

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATER OF FACT FINDING BETWEEN:

| | | |
|--|---|----------------------------------|
| Miami Township Trustees, Clermont County, Ohio |) | Case. No. 11-MED-10-1558 |
| |) | |
| Employer |) | Date of Hearing: March 13, 2012 |
| |) | Date of Report: April 5, 2012 |
| and |) | |
| |) | |
| Fraternal Order of Police, Ohio Labor Council, Inc. |) | Sherrie J. Passmore, Fact Finder |
| |) | |
| Employee Organization |) | |

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES:

For Miami Township Trustees:

Laurence Fronk, Township Administrator
R. Steven Bailey, Chief of Police

For Fraternal Order of Police, Ohio Labor Council Inc:

Ross Rader, Staff Representative
Clifford Rowland, Captain

INTRODUCTION

Case Background

This case is a fact-finding proceeding between Miami Township Trustees (Township or Employer) and the Fraternal Order of Police, Ohio Labor Council, Inc (FOP or Union). On November 30, 2011, the State Employment Relations Board (SERB) appointed Sherrie J. Passmore as the Fact Finder.

By agreement of the parties, a fact-finding hearing was held on March 13, 2012, 9:30 A.M., at the Miami Township Offices, Miami Township Civic Center, 6101 Meijer Drive, Milford, Ohio 45150. Both parties submitted the required pre-hearing statements in a timely manner.¹ At the hearing, the Employer was represented by Laurence Fronk, Township Administrator, along with R. Steven Bailey, Police Chief. Representing the Union was Ross Radar, Staff Representative for the FOP, along with unit member Captain Clifford Rowland. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue her report on April 5, 2012.

On the day of the hearing, a good faith effort was made to resolve the remaining issues through mediation. The parties were successful in reaching agreement on Article 18 regarding layoff and recall and Article 41 regarding duration. They could not agree on the remaining open issues and the fact-finding hearing was commenced to consider those issues.

The parties presented evidence and arguments in support of their positions on the open issues. The remaining unresolved issues addressed by both parties at the hearing were:

¹ The Union's position statement was submitted via electronic mail to the Fact Finder and the Employer's principal representative on March 12, 2012. The Employer submitted its position statement via electronic mail on March 10, 2012 to the Fact Finder and the Union's principal representative. Although minimally meeting the requirements of Ohio Administrative Code 4117-9-05 and guidelines issued by SERB, the pre-hearing submission of the Employer was less than helpful to this Fact Finder.

- Article 13 – Grievance Procedure
- Article 20 – Wages and Compensation
- Article 23 – Vacations
- Article 25 – Education Incentives
- Article 31 – Sick Leave

Description of the Employer

The Employer is Miami Township Trustees. The Trustees are responsible for administering the governmental affairs of Miami Township. Miami Township is primarily a bedroom community with 40,848 residents, located on the northeast side of Cincinnati. The Township has a full service government with a full-time Police Department, Fire Department, Service Department, and Parks, Administrative, and Financial Staff. The Police Department is a 24-hour, seven day a week operation with 40 sworn officers, one part-time sworn officer, and one part-time and three full-time civilian employees.

Description of the Bargaining Unit

The bargaining unit consists of all full-time Captains in the Police Department. Currently, there is only one member in the unit. Bargaining unit duties include, but are not limited to, supervising day-to-day operations of the work force consisting of Sergeants, Corporals, and Police Officers, and any other duties as directed or assigned by the Chief of Police or the Assistant Chief of Police.

History of Bargaining

Since this will be the first agreement between the parties, there is no prior collective bargaining agreement or history of negotiations. The State Employment Relations Board

certified the Union as the exclusive representative of the employees in the bargaining unit on September 15, 2011 (SERB Case No. 2010-REP-07-0125). The parties entered into negotiations and met on several occasions. A tentative agreement has been reached on all issues, except the unresolved issues identified above and addressed below.

OPEN ISSUES

Each unresolved issue will be addressed separately. The issue will be listed and a brief summary of the positions of the parties provided, followed by a discussion and the recommendation of the Fact Finder.

In making these recommendations, consideration was given to the factors set forth in Ohio Revised Code 4117.14(G)(7)(a) to (f):

- Past collectively bargained agreements between the parties (not applicable here);
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
- Interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- Lawful authority of the public employer;
- Stipulations of the parties; and,
- Such other factors, not limited to those above, which are normally or traditionally taken into consideration.

Article 13 – Grievance Procedure

Position of the Union

The Union proposes the same grievance language used in the other three bargaining units in the Police Department. Using the same language would promote consistency, and

since it is language that the parties are familiar with, it would be easier to administer and disputes about interpretation would be less likely.

Position of the Employer

The Employer's position is that the Union's proposal in Step 4(B) is unacceptable because the language is not in the public interest. Step 4 of the grievance procedure is arbitration and subsection (B) of that step describes the authority of the arbitrator, which includes the authority of the arbitrator to modify discipline in cases of suspension or discharge. The Employer objects to the arbitrator having that authority.

In support of its position, the Employer described several arbitrations involving Township police employees in which the arbitrator found just cause for discipline but reduced the penalty from discharge to suspension. In one case, the arbitrator reduced the discipline to a three-day suspension for an employee discharged for dishonesty involving a shooting report. In another case, the arbitrator gave a nine-month suspension to an employee who had been discharged for harassing a citizen, neglect of duty and "other inappropriate behavior." The Employer also generally noted that the City of Cincinnati has a history of discharging employees for "egregious behavior" and arbitrators finding the employees had "behaved badly but not enough to discharge."

Based on the above examples, the Employer argues that it is not in the public interest to permit a third party with no interest in the community to substitute their judgment for elected officials and appointing authorities as to the appropriate level of discipline.

Discussion and Recommendation

External as well as internal comparables support the Union's position. Giving arbitrators the authority to modify penalties found to be improper or too severe is common

in labor agreements. All other police bargaining units with this Employer have the same language as proposed by the Union. Using the same language as the other police units promotes consistency and eases administration since the parties have experience interpreting this language.

I agree with the Employer that the existence of language in other bargaining contracts does not mean it must be used for future bargaining units. However, rejecting such language must be justified based on statutory factors that outweigh consideration of comparables. In this case, the Employer relies on public interest.

Permitting arbitrators to modify penalties that are too severe acts as a check and balance in the disciplinary process, thereby serving the public interest. Arbitral decisions have been overturned by courts for public policy reasons, which serves as a check and balance on arbitrators. Under the Employer's proposal, abuses of authority in imposing discipline would be left unchecked. The Employer admitted that under its proposal if an employee was discharged for being five minutes late and the offense was proven, an arbitrator would be obliged to uphold the discipline.

The Employer did not persuade me that the Union's proposal is not in the public interest or that the language proposed by the Employer better serves the public. I might be persuaded that the arbitrator's authority to reduce disciplinary penalties should be restricted in certain situations. Based on the limited information presented here, I am not convinced that the arbitrator's authority to modify penalties should be eliminated altogether.

Recommendation: The Fact Finder recommends that Article 13, Grievance Procedure, read as follows:

ARTICLE 13

GRIEVANCE PROCEDURE

Section 13.1. The term “grievance” shall mean an allegation by a bargaining unit employee that there has been a breach, misinterpretation, or improper application of this Agreement. It is not intended that the grievance procedure be used to effect changes in the articles of this Agreement or those matters which are controlled by the provisions of Federal law, State law, the United States Constitution or Ohio State Constitution.

A “working day” is defined as usually Monday through Friday, excluding Holidays or any day that the Miami Township Civic Center is scheduled to be closed for normal business.

Section 13.2. Where there is an alleged violation of the provisions of this Agreement that qualifies for an appeal under the rules of the Equal Employment Opportunity Commission or the Ohio Civil Rights Commission, such matters shall not be appealable to arbitration through the grievance procedure contained in this Agreement. The employee and their representatives shall meet if a grievance has been filed, at Steps 1, 2, and 3 in the grievance procedure in an effort to resolve the alleged violation.

Section 13.3. All grievances must be presented at the proper step and time in progression, in order to be considered at the next step, unless the parties agree to waive certain steps.

The aggrieved may withdraw a grievance at any point by submitting, in writing, a statement to that effect, or by permitting the time requirements at any step to lapse without further appeal or prejudice.

Any grievance not answered by the Employer’s representative within the stipulated time limits shall automatically advance to the next step in the grievance procedure. Time limits set forth herein may only be extended by mutual agreement in writing.

Section 13.4. In order for an alleged grievance to receive consideration under this procedure, the grievant, with a representative, if the former desires, must present the

alleged grievance in writing to the Chief of Police (or designee), within seven (7) working days after the grievant knew or should have known of the facts or circumstances giving rise to the grievance.

All exchanges of grievances at the various steps shall be in person between the Employer's representatives and the FOP's representatives.

Section 13.5. All written grievances should contain the following information:

- A. Aggrieved employee's name and signature;
- B. Date grievance was first discussed;
- C. Date grievance was filed in writing;
- D. Name of supervisor with whom grievance was first discussed;
- E. Date and time grievance occurred;
- F. Where grievance occurred;
- G. And shall contain;
- H. Description of incident giving rise to the grievance
- I. Articles and Sections of the Agreement violated; and,
- J. Desired remedy to resolve grievance.

Section 13.6. The following steps shall be followed in the process of a formal grievance:

Step 1. There shall be an earnest, honest effort to settle disputes and controversies promptly through oral discussions between the employee and the employees' immediate supervisor. The immediate supervisor's verbal answer shall be given within two (2) working days of the discussions. Any matter which cannot be resolved through these discussions and which meets the definition of a grievance as herein defined, may be submitted through the formal grievance procedure within five (5) working days of the supervisor's verbal answer.

Step 2. The grievance must be submitted in writing to the Police Chief (or designee) within the time limits set forth in Section 8.4 herein. It shall be the responsibility of the Police Chief (or designee) to investigate the matter

and provide a written response within seven (7) working days following the day on which the Police Chief (or designee) was presented the grievance.

- Step 3. If the grievance is not resolved in Step 2, it may then be appealed by the grievant to a meeting between the Employer (or designated representative) and the aggrieved, with or without a representative.

The appeal in Step 3 must take place within seven (7) working days of the response in Step 2. The Employer shall respond to the aggrieved within seven (7) working days.

The employee must indicate on the grievance form in writing whether the grievance response is accepted or rejected, and sign the form on the appropriate line, and indicate the date and time it is received by the aggrieved employee.

- Step 4. Arbitration

If the grievance is not satisfactorily resolved at Step 3, it may be submitted to Arbitration upon notification of the FOP in accordance with this Section of this Article.

The FOP, based upon the facts presented, has the right to decide whether to arbitrate a grievance. Within ten (10) working days from the date of final answer on such grievance under Step 3 in the grievance procedure, the FOP shall notify the Employer in writing of its intent to seek arbitration. Any grievance not submitted within ten (10) working day period described above shall be deemed settled on the basis of the last answer given by the Employer's representative.

The representatives of the parties (the FOP and the Employer) shall, within twenty (20) working days after notification of a request to arbitrate, begin the selection procedures outlined below. The Employer will notify the FOP of any questions of arbitrability at this time. The FOP may withdraw its request to

arbitrate at any time prior to the actual hearing. The party canceling the arbitration shall pay any cancellation fee due the arbitrator.

- A. After receipt of a request to arbitrate, the Federal Mediation and Conciliation Service (FMCS) shall be jointly requested to submit a panel list of nine (9) arbitrators. The parties shall then choose an arbitrator by alternately striking names from the list until such time as one name remains as the arbitrator chosen by the parties. Either party may once reject a list prior to beginning the striking procedure, and submit a request for another list from the FMCS. The strike-off process must be completed within ten (10) days from the date the list(s) are received from FMCS. The time period described above shall begin on the date in which both parties are in receipt of the FMCS list(s). The Arbitrator's decisions shall be strictly limited to the interpretation, application, or enforcement of specific articles in this Agreement. The Arbitrator may not modify or amend the Agreement.
- B. The decisions of the arbitrator shall be final and binding. The arbitrator shall have authority to recommend any right or relief on an alleged grievance occurring at any time in the agreement period in which such right originated consistent with the terms of the Agreement. The arbitrator shall have authority to make an award based on rights arising under any previous grievance or practice. The arbitrator shall not establish any new or different wage rates not negotiated as a part of this Agreement. In cases of discharge or suspension, the arbitrator shall have the authority to award modification of said discipline.
- C. The costs of the services of the arbitrator, the costs of any proofs produced at the direction of the arbitrator, the fee of the arbitrator, or hearing room, shall be borne equally by the Employer and the FOP. The expenses of any non-employee witness shall be borne, if any, by the party calling them. The fees of the court reporter shall be paid by the party asking for one; such fees shall be split equally if both parties desire a reporter, or request a copy of any transcripts. Any bargaining unit member whose attendance is required for such hearing shall not lose pay

or benefits to the extent such hearing hours are during normally scheduled working hours on the day of the hearing.

Section 13.7. When an employee covered by this Agreement chooses self representation in the presentation of a grievance, no adjustment of the grievance will be inconsistent with the terms of this Agreement.

Section 13.8. The FOP shall use a grievance form which shall be provide the information outlined in Section 13.5. The FOP shall have the responsibility for the duplication, distribution, and their own accounting of the grievance forms.

Section 13.9. Loss of pay discipline imposed by the Police Chief (or designee) shall be initiated at Step 3 of the Grievance Procedure. Loss of pay discipline imposed by the Township Administrator shall be initiated at Step 4 of the Grievance Procedure.

Article 20 - Wages and Compensation

Position of the Union

The Union proposes a 3% increase in 2012 and a 2% increase in each of the next two years, for a total increase of 7% over the three-year contract period. The Union views this proposal as creating internal parity with other Township bargaining units in the Police Department.

In support of its position, the Union submitted the wages and compensation articles in the agreements between the Township and the Sergeants, Police Officers and Corporals. Sergeants, the rank immediately below Captains, received a 3% increase in 2012. Police Officers and Corporals received a 2.5% increase in 2012 and will receive a 2% increase in 2013.

The compensation recommendations for full-time clerks in the records division of the Police Department included in the Fact Finding Report submitted by John F. Lenehan on

February 2, 2012 were provided by the Union. Fact Finder Lenehan recommended those employees receive a 3% increase in 2012 and a 2% increase in 2013.

The Union generally observed that a number of non-bargaining unit employees had recently received pay increases, but did not provide specifics or documentation of those increases.

Position of the Employer

The Employer's position is that the Union's initial proposal on the remaining economic issues, including wages, is unacceptable given the financial position facing the Township. The Union's initial proposal regarding wages, sick leave, vacation leave, and education incentives would result in a \$14,000 compensation increase for the one employee in this bargaining unit. The value of those benefits along with one hour of overtime pay per week would represent a 24% increase in compensation to this employee over three years.²

The Police Captain is currently a salaried position. Under tentative agreements reached by the parties, the position will now be overtime eligible. As pointed out during negotiations, as a salaried employee the Captain is expected to work beyond a typical 40-hour work week without additional compensation. Extra hour work can include evening public meetings, evening meetings with residents, and working special events. The Employer conservatively estimates the Captain works an hour of overtime per week and expects his overtime to increase.

² The Employer's calculations assume a 12% increase in wages over three years. As noted above, the Union's proposal at Fact Finding represented a 7% increase in wages over three years.

The Employer made a counterproposal on wages that would reduce the Captain's salary of \$92,820 in 2011 to base wages of \$90,002 in 2012, increase to \$91,000 in 2013 and \$91,988 in 2014, but allowed the Captain to cash out 80 hours of sick leave annually. The Employer reasons that those wages combined with the sick leave payout represent a 1% increase in compensation each year.

The Employer argues that the Union is asking for significant increases in a time of economic distress without providing any justification as to how such increases would better serve the residents of the Township. The financial demands are more than the Township can afford to pay.

The current economic climate and State revenue cuts have taken a toll on most local governments. The revenue outlook for the next two to four years is uncertain. Since the Township relies on property taxes as its primary revenue source, the Employer submitted the results of a desktop appraisal conducted by the Clermont County Auditor in 2011. That appraisal indicated that the property valuation for Miami Township dropped 9.7% between 2009 and 2011. This drop in property valuation will result in less revenue to the Township. (Employer's Exhibit 4, Table 2). The phasing out of the Tangible Personal Property Tax will result in a revenue loss of \$100,000 per year for the Police Department.

Funding for the Police Department comes from a police levy and two safety levies. The safety levies also fund the Fire/EMS Department. Funds are transferred from the Safety Funds to the Police, Fire and EMS Funds as needed to cover operational expenses. Beginning in 2012, the annual revenue from the levies will no longer be sufficient to cover operational expenses, and the Township will be relying on reserves in the Safety Funds to cover the gap. At current levels of spending, the reserves carried over to 2015 will not be

sufficient to fund the Police and Fire Departments through the end of the year. (Employer Exhibit 4, Table 3).³

As to wage increases given to internal comparables, the Employer argues that the agreements for other bargaining units were negotiated before the Township knew the true extent of revenue cuts that began in 2012 and will continue for years to come. Revenue will decrease by \$1,500,000 per year as a result of the devaluation of property in the Township as well as the elimination of Local Government Funds, the Tangible Personal Property Tax and the Estate Tax.

The Employer also presented evidence regarding external comparables. Among townships with a population greater than 25,000 which operate their own police departments, the Miami Township Captain is currently the second highest paid compared to employees in those police departments with comparable responsibilities. Under the Employer's proposed 2012 base wage, the Captain would be the third highest paid.

Discussion and Recommendation

The parties disagree about the starting point for any wage adjustments. The Union's position assumes that the starting point for determining an appropriate hourly rate should be the salary Captains received when they were not in the bargaining unit. The Employer takes the position that the initial base pay for Captains should be lower than the salary Captains were paid as non-bargaining unit employees because their salaries factored in overtime that was expected but not compensated. The parties have agreed that Captains will now be paid overtime. I am persuaded that the base salary at which Captains were paid as non-bargaining unit employees reflected that they were not being compensated for

³ Employer Exhibit 4, Table 3 indicates reserves in the Safety Fund will be used up in 2016, not 2015, based on a 3% increase in expenses per year, not current spending levels

overtime. Paying overtime-exempt salaried employees a higher rate than is paid to overtime-eligible employees is the norm. It was not disputed that the Captain position necessarily involves overtime, which the Employer conservatively estimates at one hour per week. Backing out one hour of overtime per week at time and one half from 2011 salaries would mean Captains with one year or more of service were effectively paid \$43.01 per hour for regularly scheduled hours in 2011.⁴ Using that hourly rate as a starting point for determining wage adjustments during a contract under which Captains are now eligible for overtime is reasonable.⁵

The next issue to be considered is whether the 2011 effective hourly rate of \$43.01 should be adjusted in 2012. A review of internal comparables favors an increase. Sergeants, the rank immediately below Captains, received a 3% increase effective January 1, 2012. Police Officers received a 2.5% increase in 2012. A 3% increase in the hourly rate of \$43.01 would be \$44.30 hourly or an annual salary of \$92,144, slightly less than the annual salary one year Captains made in 2011 as overtime-exempt employees. With one hour of overtime per week, an estimate the Township argued was conservative and was not disputed, the take home pay for one year Captains will be \$95,599, or approximately 3% more than their take home pay in 2011.

A review of rank differential also favors an increase in 2012. Maintaining a reasonable differential between ranks is traditionally taken into consideration in determining safety force wages. It encourages officers to take on the additional

⁴ This rate was computed based on the Captain's 2011 annual salary of \$92,820 divided by 2158 hours (2080 regular hours + 78 [52 overtime hours x 1.5]).

⁵ This rate of pay was also used as a starting point for probationary Captains. The Employer made no proposal regarding the probationary rate. Based on the Union's proposal, the rate used above was adjusted to reflect a 5% differential between probationary and one year Captains in the wage recommendation below.

responsibility that comes with moving up the ranks and avoids the dissension among the ranks that comes from the gap being too wide or too small. As such, maintaining a reasonable rank differential is ultimately in the public interest. A 3% increase for Captains in 2012 of their effective 2011 hourly rate, the same increase given Sergeants, would roughly maintain the existing rank differential. The increase would also leave Captains in roughly the same standing relative to the wages of external comparables offered by the Employer.

While I appreciate the difficult times that local governments such as Miami Township have been facing, ability to pay arguments become less compelling in the context of an initial contract for a one-person unit. Because of the relatively small dollars involved, the need to establish a compensation package that is more consistent between ranks is more compelling.

In view of current economic uncertainty and in consideration of maintaining that consistency as to wages going forward, I recommend that Captains be given the same increases given Sergeants in 2013 and 2014.

Recommendation: The Fact Finder recommends that Article 20, Wages and Compensation, read as follows:

**ARTICLE 20
WAGES AND COMPENSATION**

Section 20.1. Effective the beginning of the pay period following January 1, 2012 rates of pay for bargaining unit members shall be as follows:

CLASS: Captain

| | Probationary | 1 year |
|-----------|--------------|----------|
| Hourly | \$42.19 | \$44.30 |
| Bi-weekly | \$3,375.20 | \$3,544 |
| Annual | \$87,755.20 | \$92,144 |

Section 20.2. Effective the beginning of the pay period following January 1, 2013 rates of pay for bargaining unit members shall be increased by the same percentage as for Sergeants.

Section 20.3. Effective the beginning of the pay period following January 1, 2014 rates of pay for bargaining unit members shall be increased by the same percentage as for Sergeants.

Section 20.4. The listing of annual salaries listed above is for illustration purposes only, and does not represent a guaranteed salary. The hourly rate is accurate.

Article 20 – Vacations

Position of the Union

For this article, the Union proposes language comparable to that of the Sergeant's agreement, but adjusting vacation accruals to reflect that the standard work week for Captains is 40 hours whereas the standard work week for most Sergeants averages 48 hours. The Union notes that the vacation accrual rates for Police Officers are even more favorable than the vacation accrual rates for Sergeants. Officers begin accruing 240 hours of vacation annually after 20 years of service, whereas Sergeants do not begin accruing at that rate until after 25 years of service.

The Union argues their proposal is reasonable since it does not seek the best or better vacation benefits than any other Police bargaining unit, but rather vacation benefits comparable to Sergeants. Since Sergeants are the rank immediately below Captains, the Union's proposal will keep Sergeants from "stepping over" Captains in vacation benefits.

Under the Union's proposal, Captains will accrue significantly fewer hours in the course of each vacation bracket.

Position of the Employer

The Employer's position is that the Union's proposal is unacceptable for the same reasons as the Union's proposal on wages. Given the financial position facing the Township and viewing the total economic package, the Union proposal is "unrealistic and something this township cannot afford." Nor does the proposal advance the interests or welfare of the residents of the Township.

Based on his service credit, the vacation benefits proposed by the Union would result in the one Captain in this unit earning an additional week of vacation in 2012 over what he earned the previous year. The Union's proposal also increases the maximum number of hours eligible to be carried forward and cashed out annually from 40 to 48 hours. The Employer argues the more vacation time available to an employee, the more likely the employee will be eligible for the cash out.

The Employer made a counter proposal that this initial Collective Bargaining Agreement be consistent with the Miami Township Personnel Policies and Procedures that provide annual vacation accruals for non-bargaining unit employees based on years of service as follows:

- 1 through 6 years 80 hours
- 7 through 15 years 120 hours
- 16 through 24 years 160 hours
- 25 years and over 200 hours

The Employer also proposed that the hours of vacation that can be carried over and that can be paid out match the standard hours worked per week, which for Captains is 40.

Discussion and Recommendation

As with wages, in an initial contract for a one-person bargaining unit, the need for internal consistency is a much more compelling argument than ability to pay. Giving an

employee the same benefits as immediate subordinates, absent a reason to treat those employees differently, is reasonable and serves the public interest.

Based on this reasoning, I find Captains should accrue vacation on the same basis as Sergeants. Because the standard work week for Captains is 40 hours whereas it is 48 hours for Sergeants, the annual maximum number of hours eligible for carry over and cash out for Captains should be 40. This benefit will not increase the Captain's compensation in 2012 since the Captain received a cash out of 40 hours of vacation leave in 2011.

Recommendation: The Fact Finder recommends that Article 23, Vacations, read as follows:

**ARTICLE 23
VACATIONS**

Section 23.1. Bargaining unit employees shall earn vacation leave according to their number of years of "service credit* " as follows:

- | | | |
|---------------------------------------|---|-------------|
| A. Less than 12 months | - | no vacation |
| B. 12 months + one day to 84 months | - | 80 hours |
| C. 84 months + one day to 180 months | - | 120 hours |
| D. 180 months + one day to 240 months | - | 160 hours |
| E. 240 months + one day to 300 months | - | 200 hours |
| F. 300 months + one day and after | - | 240 hours |

Section 23.2. Vacation credit accrues while on vacation and sick leave. Prorated vacation credit is given for any part of a pay period. No vacation leave shall accrue while an employee is on any unpaid leave of absence or while on disciplinary suspension.

Section 23.3. For this Article, “service credit” means the time in the service of Miami Township and includes all prior service time with another political subdivision of the State of Ohio. Service credit shall not accrue during periods of suspension or of layoffs lasting longer than one (1) year. An employee who has prior service time with a political subdivision in the State of Ohio shall receive service credit towards vacation entitlement for all such service time. An employee with prior service does not receive credit for the service until completion of one (1) year of service with Miami Township Police Department.

- A. Vacation requests for less than one (1) full work week are honored solely on the basis of order of application.
- B. Vacations are scheduled and approved in accordance with the workload requirements of the Employer.
- C. Vacation increments shall be no less than one-half (1/2) days.

Section 23.4. The Employer shall post a vacation calendar during the month of January of each year. Requests for vacation time shall be by seniority, with the most senior bargaining unit member having the first selection of vacation time. After the most senior bargaining unit member has scheduled vacation time, then the request for vacation time off shall be processed, by seniority, until the employee with the least seniority has scheduled vacation time.

Section 23.5. After the vacation list has circulated through all employees, then any remaining vacation time that an employee has not scheduled, shall be scheduled on a first application basis and seniority rights shall not prevail.

Section 23.6. When an employee retires or resigns from the Police Department, the employee shall be paid for any earned but unused vacation. An employee shall not be granted an unpaid leave of absence until all earned vacation has been used.

Section 23.7. The vacation calendar shall be from January 1st to December 31st of each year. Employees shall receive vacation credit on their first anniversary date and every January 1st thereafter. An employee may carry up to forty (40) hours of vacation leave forward to the next vacation year. Vacation leave that is not used, scheduled for use or

able to be carried over to the next year by December 1 in the year of accrual, shall be paid out to the employee on the first check in December, up to a maximum of forty (40) hours. Any vacation above the forty (40) hour maximum carry over and the forty (40) hour maximum cash out will be deemed as lost vacation hours by the employee.

Article 25 - Education Incentives

Position of the Union

The Union proposes that Captains be given an annual education incentive bonus of 2% of base pay for an Associate Degree, 3% of base pay for a Baccalaureate Degree, and 4% of base pay for a Masters Degree. In support of this proposal, the Union points to the Sergeant and Police Officer agreements. Police Officers receive a similar bonus based on dollar amounts rather than percentages, and Sergeants receive the same percentage bonus as proposed by the Union for Captains.

The Sergeants' bonus amounts to about \$2400 for a BA and \$3200 for a Masters. With this additional compensation, lower classification employees are coming close to making what Captains make.

Although a degree is required to be a Captain, it is also required to be a Sergeant. If a Sergeant is compensated for having a required degree, Captains should be too.

Position of the Employer

The Employer strenuously objects to this proposal because education incentive bonuses were negotiated in good faith out of all Township contracts in 2006 and 2007 except for Sergeants and Police Officers. In those contracts, education incentive bonuses were eliminated for new employees and only "grandfathered" in for those employees who were already receiving a bonus or who received a degree by a specified date. Education incentive bonuses were also eliminated for all non-bargaining unit employees.

The rationale for eliminating this benefit was that if a position requires a degree, the rate of pay is commensurate with the degree required for the position. If a degree is required for the position, an employee is hired because they hold the degree and should not be given a bonus each year for a requirement of employment.

Discussion and Recommendation

The public interest does not support giving Captains this type of bonus. The Captain position requires a degree. Giving an annual bonus for having a degree required by a position does not serve as an incentive and therefore, provides no public benefit. Traditionally, educational degrees required for a position are factored into salary.

Nor do internal comparables favor giving Captains such a bonus. The Township eliminated this benefit years ago for all Township employees except Police Officers and Sergeants. Those employees only receive this benefit on a “grandfathered” basis. Before coming into the bargaining unit, Captains did not have this benefit and should be treated no differently than Sergeants who do not get this benefit when entering the bargaining unit unless previously “grandfathered” in. Under these circumstances, Captains should not be given this bonus in the interest of providing parity with Sergeants.

No other types of education incentives were proposed or discussed by the parties other than passing references to tuition reimbursement and, therefore, will not be considered by this Fact Finder.

Recommendation: The Fact Finder recommends against giving Captains an education incentive bonus and that Article 25, Education Incentive, proposed by the Union, not be included in the Agreement.

Article 31 – Sick Leave

Union Position

The Union proposes giving Captains the same sick leave benefits as Sergeants and Police Officers. While the Union and Employer are in agreement regarding most of the sick leave article, their positions differ as to the number of hours eligible for cash out annually and upon retirement. Giving Captains the same cash out benefit as Sergeants helps ensure that Captains make more than the employees they supervise.

Employer Position

The Employer's position is the Union's proposal is unacceptable for the same reasons it objects to the other financial proposals. Looking at the total package of economic proposals, the Captain would receive a significant increase in compensation without any benefit to the public. Given its financial situation, the Township cannot afford such increases and must draw the line somewhere.

The Employer made a counter proposal to set the hours eligible for cash out annually at 80 and at 240 upon retirement. The 240 hours is the number of sick leave hours that Ohio Revised Code 124.39 permits employees of civil service townships to cash out upon retirement.

Discussion and Recommendation

As with wages and vacation, internal comparables and the interests served by parity favor giving Captains the same sick leave benefits as Sergeants. In consideration of the Township's finances and that this benefit would represent a significant increase in the Captain's compensation, phasing it in over the contract period as indicated in Section 31.3 below is appropriate.

Recommendation: The Fact Finder recommends that Article 31, Sick Leave, read as follows:

ARTICLE 31
SICK LEAVE

Section 31.1. Sick leave shall be earned and credited at the rate of ten (10) hours for each month in active pay status, including paid vacations, sick leave and injury leave, but not during a leave of absence without pay, layoff, disciplinary suspension, or while in overtime status. Unused sick leave shall accumulate to a limit of two thousand-eighty (2080) hours.

Section 31.2.

A. Notification by Employee

When an employee is unable to report to work, due to illness or injury, the employee shall notify the employee's immediate Supervisor or other designated person, two (2) hours or more (unless extenuating circumstances prohibit) prior to the scheduled reporting time to work on each day of absence, unless other arrangements are made with the employee's supervisor.

B. Evidence Required for Sick Leave Usage

Upon return to work an employee shall complete an application for sick leave on the form currently in use attached as Exhibit A, or upon another form mutually agreed upon by the parties to justify the use of sick leave. The Employer may, when an employee utilizes sick leave for medical appointments or where an absence is for three (3) consecutive days or more, require the employee to furnish a certificate from a physician, dentist, or other medical practitioner. After four (4) sick leave events within a twelve (12) month period, the Employer may require the employee to provide a physician's statement to justify the absence. Falsification of either a written signed statement or a practitioner's certificate shall be grounds for disciplinary action up to and including dismissal.

C. Use of Sick Leave

Sick leave may be granted to an employee upon approval of the Employer for the following reasons:

1. Illness or injury of the employee, or a member of the employee's immediate family residing in the same household as the employee wherein the employee's presence is required.
 2. Medical, dental or optical examination or treatment of employee, or a member of the employee's immediate family which requires the presence of the employee, and which cannot be scheduled during non-working hours.
 3. If a member of the employee's immediate family suffers an illness or injury which requires the care and attendance of the employee.
 4. If the employee is exposed to a contagious disease when such exposure, in the opinion of a licensed physician, would render the employee a hazard to the health of others.
 5. Pregnancy and/or childbirth, and other conditions related thereto.
 6. Death of a family member not covered by bereavement leave.
 7. For the purpose of Sick Leave in this section, the definition of immediate family shall be defined as spouse, child or parent or any other person residing in the employee's household.
- D. Sick leave usage shall be charged in minimum units of one (1) hour or fraction of an hour taken by an employee.
- E. An employee that calls in sick at the start of a tour of duty will be required to use the number of hours of sick time in their scheduled work day.

Section 31.3.

- A. Employees with an accumulation of twelve hundred (1200) hours of sick time may "cash in" forty (40) hours of sick time per year effective in 2012, eighty (80) hours of sick time per year effective in 2013, and one hundred and twenty (120) hours of sick time per year effective in 2014 and shall be paid out to the employee on the first paycheck in December.
- B. An employee with ten (10) or more years of service with the Miami Township Police Department who retires from active service shall be paid for fifty percent (50%) of

the value of their accrued but unused sick leave, up to a maximum payment of two hundred forty (240) hours effective in 2012, three hundred (300) hours effective in 2013, and three hundred and sixty (360) hours effective in 2014. Payment shall be made at the employee's pay rate at the time of retirement.

Section 31.4. An employee who is laid off shall, upon reinstatement, have placed to the employee's credit all accumulated and unused sick leave existing at the time of the layoff.

Section 31.5. When an employee suffers an illness or injury not covered by injury leave, and such employee has insufficient sick leave to cover the length of the absence, other employees may, with the approval of the Employer, donate accumulated sick leave to the employee on leave. The total of all such time donated by employees to another employee shall not exceed sixty (60) days or 720 hours.

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 Ohio Revised Code 4117.14, the Fact Finder recommends the provisions herein.

In addition, all tentative agreements reached by the parties are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted,

/s/ Sherrie J. Passmore
Sherrie J. Passmore
Fact Finder
April 5, 2012

CERTIFICATE OF SERVICE

This Fact Finding Report was sent by email on April 5, 2012 to:

Ross Rader, Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc
rossrader@columbus.rr.com

Laurence Fronk, Township Administrator
Miami Township (Clermont County)
larry.fronk@miamitwpoh.gov

Mary Laurent
State Employment Relations Board
Mary.Laurent@serb.state.oh.us

/S/ Sherrie J. Passmore
Sherrie J. Passmore

