



**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

**January 28, 2013**

FRATERNAL ORDER OF POLICE

Ohio Labor Council, Inc.

CASE # 12-MED-09-0820

and

Miami Township

Clermont County

FACT FINDING REPORT

APPEARANCES

For the Union

Ross Rader,  
Al Fatute,  
John Swing,

FOP Senior Staff Representative  
Bargaining Committee Member  
Bargaining Committee Member

For the City

John W. Fischer,  
Joseph Braun,  
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Attorney  
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## Introduction

This fact finding involves the Sergeants of the Miami Township police (sometimes referred to as “Employees”) who are represented by the Fraternal Order of Police, Ohio Labor Council (“FOP”), and Miami Township (the “Twsp” or the “Employer”). The Twsp is located in Clermont County. The Collective Bargaining Agreement (the “Contract”) between FOP and the Twsp expired December 31, 2012.

The undersigned was duly appointed Fact Finder. The fact finding hearing was set, by agreement of the parties, for January 9, 2013. Mediation was not successful. The issues were heard, the hearing commencing at approximately 10:30 AM and was closed at approximately 5:00 PM.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, the Union’s Exhibit binder and the Twsp’s exhibits.

In reaching the recommendations made in this report, the Fact Finder considered the criteria set forth in Ohio Administrative Code Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 the public service or private employment.

### **Facts**

The parties most recent agreement covering the period 1/1/11 through 12/31/12 has expired. Wages have been paid to date in accord with the wages and hours under the expired agreement. It was agreed that whatever the final result of this fact finding, the terms will be effective as of January 1, 2013.

As to economic issues, the Twsp asserts that its positions are based on sound, conservative financial management of the Twsp's finances, recognizing current economic conditions, cuts in State aid, and the Twsp's shrinking tax base due to the reevaluation of real estate.

It was agreed that we are dealing with a new three (3) year contract for the calendar years 2013, 2014, and 2015.

The Twsp's police department has 40 full-time officers. The bargaining unit consists of five Sergeants, one of whom is the support services Sergeant. He works an 8 hour shift Monday-Friday. The other four Sergeants are patrol Sergeants who work 12 hour shifts, 4 days one week, 3 days the next. The Chief, Assistant Chief and the one Captain work 8 hour shifts Monday-Friday. The Captain is scheduled to retire next year. That position will not be filled. There are no Lieutenants. There are 32 police officers. The Twsp has reached new three year contracts with the Firefighters and with the Service Department employees.

The Twsp has a population in excess of 40,000, and contains about 36 square miles. It is a

bedroom community for Cincinnati.

With that background, we turn to the issues that were presented at the fact finding hearing, in the order they were presented, bearing in mind that the burden of proof is on the party advocating a change.

**Issue No. 1**

**Grievance- Article 8**

**Twsp Position**

The Twsp wishes to delete the last sentence of section 8.6A of the contract which says:

The Arbitrator may not modify or amend the Agreement.

and replace it with the following language:

The Arbitrator shall not have the authority to add to, subtract from, modify, change or alter any provision of this Agreement, in arriving at a determination on any issue presented that is proper within the limitations expressed herein. The Arbitrator shall have no authority to determine any other issues not so submitted or to submit observations or declarations of opinion which are not directly essential in reaching a decision on the issues in question.

Essentially, the Twsp feels the existing provision needs to be clarified.

**FOP Position**

There is a long contentious history between the parties. The requested change, rather than clarifying, actually makes the provision ambiguous.

**Discussion**

The last two sentences of section 8.6A of the Contract read as follows:

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.

These two sentences represent a common provisions found in most, if not all, contracts. Together, they leave little room for misunderstanding.

Recommendation

The current Article to remain unchanged.

**Issue No. 2**

**Use of Comp Time and Vacation Time- Articles 14 and 18**

Twsp Position

The Twsp proposes to add language to section 14.3 to require Sergeants to get prior approval from a supervisor before taking comp time and to add language to section 18.3 to require a Sergeant to obtain approval from a Divisional Commander to use vacation time not previously approved.

The Twsp's rationale is that, for a majority of the day and all day Saturday and Sunday, a Sergeant is the senior officer. When a Sergeant has wanted to take either comp time or vacation time to leave work, the Sergeant approves his own request as the Sergeant is the Senior Officer on duty. Senior Supervisors, i.e. the Chief or Assistant Chief, are not made aware the Sergeant is not at work which could lead to confusion in case of emergency.

In its Position Paper, the Twsp initially claimed there were 11 instances in 2012 when a Sergeant took comp time leaving no one in charge of shift. That claim was withdrawn at hearing. The Twsp does claim that there were 78 times when a Sergeant approved his own comp time and 39 times when he approved his own vacation time for a total of 107 instances.

The Twsp asserts this is a basic management function.

## FOP Position

The FOP contests the Twsp's numbers and offers its own analysis that shows the total number of times a Sergeant approved his own comp or vacation time off was a total of 52 times and that the senior patrol officer was always left in charge of the shift.

Requiring Sergeants to contact a Supervisor will potentially mean calling the Chief or Assistant Chief (shortly there will not be a Captain) in the middle of the night for permission to do something that has rarely been denied.

Further, there is no evidence that the existing practice has ever caused a problem in the 20 year history of the Contracts. In short, if it isn't broken, why fix it?

## Discussion

Sergeants routinely call a superior if there is an emergency. Whether it's the 107 times the Twsp claims or the 52 instances the FOP claims when Sergeants granted themselves comp or vacation time, that's one or two times a week. One or two additional calls a week to the Chief or Assistant Chief who, according to the Twsp's Position Paper are willing to receive such calls, is not an excessive burden on the Sergeants.

As shown by the recent school shootings, one never knows what the next emergency will be nor when or where it will occur. It is important for the responsible person to know what forces are immediately available.

If the request for comp or vacation time is made outside the Monday-Friday 8-5 time frame, it can be made by phone. If the superior officer does not answer, a voice mail message will be left and the Sergeant will, as the senior officer, grant his own request as is now the practice.

Recommendation

Grant the Twsp's proposal in part.

Contract Language

Section 14.3. Employees may elect to take compensatory time in lieu of overtime pay, holiday pay, court time pay and call out pay. All holiday compensatory hours shall be paid at the rate of one (1) hour of pay for each holiday hour. The maximum amount of compensatory time that an employee may accrue is sixty (60) hours. Compensatory time shall be scheduled and used at a time mutually agreed upon by the employee and the Employer. Any compensatory time leave requested by a Sergeant may be taken only with prior approval by the Sergeant's Division Commander or his/her designee. The Employer will not unreasonably refuse to grant the compensatory time off requested by the employee. Compensatory time requested of one (1) day or less may be approved by the supervisor in charge of the tour covering the requested time as long as the compensatory leave does not prompt departmental overtime to meet minimum staffing levels. If the Division Commander or his/her designee is not available, the Sergeant shall leave a voice mail message with the Division Commander or his/her designee who shall maintain a means of receiving voice mail.

Section 18.3A. Any vacation leave requested by a Sergeant, not previously approved in accordance with Section 18.4. may be taken only with prior approval by the Division Commander or his/her designee. The Employer will not unreasonably refuse to grant the vacation time off requested by the employee. If the Division Commander or his/her designee is not available, the Sergeant shall leave a voice mail message. A request for one (1) day or less may then be approved by the supervisor in charge of the tour covering the requested time as long as the vacation leave does not prompt departmental overtime to meet minimum staffing levels.

The remainder of section 18.3 shall be re-lettered to reflect the above addition but otherwise those sections shall remain in full force and effect.

**Issue No. 3**

**Wages- Article 15**

Both parties have submitted proposals:

The Township's wage proposal:

January 1, 2013                      +1.5%

January 1, 2014	+1.0%, plus \$1,500 lump sum payment to each unit employee in January 2014
January 1, 2015	+1.0%, plus \$750 lump sum payment to each unit employee in January 2015

The Union’s wage proposal:

January 1, 2013	+5%
January 1, 2014	+3%
January 1, 2015	+3%

Twsp Position

The Twsp pays well but it is a township. As such it has fewer sources of revenue and is less able to reallocate those resources.

The principal source of revenue for the Twsp is from taxes on real estate. In 2011, Clermont County, as required by law, did a revaluation of all real estate in Clermont County. In Miami Township, this resulted in a decrease in the valuation of real estate of 9.7%. Further, the Twsp has lost \$1.4 million in revenue from the State by reason of the terminations of the tangible personal property tax, the Ohio estate tax and reductions in distributions from the State.

Factoring in a 2% annual increase in Twsp’s expenses, the Twsp’s reserves will be exhausted in 2015. Seeking additional revenue from a police or a safety forces levy is unlikely to be successful, given the number of requests for levies for both townships and for schools which have failed in surrounding townships and school districts in the past three years.

Inflation, as measured by the Consumer Price Index (“CPI”) over the past five year period

(November 2007 through November 2012), has totaled 9.5% while, in that same period, Sergeants pay has increased 21.7%. Comparing the Twsp's pay to nine other townships of 25-50,000 population which have full service police departments, six of which are in the Greater Cincinnati area, shows Miami Township Sergeants wages are the second highest.

The Firefighters settled on a 3-2-1% raise over three years, that raise being offset by a reduction in holiday pay. Service Department workers accepted 1.5-1-1.5%.

The Sergeants are only 5 members. The 32 patrol officers contract expires December 31, 2013. They will seek whatever raise the Sergeants receive. A raise beyond what the employer is offering will be beyond the Twsp's means.

#### FOP Position

The Twsp's projections are unreliable. They claimed at negotiations for the prior contract that the reserves would be exhausted in 2012. In fact, the reserves in the Safety Fund have increased according to the Twsp's 2012 Budget Summary, from \$6,221,600 in 2011 to \$7,576,800 in 2012. Further, that same Twsp document says that, while the Twsp's General Fund and The Road and Bridge Fund will be impacted by the reduction in the appraised value of real estate;

The other funds are voted mileage and will not be as affected.

Contrary to the Twsp's exhibits, the FOP's budgetary projections using a 5% increase in pay show a minimal impact on the Twsp's finances. Further, the FOP points to the Twsp's 2010 Budget Summary in which the 5 year projection included a 4% annual increase.

#### Discussion

Both the Twsp and the FOP point with pride to the high regard in which the police department is held. The department has been recognized with "Flagship Status" both in 2007 and

again in 2011 by The Commission on Accreditation for Law Enforcement Agencies (CALEA). Flagship Status is awarded to about 1% of all departments that seek accreditation from CALEA. The Department anticipates securing CALEA's "With Distinction" status for 2012.

Sergeants in the Twsp are rather unique. There are no lieutenants. Formerly, there were three lieutenants. Two retired. The third became the Captain but he is scheduled to retire and will not be replaced. There will be a Chief, an Assistant Chief and then the five Sergeants. The duties the Sergeants perform are beyond those normally associated with this rank in a department of this size. In the Twsp, the Sergeants must have a Bachelor's degree. Two of the Sergeants have a Master's Degree.

The gap in pay among the ranks is:

Patrol Officer to Corporal	7%
Corporal to Sergeant	7%
Sergeant to Captain	20%
Captain to Assistant Chief	7%

While the Twsp Sergeants are well paid compared to Sergeants in other similar size communities, little evidence was presented as to the comparable duties of Sergeants in other communities. It appears that the Twsp's Sergeants perform a wider range of duties including functions that, in other jurisdictions, are performed by officers with a higher rank. This justifies a higher pay.

Inflation, as measured by the CPI has averaged 2.6% per year in the November 2010 through November 2012 period. The Twsp will realize a substantial savings in the police department payroll when the captain retires. From the evidence, the captains duties will be reallocated among the Chief, Assistant Chief and the Sergeants.

Wages are only part of the total compensation. Holiday pay and insurance must be considered to assess the total effect of any adjustment in wages.

The Twsp's wage offer is essentially zero as the Twsp's wage offer is offset by other reductions. Bearing in mind the settlements with the firefighters whose wage increase was offset and with the wage increase with service department, an annual wage increase for the Sergeants of 2% for each year is appropriate.

Contract Language

Increase wages in each of 2013, 2014 and 2015 by 2%.

**Issue No. 4**

**Longevity**

FOP Position

The FOP requests the Sergeants be given Longevity Pay of \$350 after 5 years, increasing \$70 each year to a maximum of \$1,750 after 25 years.

They point to the practice in near by comparable townships. It is a common benefit.

Township Position

No one in the Twsp receives Longevity Pay.

Discussion

Past contracts and whether the benefits are in the contracts of other bargaining units in the Twsp are to be considered. In fact, no other employees would have this benefit.

Contract Language

No change.

**Issue No. 5**

**Holiday Pay- Article 17**

**Twsp Position**

Pay Sergeants for 73.5 hours (i.e. 6 holidays) in lieu of holiday pay. If a Sergeant works on a holiday, he get his regular pay. If a Sergeant is scheduled to work on a holiday and does not work, would have to take either comp time or vacation time to get paid for that day.

**FOP Position**

Retain current contract language. Last year, two Sergeants worked nine holidays.

**Discussion**

The Twsp's proposal is a significant change from the existing practice. It appears in no other contract though the Twsp has recently concluded new contracts with the Firefighters and with the Service Department. It does not appear to have even been proposed in negotiations with those units.

The Firefighters did agree to a 50% reductions in holiday pay which would be the result of the Twsp's proposal to the Sergeants. The difference, however, is that, thanks to a provision that got into the firefighters prior contract, the Firefighters were getting twice as much in holiday pay.

There are no comparable provisions within the Twsp and nothing in comparable communities.

**Recommendation**

Current contract language.

**Issue No. 6**

**Insurance- Article 22**

**Twsp Position**

Require the Sergeants to pay 25% of the deductible under the Twsp's high deductible health insurance plan after the Twsp has paid the first 75% of the deductible.

**FOP Position**

Current contract. Sergeants pay no part of the deductible.

**Discussion**

There is a long and bitter history with this issue. Under the Twsp's health insurance plan, all employees, including the Sergeants pay 25% of the premium.

Under the current health plan there is a \$6,000 deductible for a family and a \$3,000 deductible for an individual. The Twsp pays the first \$4,500 of the deductible for a family, and \$2,250 for an individual (75%), the employee pays the next \$1,500 for a family and \$750 for an individual (25%). Expenses in excess of \$6,000 for a family and \$3,000 for an individual are paid by insurance.

All other Union employees, i.e. the firefighters, service department workers and patrol officers, pay the 25% share of the deductible as do all non-union employees except the three township trustees.

The Twsp asserts that this is a matter of consistency among the various contracts. Ordinarily this fact finder would agree. However, prior negotiation must also be considered.

There was fact finding in 2008. The patrol officers and the Twsp negotiated a settlement of this issue. Negotiations between the Twsp and the Sergeants broke down. Instead of taking this

issue to fact finding, the Twsp chose to impose the 25% share and took the matter to arbitration. In FMCS Case No. 08-01063 Arbitrator Talarico rejected the Twsp's position holding:

When an employer acts unilaterally in altering existing benefits it does so at its own risk. I therefore fail to see how any remedy other than enforcing a \$0 deductible for sergeants would be an appropriate make whole remedy. Especially since the Employer had the opportunity to negotiate a change in the plan design for sergeants in the same way it did for patrol officers and corporals.

The Twsp attempted to have the Arbitrator's award vacated but was again unsuccessful. See Clermont County Court of Common Pleas Case No. 2008 CVH 02532.

In the negotiations that led to the 1/11/11- 12/31/12 Contract, this issue was not raised until the end of negotiations. As no settlement was reached, this issue went to fact finding but was later withdrawn.

To grant the Twsp's position on the issue would make the wage increase previously recommended a nullity. The previous bargaining history on this issue and the compensation previously recommended supports retaining this special benefit for the Sergeants.

Contract Language

No change.

**Issue No. 7**

**Training- Article 31**

Twsp Position

Pay only for time actually spent attending training classes and for necessary travel expenses.

Add a detailed list of reimbursable expenses.

FOP Position

Current contract.

## Discussion

The current Article 31 was the result of mediation that occurred during fact finding in 2008. Fact finding in 2010 retained the current language.

The Employer says, consistent with its position on other issues, that it should only pay for hours actually worked, not for hours based on a schedule. It further seeks to clarify its obligations by adding a detailed list of expenses that would be reimbursable.

The FOP says this issue grows out of an instance where the Twsp required an employee returning from disability to attend retraining that, due to the required hours, ended up costing the Twsp a substantial amount in overtime pay. The FOP further argues that this matter has previously been resolved.

The real issue here appears to be whether the Twsp should have to pay for the time spent during lunch breaks at training sessions as has been the practice at least since the 2008 fact finding. Sergeants and Officers are paid for lunch while on regular duty because they are never off duty when on shift. While somewhat different, at training sessions, Sergeants are still on duty, in a sense, as networking and informal exchanges are regular features during lunch breaks.

When Sergeants are away, there is nothing else for them to do. There is no reason to change the existing practice.

The only evidence presented as to the training day being shorter than what was scheduled was to the effect that on Fridays, training might end somewhat earlier than indicated on the schedule. That appears to be *de minimus*.

The proposed list of reimbursable expenses raises as many questions as it solves. The existing system appears to be working. There is no indication that this list appears in any other

bargaining unit's contract.

Recommendation

Current contract language for 31.2 and 31.3, except 31.2B.

31.1 and 31.2B were agreed as follows:

Section 31.1. Each bargaining unit member shall attend any training necessary to meet Continuing Professional Training requirements stated by the Ohio Peace Training Council (OPOTC); or any other training deemed as mandatory by the OPOTC or the Ohio General Assembly or other competent authority; or any training deemed as mandatory by the Miami Township Police Department.

Section 31.2B. Travel time to and from training outside of Clermont County shall be counted as hours worked. The agreed standard for calculating travel time shall be the time and distance between the Miami Township Police Department and the training location.

**Other Issues**

All other matters that were agreed to outside of Fact Finding are adopted.

*Robert M. Lustig*

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Robert M. Lustig  
Fact Finder  
Cleveland, Ohio  
January 28<sup>th</sup>, 2013

**CERTIFICATE OF SERVICE**

A copy of the foregoing document was sent, by agreement of the parties, solely by email, January 28<sup>th</sup>, 2013 to:

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