables to suggest that to be properly aligned, similar units need to be within a particular percentage of one another. For this Fact Finder, the wage comparison shows the units to be relatively close. Differences of \$1.20/hour, or even \$2.85/hour, could be accounted for in factors such as the history of the bargaining unit, the type of community served by the unit, or even the timing of collective bargaining intervals and contract length. No actual evidence was presented to this Fact Finder showing that higher wages in neighboring jurisdictions are luring unit members out of Miami Township. For wages to warrant a labor market adjustment they would have to be farther out of line, and more information about recruitment and retention problems would have to be presented.

Comparables that present a more compelling story are wage settlements for the same Employer, and/or the same time period, and/or the same geographic area, and/or the same type of unit. For this information, the Fact Finder turns to information provided by the parties and information available from SERB. Within Miami Township itself, the Fire Fighters recently received a wage settlement of 3% in 2010, 3% in 2011 and 1% in 2012. Teamsters in Miami Township will receive a 3% wage increase in 2011 and a 2% increase in 2012. Sergeants of the Miami Township Police Department were recently awarded a 3% wage increase in 2011 and a 3% wage increase in 2012. Data from SERB's most recent Annual Wage Settlement Report shows the 2009 average Township wage settlement as 2.82%. The same Report shows 2009 average wage settlements for Police units as 2.43%. The average wage settlement for the Cincinnati region in 2009 was 2.10% and average 2009 wage settlements for the first, second and third years of a contract were 2.09%, 2.46%, and 2.65% respectively.²¹

Given available economic data concerning property taxes and flat economic growth, it is unreasonable for the Union to expect to enjoy cost of living increases in the range proposed. Nor is

²¹ SERB Annual Wage Settlement Report, 2009

it reasonable for the Union to expect to be awarded wage increases designed to bring hourly rates to the exact same levels as other select FOP units. On the other hand, a quick review of available fact finding reports concerning this Employer show that since 2005 it has become standard practice for the Township to offer wage proposals from 1%-1.75% regardless of its ability to pay more. In this case, both parties characterized the bargaining as coming to screeching halt on the fourth meeting when the Employer withdrew its original wage proposal and declined to bargain further.

The Fact Finder has spent considerable time and effort calculating the impact of potential wage settlement variations using the Four-Year Projection spreadsheets provided by the Employer. Applying the Employer's gloomy economic forecast, and if the Employer closely manages other departmental expenses, a wage settlement consistent with those granted other Township units is both appropriate and fair. Such a wage settlement should allow the Employer to maintain a funding carryover throughout the three-year term of the contract. A modest wage settlement should also prevent the FOP unit from falling behind other units within the Township and stay within a reasonable range when compared to other FOP units in the area.

Recommendation

The Fact Finder recommends the following wage settlement.

Article 15, Section 15.1, Effective January 1, 2011 all rates of pay shall increase 2.5%.

Article 15, Section 15.2, Effective January 1, 2012 all rates of pay shall increase 2.5%.

Article 15, Section 15.3, Effective January 1, 2013 all rates of pay shall increase 2.0%.

3. Article 15 Wages, New Section – Longevity

Union Position

The FOP seeks an annual longevity pay supplement to be paid in December following the completion of five years of service. The longevity supplement would start at \$350 at five years of service and increase by \$70 for each additional year of service up to a maximum of \$1750 after twenty-five years of service.

Longevity is nearly universal as a provision in FOP contracts. It is included in the contracts of all seven comparable jurisdictions used for comparison by the FOP in this hearing. Longevity provides an incentive to stay with a jurisdiction once an officer becomes a seasoned professional. As for the makeup of the current bargaining unit, 11 officers would not be eligible for the benefit because their years of service are under the minimum threshold.

Employer Position

The Employer is opposed to the longevity pay supplement. The cost to the Employer is calculated at \$96,824.00 over the three-year term of the contract. This is strictly a cost item. There is no benefit to the Employer. There is no evidence of a turnover problem that this supplement purports to remedy.

Discussion and Recommendation

The Employer's cost estimate is high and is likely related to an earlier Union proposal that provided for \$75 per year of service and no maximum cap. The Employer's estimates may also include costs not relevant to this unit, but associated with the cost of offering the same longevity benefit to other Department employees. Regardless, the Fact Finder's rough calculations, based on a Date of Hire chart provided at the hearing, show that the cost of the proposed longevity benefit would be slightly over \$70,000 for the three-year term of the contract.

Further, assuming the benefit stays in effect going forward with no changes in the provisions and a stable workforce (the objective of the benefit), the costs increase by approximately \$5000 in 2014 as a cohort of recently hired officers age into eligibility, and about \$2500 per year thereafter, depending on retirement patterns. The cost of this benefit could quickly become an annual expense of \$30,000+. Within the matter of one additional three-year contract this benefit could add, in the neighborhood of \$90,000.00 to personnel expenses.

Even though longevity pay is a standard provision in many labor agreements, and is an established practice for FOP units around Miami Township, there was no evidence presented to the Fact Finder to substantiate the assertion that there is unusual turnover in the Police Department that this proposal could remedy. The Fact Finder will go one step further and suggest that even if a pattern of high turnover was in evidence in the Police Department, it would not necessarily be a problem that could be remedied by longevity pay. Turnover rates fluctuate based on a variety of factors and establishing a cause and effect relationship between benefit structures and turnover is tricky.

Recommendation

For these reasons the Fact Finder rejects the Union's proposal and will not add longevity pay to Article 15, Wages.

4. Article 17 Holidays, Section 1.

Union Position

The FOP seeks to add an 11th holiday – May 15, Police Officers Memorial Day.

Although not universally a provision in FOP contracts, it is a day universally recognized by sworn officers all across the country as a special day of remembrance and recognition. May 15 is not a day that other Township bargaining units would seek to add to their contracts simply because it is a day set aside specifically for the benefit of police officers. Adding an eleventh holiday would bring the Township into alignment with surrounding jurisdictions, in particular, Blue Ash, Fairfield, Montgomery, Sharonville and Springdale, all of which have either 11 or 13 paid holidays. Furthermore, all seven of the jurisdictions referenced as comparables have higher rates of pay for holidays than does Miami Township. Some pay as high as triple-time for 11 holidays. By comparison, Miami Township pays double-time and one half for six holidays, and double-time for four holidays.

Employer Position

The Township proposes no change to this Article and opposes the Union proposal. The Township calculates the cost of an additional holiday for police officers at approximately \$31,000 per year. Over the term of a three-year contract this is a \$93,000 benefit. Adding a holiday is strictly a cost item for the Township. There are no off-sets to the expense in terms of improved operational efficiency for the Department, nor does it improve services to the taxpayer. All other Township employees receive only 10 paid holidays per year.

Discussion and Recommendation

In presenting its comparables the Union acknowledged that it is difficult to make comparisons because some jurisdictions offer a “personal” day or a “birthday” holiday, rather than designating a specific day, such as Police Officer Memorial Day, as an additional paid day off for all unit members. Regardless of how it is structured, additional days off work for unit members in a 24/7 operation comes at considerable expense due to the application of premium pay, whether that premium is calculated at double-time, double-time and one-half, or triple-time.

Currently, Township employees including those in this unit enjoy 10 holidays inclusive of all U.S. national holidays²². If an additional holiday were considered, no doubt there are some members of this unit who would place a higher value on a religious observance of their choice, or a holiday of particular relevance to their ethnic or cultural identity. Adding a holiday beyond designated national holidays can be a sensitive issue both for those who directly benefit from the day off, and other employees who will seek to increase their own holiday list for the sake of “internal equity.” For these reasons it is a benefit better negotiated between the parties than dictated by the Fact Finder. It is more likely that those jurisdictions enjoying 11, 12 or 13 holidays arrived there via negotiated settlements rather than via fact finder or conciliator award.

Recommendation

The Fact Finder rejects the Union’s proposal to add a holiday. Article 17 will not be modified.

5. Article 18 Vacations, Section 1

Union Position

The FOP proposes adding a tier to the accrual structure allowing unit members to accrue more vacation leave earlier in their career and achieve the top tier of accrual at 20 years of service rather than 25.

The FOP seeks to progress bargaining unit members through the various vacation accrual levels faster, topping out at the same amount of vacation, 240 hours, but getting to that level after 20 years of service rather than 25 years of service. Currently, unit members are eligible to retire with 25 years of service, receiving a bump in vacation accrual is somewhat meaningless at this level. Whereas, at 20 years of service an officer could actually benefit from the benefit (As it were.) by having and using the higher level of accrual during a typical 25-year career. The FOP proposal also moves members through the accrual levels faster by adding a tier to the accrual allowing all bargaining unit members to gain with somewhat higher accruals along the way to the top level.

The Union offered comparisons of FOP units in other jurisdictions²³ within close proximity to Miami Township showing that although accrual amounts vary from jurisdiction to jurisdiction, other units accrue more vacation and achieve higher accrual levels with fewer years of services.

²² An exception is found in the IAFF contract were the day after Thanksgiving is substituted for Veterans Day.

²³ Blue Ash, Fairfield, Montgomery, Sharonville, Springdale, Springfield Township and West Chester Township

Employer Position

The Employer seeks no change in this article and is opposed to the Union's proposal. The Township calculates the costs of an earlier version of the Union's proposal to be in excess of \$58,000 over the three-year contract. The unit's current vacation accrual tiers are the same as other Township employees and the benefit, when structured in workweeks at each tier, is comparable to what other Township employees receive. This is a substantial cost, for a benefit that does not add value to the Employer's operations or improve services to taxpayers.

Discussion and Recommendation

A true apples-to-apples comparison is difficult to make when looking at accrual rates across jurisdictions. Depending on whether a police unit works 8, 10, or 12- hour days makes a significant difference in how accrual levels are calculated. Also, in 24/7 operations there are a variety of scheduling patterns used resulting in differences in the number of workdays that equate to a workweek. However, what is reliable across jurisdictions is that police officers are eligible to retire at 25 years of service rather than at 30 years of service²⁴ – the standard for non-uniformed public sector employees. This being so, many FOP units structure their vacation accruals to “top-out” before retirement eligibility rather than at retirement eligibility as this Employer has structured its benefit.

Without entering into a long discourse on the fairness of pension eligibility differences between uniformed and non-uniformed public sector employees, it is enough to recognize that the difference exists to make the argument that vacation accruals can be different between uniformed and non-uniformed employees within the same employer and still be equitable. Police officers should be allowed to enjoy their highest available vacation accrual during the last years of a normal career spanning 25 years. Just as non-uniformed employees enjoy a bump in vacation for their final years of service.

While not adopting the full scope of the Union's proposal, a minor adjustment to the current accrual levels will bring an equitable format to the unit's vacation accrual levels while only costing the Employer approximately \$5000 per contract year – a much reduced cost than that of the full Union proposal.

²⁴ OPERS has proposed raising normal retirement eligibility to 32 years of service and a minimum age of 55

Recommendation

The Fact Finder recommends that the vacation accrual levels in Article 18, Section 1 be as follows:

A. Less than 12 months	----	no vacation
B. 12 months + one day to 84 months	----	96 hours
C. 84 months + one day to 180 months	----	144 hours
<u>D. 180 months + one day to 240 months</u>	----	<u>192 hours</u>
<u>E. 240 months + one day and up</u>	----	<u>240 hours</u>

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 10th day of February 2011.



Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail and First Class USPS Mail on February 10, 2011 to:

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