

STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

2011 JAN 19 P 2:28

In the Matter of Fact-Finding Between

The Fraternal Order of Police,  
Ohio Labor Council, Inc.

Employee Organization

Case Nos. 10-MED-09-1066

and

The Miami Township,  
Clermont County, Ohio  
Sergeants

Fact-finder: Jerry B. Sellman  
Date of Report: January 18, 2011

The Employer

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**FACT-FINDER'S REPORT AND RECOMMENDATION**

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APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Mr. Ross Rader - Staff Representative FOP/OLC Inc., representing the Union

FOR THE EMPLOYER:

Laurence Fronk – Administrator for Miami Township, Clermont County, Ohio, representing Miami Township

## I. INTRODUCTION

This matter concerns a Fact-finding proceeding between the Miami Township, Clermont County, Ohio (hereinafter referred to as the “Employer” or the “Township”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the “FOP” or “Union”). The State Employment Relations Board (SERB) duly appointed the undersigned as Fact-finder in this matter. A Fact-finding hearing was held on December 15, 2010 at which time the Fact-finder invited the parties to enter into mediation pursuant to the Ohio Administrative Code and the Policies of SERB in an effort to find consensus on all remaining disputed provisions of the new Collective Bargaining Agreement. Both parties accepted the offer to mediate and in good faith tried to resolve all outstanding issues. They were successful in mutually agreeing to proposed provisions in Article 17, Sections 17.2 and 17.4, regarding holiday issues; Article 22, regarding Insurance; and Article 34 regarding the retention of the sergeant’s service weapon upon retirement. They could not agree on other provisions. The Fact-finding hearing was commenced to consider all remaining issues

The remaining open issues identified and discussed by both parties included:

ARTICLE 14 – HOURS OF WORK AND OVERTIME, Section 14.8, Additional Hours for Sergeants in lieu of Short days

ARTICLE 15 – WAGES AND COMPENSATION, Section 15.1, Rates of Pay

ARTICLE 15 – WAGES AND COMPENSATION, Section 15.7 Longevity

ARTICLE 17 – HOLIDAYS, Section 17.1, Entitlement to specific holidays

ARTICLE 17 – HOLIDAYS, Section 17.3, Overtime for stated holidays

The Fact-finding proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of the State Employment Relations Board, as amended. During the Fact-finding proceeding, this Fact-Finder provided the parties the opportunity to present arguments and evidence in support of their respective positions on the issues remaining for this Fact-finder's consideration. The parties waived the taking of a transcript.

In making the recommendations in this report, consideration was given to all reliable evidence presented relevant to the outstanding issues before him and consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

- (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 public service or in private employment.

## **II. BACKGROUND**

The FOP represents the Miami Township, Clermont County, Ohio Police Sergeants. There are five (5) employees in this bargaining unit. Miami Township is primarily a bedroom community with 42,000 residents located on the northeast side of Cincinnati, Ohio. Miami

Township has a full service government with a full-time Police Department, Fire Department, Service Department, Parks and Recreation Department, Community Development Department and Administrative/Financial Staff. The Police Department is a 24/7 operation with forty (40) full-time sworn, one (1) part-time sworn, three (3) full-time civilian, and one (1) part-time civilian employees. Statistical information reveals that Miami Township has experienced the highest growth in Clermont County since 1990 and it's Household Income and Per Capita Income is also the highest in the County. The primary source of revenue supporting government services is the property tax. The Police Department receives revenues from Police District Levies and two Public Safety Levies. Property tax revenue over the next couple of years is expected to be flat or slightly down. In addition, the Clermont County Auditor will conduct a desktop appraisal in 2011 that is expected to result in a lower valuation and less tax revenues, although for budgeting purposes the Township has slightly increased the revenues each year.

Even if revenues remain stable over the next several years, which assumption is uncertain, the Township expects expenses to exceed income for the foreseeable future. In 2009 revenues exceed expenses by approximately \$700,000, but in 2010 expenses exceeded revenues approximately \$1,300,000 and that trend is expected to continue at an increasing rate. The Township has been able to meet its expenses because it has been able to carry over a reserve from prior years and because it typically spends only about ninety percent (90%) of its budget due to reductions in expenses and delayed projects.

The current Collective Bargaining Agreement expired on December 31, 2010 and Extension Agreements were executed by the parties to allow for Fact-finding on unresolved issues. The parties tentatively agreed to language in all but five (5) negotiated issues in the new proposed Collective Bargaining Agreement prior to the Fact-finding Hearing.

### III. UNRESOLVED ISSUES

#### 1. ARTICLE 14 – HOURS OF WORK AND OVERTIME, Section 14.8, Additional Hours for Sergeants in lieu of Short days

##### The Union's Position

The Union proposes that the language in Article 14, Section 14.8 be amended to provide that each Sergeant assigned to road patrol shall receive three and one-quarter ( $3 \frac{1}{4}$ ) hours instead of the current three-quarters ( $\frac{3}{4}$ ) of one hour, of overtime pay per pay period in place of their "short days."

Miami Township Police Sergeants currently work an eighty-five and three-quarter ( $85 \frac{3}{4}$ ) hour work schedule during each two-week pay period. Currently the first eight-five (85) hours are compensated at straight time with the excess time being compensated at one and one half ( $1 \frac{1}{2}$ ) times their normal hourly rate.

Miami Township Patrol Officers currently work an eighty-four (84) hour work schedule during each two-week pay period. The first eighty-two and one-half ( $82 \frac{1}{2}$ ) hours are compensated at straight time with the excess time being compensated at one and one half ( $1 \frac{1}{2}$ ) times their normal hourly rate.

The police sergeants are seeking a change in the language of Section 14.8, consistent with that of the patrol officers, to be compensated at the one and one half ( $1 \frac{1}{2}$ ) times rate for hours worked in excess of eighty-two and one half ( $82 \frac{1}{2}$ ) hours per pay period.

This revision to the agreement is designed to bring conformity to the handling of overtime between the patrol and the Sergeants.

### The Township's Position

The Township proposes no change in the current contract language.

The Township argues that the Collective Bargaining Unit has not provided any justification to show how this change to the Bargaining Agreement increases efficiency or better serves the residents of Miami Township. Each Sergeant has one "short day" per pay period. Miami Township pays bi-weekly (26 pay periods per year). The increase in overtime pay for five sergeants is \$12,358 per year. The employer knows of no reason the residents of Miami Township should be paying an additional \$12,358 per year for this benefit.

### Discussion, Findings and Recommendation

Under current contract language, Sergeants must work over eighty-five (85) hours per pay period before receiving any overtime, while patrol officers need only work eighty-two and one-half (82 ½) before receiving overtime. The Union seeks to bring conformity to overtime pay for hours worked between the patrol officers and the Sergeants. Creating consistency among the police officers in overtime pay is in the best interest of officers in eliminating any dissention among the ranks, and ultimately is in the best interest of the public. Because this modest increase will have very little impact on the budget, the merits of consistency outweigh any arguments to the contrary.

### **RECOMMENDATION**

**It is recommended that the Union's proposal to amend ARTICLE 14, Section 14.8 by paying Sergeants three and one-quarter (3 ¼) hours of overtime pay per pay period in place of their "short days" be adopted.**

## **2. ARTICLE 15: WAGES AND COMPENSATION: Section 15.1 and 15.2**

### The Union's Position

The Union proposes that effective January 1, 2011 rates of pay for bargaining unit members shall be increased by 6.5% in all pay steps and that effective January 1, 2012 rates of pay for bargaining unit members shall be increases by 3% in all pay steps

The Union believes its proposal represents a modest yet necessary wage adjustment in order to be more balanced with comparable agencies and in recognition of the national accomplishments it has attained.

The Union provided documentation indicating that the Sergeants in Miami Township are the lowest paid among sergeants in comparable jurisdictions.<sup>1</sup> It argues that a 6.5% increase in 2011 would move the Sergeants up, but they would still be nearly a full 1% under the average of the comparable agencies. In relationship to other expenditures in the Township, the increase sought is minimal. While the first year wage increase will result in a little over \$20,000, the Township is spending more than that on other expenditures such as janitorial supplies, Newsletters, and the Township's Midsummer Concert. The Township spends \$125,000 out of the operating budget just for the Midsummer Concert each year. Out of the \$3.4 Million non-committed Police Discretionary Funds, the Township should be able to find sufficient funds to pay the reasonable increases sought.

The Union argues that the Township can afford to pay the increases sought. While the Union and the Township met for the first time to discuss a new collective bargaining agreement on September 28, 2010, the *Milford-Miami Advertiser* reported that the Township's revenues

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<sup>1</sup> The Union compared the top Sergeants' pay in 2011 with the top pay of sergeants in the communities of Blue Ash, Springdale, Montgomery, Sharonville, Forest Park, Springfield Township and West Chester Township. The listed

were on track to exceed the \$25 million budgeted by the end of the year and expenses were practically flat.<sup>2</sup> As the parties met five additional times in October to negotiate a new contract, this stable financial picture continued to be projected. On December 11, 2010 Miami Township officials reported that they expected to end the year with a larger cash reserve in the general fund than last year.<sup>3</sup> On December 12, 2010 *The Enquirer* reported that the Township planned to replace at least one fire engine for about \$400,000 and that up to ten (10) part-time employees might be hired to fill scheduling gaps in the Fire Department. The Township also planned to hire twenty-eight seasonal employees to work for the parks and recreation departments in 2011. Based upon these reports, the Union believes that the Township can afford to pay the additional wages increases to the five Sergeants in this unit.

One measure commonly used to assess and compare relative staffing of police officers in communities is the number of officers per capita. The International Association of Police Chiefs recommends that this ratio be no less than 2.5 officers per 1,000 citizens. Compared to this recommendation, as well as the national, State and local ratios, Miami Township is below the IAPC recommended staffing level and comparable ratios in surrounding communities. The national average of police officers per capita is 2.8, while the Ohio average is 2.9 and Clermont County is 1.29. The surrounding City of Milford is 3.01 and the City of Loveland is 1.64. Miami Township is .85, far below any of those averages. This basically means that fewer officers are handling more work than their counterparts in other communities and, as set forth above, being paid less. The Township is already saving money by employing staffing ratios at 34% of the national average.

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salaries in all communities do not include differential pay, longevity pay or pension pick-up. Miami Township Sergeants currently enjoy none of these additional benefits.

<sup>3</sup> The article reflected comments made by the Township's Fiscal Officer.

For more than a decade, the Miami Township Police Department has worked toward its goal of establishing itself as one of the premier police agencies in Ohio. During the month of March 2007, that goal was realized when the agency received “Flagship” status from the Commission on Accreditation of Law Enforcement Agencies (CALEA). This designation means that an agency is held as an example after which other police agencies model themselves. During the 2010 CALEA assessment, the Miami Township police department once again earned “Flagship” status for its performance over the previous three years. The agency first established itself in 1996 when it earned international accreditation; an accomplishment that only 3% of the 17,000 police agencies nationwide have achieved. Upon earning Flagship status in 2007, it accomplished a level of professional recognition that only 3/10ths of 1% of all police agencies have achieved. It should be noted that only two of the agencies in the Union’s comparables have achieved accreditation.

The Union asserts that as a result of the high level of service and professionalism offered by this police department, this growing community of more than 45,000 residents has overwhelmingly supported the police department through tax levies. Community surveys illustrate that Miami Township residents are well satisfied with their police service and are willing to sustain the current level of service through financial support.

The police sergeants are part of the agency’s leadership team and have played a critical role in the successes of the past dozen years. The sergeant's rank is the only current rank within the agency that requires a bachelor’s degree. Over the past 10 years, the responsibilities and span of control for the police sergeants has doubled. Due to the increase in police personnel, sergeants have taken on additional supervisory responsibility over officers with relatively low levels of

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<sup>3</sup> Article in the *Community Press*.

police experience.

Based upon the quality of the Township police department and the Township's ability to pay, the wage increases should be granted.

#### The Township's Position

The Township proposes that wages beginning in the year 2011 be increased as follows: 1% in 2011; and 1% in 2012.

The Township appreciates the work performed by the Sergeants and is willing to increase the Sergeants' wages over the next two years, but it believes the increase must be minimal to keep expenses in check. The percentage increase offered is appropriate in a recessionary economy and is well in line with other internal and external comparables. The Township has been very accurate in its budgeting process over the last ten years, being at most within only .2% of budget from year to year. It, therefore, believes its forecasts of flat income and increasing expenses at certain levels is accurate and reliable.

While revenues were initially predicted to be slightly up in 2010, they actually declined. Expenses were up. This is resulting in the beginning of a continual decline in reserves to cover the shortfall(s) not only for 2010, but for the foreseeable future. Even with the proposed 1% wage increase submitted by the Township, reserves will continue to decrease each year. At a 4% annual wage increase, the reserves would decline at twice the rate of 1% increase. Even without any wage increases, the township will need to cut expenses in order to prevent total depletion of its reserves. The only way that can be accomplished is eventually through the reduction of staff.

Historically the expenses to run the Police Department have increased on average six percent (6%) per year over the last fifteen years. Revenues have increased at around a four

percent (4%) rate, thus creating a two percent (2%) gap. With this trend, staff reductions will occur in the future. It is projected that with a 1% wage increase for the Sergeants, layoffs may not occur until 2013; with a 4% increase, they are projected to take place in 2012. The Union is requesting a 6.5% increase in 2011 and a 3.5% increase in 2012. Forecasts prepared by the Township show that if a four percent (4.0%) wage increase is awarded the Sergeants (not even the 6.5% sought), the Police Department expenses will exceed revenue each year and at the end of 2012 the Township will only have a \$131,299 reserve carryover resulting in a \$2,148,795 deficit in 2013. At a 3.0% wage increase, the Township will have a \$288,823 carryover resulting in a \$1,826,364 deficit in 2013. Even at a 1.0% wage increase, the Township will have a \$600,845 carryover resulting in a \$1,193,985 deficit in 2013.<sup>4</sup> This forecast weighs against any wage increase.

The Township forecasts that if only ninety percent (90%) of the budget is spent due to a reduction in expenses and delayed projects, the Police Department can delay total depletion of reserves to cover the annual deficits until 2014 with a projected 1% wage increase. Under the same 10% reduction in spending, the Police Department can delay a total depletion of its reserves to cover annual deficits until 2015. Regardless of the formula used, with current expenses eroding the Townships reserves, any increases sought by the FOP will accelerate the depletion of any general reserves.

The Township Administrator testified that the Township's forecast of flat revenues is accurate based upon current information from the Clermont County Auditor's Office on Miami Township property valuations. In a first ever trend, Residential/Agriculture valuations decreased by \$1,858,940 and Commercial Property valuations decreased by \$2,632,460. These lower

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<sup>4</sup> These figures are based upon the Township's Ten Year Budget Projection.

valuations resulted from lower selling prices realized for residential, agricultural and commercial properties in 2010. With lower valuations, revenues from taxes based on these valuations will be lower. It is anticipated that revenues will be down .2% in 2010.

When analyzing revenues available to pay expenses, one must consider when the Township receives revenues through settlements from the Clermont County Auditor's Office. The largest settlements are typically sent to the Township in March/April and September/October. As a result, the minimum year-end balance for any fund must be equal to the first four months operating expenses for the Township to operate. Based upon a minimum year-end balance needed in 2009 to cover the first four months of operating expenses in 2010, the Township needed \$2,161,109. If the Township expenses increase annually by 4% a year in 2010 and 2011 (historically it has been 6% per year), under current projections *with no increases* to the bargaining unit there will be insufficient reserves to pay the first quarter 2013 operating expenses.

Newspaper articles were submitted by the Township showing the impact of recessionary times in the County and in the surrounding area. The Clermont Deputy Sheriffs accepted a two year wage freeze to eliminate the immediate need to lay off other deputies. The City of Cincinnati was faced with huge budget cuts to balance their budget. Miami Township has proposed a 2.7% cut in the Budget for 2011 to alleviate anticipated shortfalls in 2011. Under the Union's full economic proposal,<sup>5</sup> the Township would be required to spend an additional \$119,539 of which \$45,033 would be wages. With the projected deficits, it is not fiscally sound for the Township to provide these requested increases.

The Township does not see the pay of its Sergeants to be at the bottom of the list of

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<sup>5</sup> The Union's economic proposal would include requested increases in wages, longevity pay, holidays and holiday

comparable wages paid to sergeants in jurisdictions of comparable size and economics. It sees its officers as being paid more in the middle and, with the proposed 6.5% increase, they will be the highest paid. As an example, at the proposed rate of \$37.81 per hour, multiplied by 85 hours per pay period times twenty-six pay periods, a Sergeant would earn \$83,560, which is higher than the highest annual wage comparison paid to Blue Ash Sergeants, who are paid \$80,579 per year. This is because the Township Sergeants work 2200 hours per year and not the 2080 hours worked by the jurisdictions considered comparable by the Union.<sup>6</sup>

In response to indications that money could be saved in other areas to pay the increases sought, the expenditure of funds in other areas is from special funds not available to the police department. As an example, the \$400,000 proposed to be spent on a new fire engine would be from a specific fund, not the general operating fund. The hiring of the seasonal employees for the parks and recreation departments is done every year and therefore within the budget, not an additional expense. In the recreation department, fees are charged participants in the Department's programs and those fees generally cover the cost of the seasonal employees. The hiring of an additional ten part-time employees to fill gaps in the fire department is actually a cost savings, for the part-time employees would reduce overtime paid to other full-time employees.

The Union believed that funds paid for other township expenses could be used to pay the wage increases sought by the Union. Such is not the case, because those expenditures are out of other designated special funds in the Township. The Newsletter is funded from the General

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pay.

<sup>6</sup> The Union disputes this conclusion, because to be a true comparison, the 40 hour work week is the only true comparison. No one can determine how many hours sergeants work in other jurisdictions beyond the standard work week. Even though Miami Township Sergeants work more than the 80 hours in a two week period (they work 85), they do not get the other pay benefits, such as differential pay, longevity pay or pension pick-up, which was excluded from the comparison.

Fund, trash days are funded from the Road and Bridge Fund and the Midsummer Concerts are paid from the Parks and Recreation Fund. The Police Department is not funded from any of those funds.

*In order to remain fiscally responsible the Township cannot afford the increase in wages, particularly when combined with the Union's request for longevity pay.*

#### Discussion, Findings and Recommendation

*In assessing what is a fair recommendation on wages for employees in this bargaining unit, the Fact-finder considered the wages of public employees doing comparable work, the level of any wage increases over the past several years given to the bargaining unit, the Employer's ability to pay and current economic considerations, among other factors.*

The Township Trustees are willing to increase the Sergeants' wages by one percent (1%) each year over the next two years, but they are unwilling to increase wages by 6.5% in 2011 and 3% in 2012 as proposed by the Union. Supporting their position is a ten year budget forecast that shows increasing expenses and flat revenues that result in deficits that will diminish their reserves over the next several years. The Township forecasts at best, depletion of all reserves (currently \$4,207,616) by 2015, if only 90% of projected expenses are expended and a 1% increase in wages per year is granted. At worst, the Township forecasts depletion of all reserves by 2013 if 100% of the projected expenses are expended and a 4% increase in wages per year is granted. Since the Township has only been .02% off forecasts in the past, the Trustees believe these projections to be accurate.

The problem with the forecasting by the Township is that it projected what impact salaries and benefits for the entire Police Department would have if certain percentage increases were granted. In this case, the Fact-Finder is asked to assess the impact of a wage increase

granted to five Sergeants, not the entire police department. While the Township may argue that other bargaining members of the police department will seek the same salaries and benefits the Sergeants are awarded here, such an argument can only be taken as one factor among many under consideration. The Fact-finder does not have evidence before him to assess the impact of wage and benefit increases of other bargaining units that have yet to finalize a new collective bargaining agreement. As such, the Fact-Finder must assess the impact of the Sergeants' proposal on the Township in light of other factors made known to the Fact-Finder at the hearing.

The Township submitted an exhibit reflecting the cost of a five percent (5%) wage increase in 2011 and a four percent (4%) wage increase in 2012. The Township concluded that the total cost was \$45,033.23. This is not a significant impact on the budget of \$7.8 Million in 2011. While the Township argued that any wage increase received by this bargaining unit will trigger increases in other police bargaining units, such may or may not be the case. Here the Fact-finder is focused upon wages paid employees in this bargaining unit (Sergeants) compared to other public and private employees doing comparable work, i.e., internal and external comparables, as well as the interest and welfare of the public and the ability of the Township to finance the proposed wage increases, among other factors.

Sergeants in Miami Township are paid an hourly rate lowest among the seven other jurisdictions compared. The top pay for sergeants working 2080 hours a year is at \$80,579.20, excluding any consideration for differential pay, longevity pay or pension pick-up, in Blue Ash. Miami Township Sergeants are currently paid \$73,840 and are the lowest paid. The Employer argued that this is an unfair comparison because the sergeants in the other jurisdictions work an 80 hours every two week pay period and the Miami Township Sergeants work 84 hours every

tow week pay period. They thus make more than the top level. The Employer's position is not a fair comparison, for as pointed out by the Union, if sergeants in the other jurisdictions work the 84 hours, they will earn overtime for the additional hours, which would place them at an even higher annual salary.

There is no question that the Miami Township police department is an outstanding police department. The awards prove it. It is in the best interest of Miami Township, a well managed township, to retain officers of this caliber, who are the front line supervisors of the police force. To do so, the Township must offer competitive wages and benefits.

As with most communities throughout America, Miami Township revenues are either flat or declining and expenses continue to increase. The Miami Township administration has demonstrated that it manages its money well and is prudent in forecasting a budget over a long period of time to enable it to react to anticipated events. While administration officials testified at the Fact-finding hearing that granting increased wages and benefits to this bargaining unit would add to an already increasing deficit and ultimately deplete all of their reserves, such an event will occur whether they granted this bargaining unit all of its economic requests or none of their requests during the same period of time. If the Township were to take \$119,539 out of the budget over the next two years to pay the total economic benefit sought by the Sergeants, which is the cost submitted by them in Employer's Exhibit #4 at the hearing, the year in which total depletion of reserves would occur would remain unchanged.

This fact must be taken into the context of the full budgeting process, which obviously takes into consideration increases to the salaries and benefits of the entire police department, not just the Sergeants in this bargaining unit. Because of this, the Fact-finder cannot conclude that all

of the economic benefits proposed by this bargaining unit are appropriate, for it reasonable to conclude that other bargaining units within the police force will deserve increases. The question is what is appropriate here.

The Fact-finder concludes that it is reasonable to increase the wages of the Sergeants to increase their competitiveness with surrounding and comparable jurisdictions. In these economic times, notwithstanding the outstanding performance of the police department, increasing their hourly wage to the top of all jurisdictions is not reasonable. They should, however, make some progress over the next two years. This is in the best interest of the community for it will encourage the Sergeants to remain in the community; Miami Township has the best police department around according to the Commission on Accreditation of Law Enforcement Agencies and they need to keep it this way, if possible.

When a governmental entity is currently operating in the red and forecasts depletion of all reserves in the next few years, it is unwise to imprudently increase wages and benefits while steps are taken to increase revenues and cut expenses. Some entities respond to this by an immediate freezing of wages, such as was the case with the wages of the Clermont County Deputies, and others by cutting expenses, which the Township proposes to do by 2.7% in 2011. When such actions are being taken, it is not reasonable for a bargaining unit to expect increases for itself, to the exclusion of all others, and close its eyes to public perception of increases in a down economy. It is fortunate for the residents of the Miami Township that they live in the section of the county with the highest growth, highest household income and highest per capita income. This should bode well in enabling the Township Administration to address the economic issues to come. The community obviously supports its police, for it has always supported their

levies.

The Fact-finder recommends that the wages of the Sergeants be increased 3% beginning January 1, 2011 and then be increased 3% effective January 1, 2012. Under current circumstances, this will move the top sergeant's closer to the average pay of top sergeants in comparable communities. Because the Fact-finder is not recommending increasing other benefits currently sought by the Sergeants, this increase will have little impact on the current police department budget, will not bind the Township on longer term economic issues, thus giving it time to navigate the economic waters over the next two years, will be beneficial to the residents of the Township by retaining high level police officers, and will be fair to the Sergeants by helping them remain competitive with neighboring, comparable jurisdictions.

### **RECOMMENDATION**

**It is recommended that under Article 15, Wages and Compensation, Sections, 15.1 and 15.2, effective January 1, 2011 rates of pay for bargaining unit members shall be increased by 3% in all pay steps and that effective January 1, 2012 rates of pay for bargaining unit members shall be increases by 3% in all pay steps.**

### **3. ARTICLE 15: WAGES AND COMPENSATION: Section 15.7, Longevity**

#### **The Union's Position**

The Union proposes to add a new provision to the Collective Bargaining Agreement providing for longevity pay for Sergeants. The new provision would provide the following:

In addition to their regular compensation, sergeants shall receive annual longevity pay as follows:

Beginning the first pay period in December following the completion of five (5)

years of service as a full time employee of the Miami Township Police Department, sergeants shall receive \$350.00 longevity pay. This sum shall increase by \$70.00 per year up to a maximum of \$1,750 after twenty-five (25) years of service and each annual payment shall be made during the first pay period in December.

If a sergeant resigns or retires before the first pay period in December of any year, their longevity pay shall be prorated for the calendar year in which they resign or retire.

Longevity is part of a number of surrounding jurisdictions, including Blue Ash, Montgomery, Sharonville, Springdale, Springfield Township, and Westchester Township. Only Forest Park and Miami Township do not offer longevity pay. This should be part of the Township's economic package.

#### The Township's Position

The Township proposes no change in the Collective Bargaining Agreement. The Collective Bargaining Unit has not provided any justification to show how this change to the Bargaining Agreement increases efficiency or better serves the residents of Miami Township. The increased cost of the paying longevity pay to the sergeants will be \$16,171.00 over two years.

#### Discussion, Findings and Recommendation

Longevity provisions are a very common in collective bargaining agreements. They are aimed at retaining employees and providing them with longer term benefits. Retaining experienced employees is in the best interest and welfare of the public. Such provisions do, however, commit an employer to a long term financial commitment. When such provisions are proposed for the first time in a collective bargaining agreement or a proposal is sought to increase the amount of a longevity payment, such a proposal must be considered as part of the

overall economic package sought by the Union. As stated before, Miami Township is forecasting a period of diminished revenues and increasing expenses. The recommendation for a wage increase is supported by the underlying discussion and analysis above. Because of the recommended wage increases in light of the Township's current economic situation, the Fact-finder believes it to be unwise to commit the Employer to additional expenses and a long term commitment when it is forecasting a deficit operating budget. For these reasons, it is recommended that this issue be addressed in the future and that the new provision not be included in the current collective bargaining agreement.

#### **RECOMMENDATION**

**It is recommended that ARTICLE 15, WAGES AND COMPEMSATION, shall not include a Longevity Provision.**

#### **4. ARTICLE 17: Holidays, Section 17.1, Entitlement to Holidays**

##### The Union's Position

The Union proposes to add an additional day to the current list of holidays celebrated by adding a Police Officer Memorial Day on the 15<sup>th</sup> day of May each year.

The Union argues that Police Officer Memorial Day is an important day for the bargaining unit and police officers nationwide. They should be entitled to take the day off as a Holiday.

##### The Township's Position

The current list of ten (10) holidays is consistent in all the Township collective bargaining Agreements and the Township Policy and Procedures. The annual increased cost to

the Township to increase the 12 hours of holiday pay for non-working sergeants by one quarter of an hour is \$7,094.40. The Collective Bargaining Unit has not provided any justification to show how this change to the Bargaining Agreement increases efficiency or better serves the residents of Miami Township.

Discussion, Findings and Recommendation

The Union's proposal to add a Police Officer Memorial Day would be a nice benefit for the bargaining unit, but it would not come without cost or another benefit others in the Township would not have. Since the current list of ten (10) holidays is consistent in all the Township collective bargaining Agreements and the Township Policy and Procedures, it is in the best interest and welfare of the Township to remain consistent and to conserve expenses in light of the wage increases as previously mentioned.

**RECOMMENDATION**

**It is recommended that ARTICLE 17, VACATIONS, Section 17.1 remain the same.**

**5. ARTICLE 17: Holidays, Section 17.3, Overtime pay for Holidays**

The Union's Position

The Union proposes to increase the number of days for which overtime at one and one-half (1.5) times their hourly rate is paid to all listed holidays, instead of the current designated days of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas.

The increase is requested to bring them in line with the Holiday Pay received by the Township Fire and EMS employees in their 2010-2012 Collective Bargaining Agreement. The Fire Department's additional pay for Holidays resulted in a 9.6% increase to their compensation

plan, in addition to their 3% wage increase.

### The Township's Position

The Township opposes any change to the current contract language. It avers that the current collective bargaining agreement allows for six (6) premium holidays that entitled the sergeants to one and one half (1- ½) times their hourly rate in addition to their scheduled hours. The addition of five additional premium holidays (including Police Memorial Day) would cost the Township \$33,976.59 per year for which there is no justification.<sup>7</sup>

The reason the Fire Department received their increases was their argument that the Police Department had received an increase. This will become a circuitous argument. If additional increases are given the Police here, then the Fire Department will come back for an additional increase. The Township cannot continue to pay these increases. This becomes a vicious cycle. At some time the Township must stop the increases to become fiscally responsible.

### Discussion, Findings and Recommendation

Currently the bargaining unit is paid one and one half (1- ½) times their hourly rate when they work certain major holidays. While the Miami Township Fire & EMS bargaining group recently bargained the right to receive one and one half (1- ½) times their hourly rate for all holidays worked, with the exception of major holidays for which they are paid two and one half (2- ½) times their hourly rate, this fact is insufficient justification to automatically conclude that this internal comparison should be equalized. There was no indication that sergeants in any other comparable jurisdiction received this benefit, and there was no evidence that these employees were truly performing substantially similar work for the benefit derived. Further, while Union representatives testified that the Fire Department bargaining unit received a large overall increase

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<sup>7</sup> The Union says that the increase in pay would be \$2,662 and \$5,325. If all five Sergeants worked all of these

as a result of this benefit, the Fact-finder was presented no evidence from which to conclude that this internal comparable justified a similar increase for this bargaining unit. In light of the recommended wage increases and the underlying rationale for them, the Fact-finder does not see increasing the rate of overtime pay for all holidays to be in the best interest and welfare of the Township or to be inconsistent with other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

### RECOMMENDATION

**It is recommended that ARTICLE 17, VACATIONS, Section 17.3 regarding pay for holidays remain the same.**

6. **ARTICLE 19: Sick/Bereavement Leave, Section 19.3, Maximum Payment of Sick Leave**

#### The Position of the Union

The Union proposes to increase the maximum hours qualifying for entitlement to payment for unused sick leave upon retirement from 360 hours to 520 hours.

There was some dispute in the negotiation of the last contract whether the maximum number of hours entitling a bargaining unit member to unused sick leave upon retirement was to have been increased. The Contract used to say “up to a maximum of thirty (30) days.” To eliminate any confusion, the parties converted the days to hours. The language was changed to read “up to a maximum payment of three hundred and sixty (360) hours.” Miami Township Police Sergeants who retire are currently entitled to be paid fifty percent (50%) of the value of their accrued but unused sick leave, up to a maximum payment of three-hundred and sixty (360)

hours. The allowable amount of unused sick leave payout is significantly lower than that of comparable agencies.

Police sergeants who utilize their sick time over the length of their career are compensated in full for each hour used. Those sergeants who do not use their sick time over the course of their career currently receive fifty percent (50%) of the first seven-hundred twenty (720) hours and then forfeit the remaining balance of the allowable two-thousand eighty (2080) hour accumulation. This results in a windfall for employees who use more sick time and represents a disadvantage for those who do not. The unintended result of the current language is a built-in incentive to use more sick time.

The Union is proposing a modest increase from the current maximum payment of three-hundred sixty (360) hours to a maximum payment of five-hundred twenty (520) hours. Such a change would require an employee to bank one-thousand forty (1,040) hours to enjoy the maximum benefit. This represents only half of the allowable two-thousand eighty (2080) hour maximum accumulation and remains on the low end of allowable sick leave payments when compared to other agencies. This would be an incentive for those who do not take their sick leave when it is available.

The Sergeants in Miami Township receive the least number of hours for accumulated sick leave payout. Forest Park is the highest with 1800 hours, West Chester sergeants receive 1680 hours, Sharonville sergeants receive 1400 hours, Springdale sergeants receive 1320 hours, Blue Ash and Montgomery sergeants receive 960 hours, and Springfield Township sergeants receive 800 hours. Miami Township sergeants are way behind in this category.

While some incentives are built in to the current benefits for the sergeants, it is not comparable. Under our proposal, a Sergeant would only be entitled up to an additional \$5,600

upon retirement.

### The Township's Position

The Township proposes no change in the Agreement.

The Sergeants are given generous sick leave. If they are sick, they have days to use. The Union somehow suggests that those who abuse the sick day benefits are paid in a current year and those who do not should be rewarded upon retirement. That is an absurd argument. Sick days are to be used appropriately. The fact that someone is not sick is not an incentive to get more pay upon retirement.

The Township argues that it provides exactly what the Ohio Revised Code requires the Township to pay. Other jurisdictions have found themselves in trouble because they offered accumulated sick leave and compensation time upon retirement, which they now cannot afford to pay. Small townships like Miami Township cannot afford to offer those ill-conceived benefit packages.

### Discussion, Findings and Recommendation

Payout of unused accumulated sick leave has been a staple benefit in collective bargaining agreements in the past. In the past recession, many jurisdictions have found themselves in a precarious financial position because of the obligation to pay a retired employee's unused sick or accumulated comp days for which funds were not set aside. The wisdom of this benefit upon retirement (payment for unused sick pay) is a subject of collective bargaining. It is designed to provide an additional benefit for the employee who was fortunate enough to stay healthy and not need to take advantage of the sick day benefit. Whether the wisdom of increasing entitlement to this benefit is in the best interest of both parties is something that should be determined at the bargaining table and not by a Fact-finder. Under the current

economic conditions existing and forecast in Miami Township, increasing the value of a more long term benefit would not appear to be wise or in the best interest of the public welfare, notwithstanding the fact that other jurisdictions have cast a formula more lucrative to their bargaining unit.

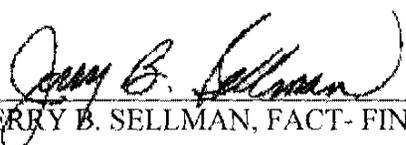
### **RECOMMENDATION**

**It is recommended that ARTICLE 19, SICK/BEREAVEMENT LEAVE, Section 19.3 (b) regarding the maximum hours qualifying for entitlement to payment for unused sick leave upon retirement remain the same.**

### **CONCLUSION**

In conclusion, this Fact-finder hereby submits the above referenced recommendations on the outstanding issues presented to him for his consideration. Further, the Fact-finder incorporates all tentative agreements previously reached by the parties and recommends that they be included in the Parties' Final Agreement.

January 18, 2011

  
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JERRY B. SELLMAN, FACT- FINDER

## CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the Fact-finder's Report was sent by E-mail and First Class Mail on January 18, 2011 to:

SERB

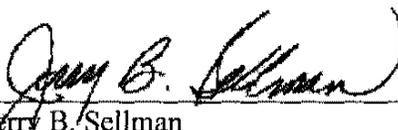
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