

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

Case No. 12-MED-01-0059

In the Matter of: Ohio Patrolmen's Benevolent Association (Full-time Sergeants)

And

Copley Ohio Township Trustees

REPORT AND RECOMMENDATIONS OF FACT-FINDER JACK E. McCORMICK

Date of hearing: October 23, 2012

Date of Report: October 29, 2012

Pursuant to an appointment letter dated August 15, 2012 from the State Employment Relations Board (SERB) in Case Number 12-MED-01-0059 a Fact-Finding hearing was held at 9:30 am October 23, at the offices of the Copley Township Ohio Trustees offices, 1540 S. Cleveland-Massillon Rd., Copley, Ohio 44321.

Present at the hearing were the following:

For the Union:

Daniel Leffler, Esq. OPBA

John M. Lynch

For the Employer:

Dean E. Westman, Esq.

Michael Mier, Chief
Copley Township Police Department

Janice Marshall, Fiscal Officer
Copley Township

Copley Township is located in Summit County, Ohio. The collective bargaining unit at issue is the full-time Sergeants (3) of the Copley Township Police Department.

The Collective Bargaining Agreement (CBA) between the Township and the Ohio Patrolmen's Benevolent Association (OPBA) expired on December 31, 2011 and was for the term of January 31, 2011 and was for the term January 1, 2009 through December 31, 2011. The current CBA under negotiations is for the three year agreement effective January 1, 2012 and terminating on December 31, 2014.

As a result of contract negotiations between the parties on April 17, May 7, and May 17, 2012 the parties have, as the date of the hearing of October 23, 2012, resolved all but four issues. Those issues are: Article 23, Vacation, Section 23.6, Article 29, Compensation, Sections 29.1, and 29.3, Article 40, Duration of Agreement and Article 20 Section 20.2 Duty Hours.

It is noted that the Township currently has five other Bargaining Units under different CBA's, including the patrolmen and have signed agreements with all but one.

ISSUES – Article 23, Vacation, Section, 23.6

The Employer proposes to change the language in the prior CBA as follows:

All carry over balances of vacation leave (that were in existence as of January 1, 2012) must be utilized by no later than December 31, 2012, and any unused portions of those balances will be bought out by the Employer as of that date at the employee's then current regular hourly rate. Beginning January 1, 2012, , all future grants of vacation leave must be used by the employees within twelve months after the vacation leave is granted, and any unused vacation leave will be bought out by the Employer at the end of that twelve month period.

The Employees wish to retain the language of the expired CBA which provides:

All vacation must be taken in the year following its award unless the employee receives written permission from the Board of Trustees to carry over a portion thereof into the following year. In no case may any employee carry over more than one-hundred twenty (120) hours vacation from year to year. If any employee has vacation carryover in excess of one-hundred twenty (120) hours on his/her anniversary date, the carryover hours in excess of one-hundred (120) hours shall be paid by the end of the second pay check following the employee's anniversary date.

The Employer asserts that this is the same language as that of the other bargaining units which they have current agreements, including the patrolmen.

ARTICLE 29, Compensation, Sections 29.1 and 29.3

The Employees propose a wage freeze for the first two years of the 2012-2014 CBA and a 3% raise in the final year. The Employer proposes a wage freeze in the first two years also, but would provide a signing bonus of One Thousand Dollars (\$1,000.00), the latter of which is contained in their proposed Article 40 .

The Employer and the Employees previously engaged in Fact-Finding with the OPBA Dispatchers on February 16, 2012. The Fact-Finder therein recommended a similar two year wage freeze and re-opener in the third year and that unit was offered a lump sum payment also.

This unit (Sergeants) asserts that in lieu of a lump sum payment that...“the Township is well funded and can afford a wage increase “

Although the Employees asserted that the Township “is well funded” they presented no evidence of that assertion at the hearing. Generally speaking, the party who makes an assertion carries the burden of persuasion. The Employees did not provide any facts as to how they arrived at the conclusion about the funding available to the Township two years from now. The Township, on the other hand, asserts that its proposal is the same as that agreed to by the other bargaining units.

Article 40, Duration

The only difference between the parties’ proposals is that while the Employees are proposing a wage increase in the third year the Employer proposes a wage re-opener.

Article 20, Duty Hours, Section 20.2

Currently all Copley Township Police department Employees work a Forty (40) hour shift five day shift. The Employees propose to change that for the Sergeants to a four day ten (10) hour shift. The Employer opposes this change as it would put these three supervisors on a different shift than the patrolmen.

DISCUSSION

The Employer's primary focus of its proposals relies on the notion of pattern bargaining; i.e. other bargaining units, including, but not limited to the patrolmen have like provisions in their current CBA's.

This Fact-Finder finds this persuasive in this particular case. OAC 4117-9-05 sets out those factors that Fact-Finders must consider in their decisions, see 4117-9-05 (K).

In particular is section 4117-9-05 (K) (2) which provides that one of those factors that are to be considered is:

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.

This does not mean that there may not be legitimate reasons to forego pattern bargaining. Very often a bargaining unit will have special needs, or problems that must be considered.

In this particular case the Employees are proposing provisions that are, at odds with other Copley Township units. In doing so, they admit that if their proposals were implemented this unit's CBA would, in fact be an outlier. However, they could not provide this Fact-Finder any compelling reason why this should occur.

It is noted once again that all the proposals made by the Employer are the same as agreed to by four of the five other bargaining units, including this unit's brethren, the patrolmen.

This Fact-Finder believes that OAC 4117-9-05 (K) (2) was enacted for a reason. That reason was an attempt to avoid the chaos and conflicts that would surely develop between, and among Bargaining Units as well as the Employers. Certainly pattern bargaining is not a "silver bullet", but it is meant to achieve some rational harmony to public sector bargaining.

Pattern bargaining is not a straight jacket. However, when any party, employer or employees propose items that are clearly outside the reasonable parameters of other similar, or like units it must be closely scrutinized.

The facts are that the proposals of the Employees herein do not pass muster under scrutiny. Furthermore, they would likely exacerbate any future bargaining conflicts with the other units, most especially the patrolmen.

This unit is asking for a compensation package that it admits is an outlier, as well as the proposal on duty hours. When asked by the Fact-Finder why the Sergeants should be changed to a four day 10 hour shift the response was “they could make some additional money working special duty on that day”. This is certainly a legitimate goal, but hardly a rationale to treat them different than other units. Surely, the lesser paid patrolmen would also like to make “extra money” but have agreed to keep the current tour of duty.

When asked why this unit should receive a raise, rather than engage in a re-opener in the third year of the contract the response was that the Township was “well funded and since they [the Employees] are here now at the table, so why not go ahead now instead of waiting until the Fall of 2013?”. This neutral does not find that to be sufficiently persuasive to make this unit an exception.

FINDINGS OF FACT AND RECOMMENDATIONS

The Fact- Finder finds there are sufficient and valid facts to adopt the contract proposals of Copley Township attached hereto as Appendix I and known as:

Article 23, Vacation, Section, 23.6

Article 29, Compensation, Sections 29.1 and 29.3

Article 40, Duration

Article 20, Duty Hours, Section 20.2

CONTRACT PROPOSALS OF COPLEY TOWNSHIP ON UNRESOLVED ITEMS

Unresolved Item #1 - Article 23, Vacation, Section 23.6 – Replace the existing contract language in Section 23.6 with the following:

"All carry over balances of vacation leave (that were in existence as of January 1, 2012) must be utilized by not later than December 31, 2012, and any unused portions of those balances will be bought out by the Employer as of that date at the employee's then current regular hourly rate. Beginning January 1, 2012, all future grants of vacation leave must be used by employees within twelve months after the vacation leave is granted, and any unused vacation leave will be bought out by the Employer at the end of that twelve month period."

Note to Fact Finder McCormick: As a result of the parties' discussion with you on Tuesday, October 23, 2012, and in an attempt to address the concerns raised by the Union on this topic, the Township would also be willing to put the following provision in a Memorandum of Understanding, but not as a provision in the actual labor agreement:

"Except in cases of emergency, as determined by the Chief of Police or his designee, no bargaining unit member will be denied a vacation request due to the unavailability of an Officer In Charge."

Unresolved Item #2 - Article 29, Compensation, Sections 29.1, 29.2 and 29.3 – Replace the existing contract language in these three Sections with the following:

"Section 29.1. Effective as of the first pay period in January, 2012, and continuing through December 31, 2013, the hourly wage rate and annual salary for full-time bargaining unit members shall be as follows:

<u>Hourly Rate</u>	<u>Annual Salary</u>
\$34.70	\$72,172.99"

"Section 29.3. A \$1,000.00 ratification bonus will be paid to all bargaining unit employees as soon as practicable after the new labor agreement has been ratified by the parties."

Note to Fact Finder McCormick: The parties have tentatively agreed upon the language that will become the new Section 29.2, and that is why proposed language only for Sections 29.1 and 29.3 appear above.

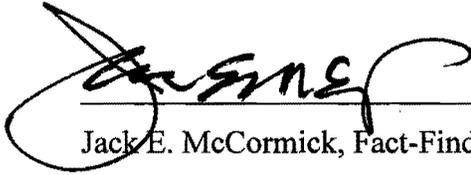
Unresolved Item #3 - Article 40, Duration of Agreement

"This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and except as otherwise noted herein shall become effective January 1, 2012 and shall remain in full force and effect until December 31, 2014. If either party desires to make any changes in the Agreement for a period subsequent to December 31, 2014, notice of such desire shall be given prior to November 1, 2014. If such notice is given, this Agreement shall remain in effect until the parties reach agreement on a new contract. If no notice seeking modification is given, then the Agreement shall remain in effect for another year.

The parties have agreed to enter into reopener negotiations in the fall of 2013 for the limited purpose of negotiating the wage rates and employee health insurance contribution amounts for the third year of this Agreement, i.e., January 1 through December 31, 2014. This limited reopener will be commenced in the Fall of 2013 at the request of either party, and without the necessity of providing the formal written notice described above. In the event of an impasse, any dispute will be resolved through the ORC 4117.14 dispute resolution procedure."

Unresolved Item #4- Article 20, Duty hours, Section 20.2

"A "tour of duty" for a bargaining unit member means the normal eight (8) hour shift to which said member is scheduled to work."



Jack E. McCormick, Fact-Finder, State Employment Relations Board

CERTIFICATE OF SERVICE

A copy of the foregoing was provided to the following by facsimile on this 29th day of October 2012:

Daniel J. Leffler, Esq.
Ohio Patrolmen's Benevolent Association
Fax 440-237-6446

Dean Westman, Esq
Attorney for Copley Ohio Township
Fax 330-867-3786

Donald M. Collins, Esq.
State Employment Relations Board
Fax 614-466-3074



Jack E. McCormick, Fact-Finder

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Fact-Finder's Fee Statement

In the Matter of:

OPBA and Copley, Ohio Township Trustees

Scheduling and review pre-hearing materials - .25 days	
Travel & conduct hearing	- .75 days
Write report	- <u>.50 days</u>
Total -	1.50 days @ 950.00 = \$1,425.00
Mileage 240 miles @ \$.50	<u>\$ 120.00</u>
Total due:	\$1,545.00

Employees - \$772.50

Employer - \$772.50

Thank you

Jack E. McCormick EIN 31-1410950 (W-9 attached)