

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

|   |   |                  |
|---|---|------------------|
| In the Matter of Fact-Finding Between:  | ) |                  |
|   | ) |                  |
| Ohio Patrolmen's Benevolent Association | ) | 12-MED-10-1093   |
|   | ) |                  |
| And                                     | ) |                  |
|   | ) | Fact Finder:     |
| Miami Township Trustees                 | ) | John T. Meredith |

**FINDINGS, OPINION AND RECOMMENDATIONS  
ISSUED APRIL 18, 2014**

The parties to this Fact-Finding proceeding are the Ohio Patrolmen's Benevolent Association (“OPBA or “Union”) and the Miami Township Trustees (the “Township” or the “Employer”). The bargaining unit consists of the six full-time Sergeants employed by the Township Police Department. The parties' current Agreement was originally supposed to expire on December 31, 2012. However, negotiations were delayed due to unexpected defeat of a police levy, and the parties extended their Agreement to facilitate continuing negotiations. Another levy was put on the ballot and passed in Spring 2013. Negotiations resumed and the parties' bargaining teams reached a tentative agreement in early 2014. This agreement provided for a 2013 wage freeze. Followed by wage increases of 2.5%, 1.75% and 1.5% in 2014, 2015 and 2016. It also included agreements to change various other contract provisions, some of which involved concessions by the Union.

The OPBA membership rejected the proposed agreement. It appeared that the

following three issues were at the root of the rejection: (1) Elimination of speciality pay, Article 13, Section 15. (2) Proposed change to permit any supervisor (instead of only a staff sergeant) to fill a vacancy during the day shift Monday – Friday excluding holidays (Article 13, Section 3). (3) Abolition of the contractual compensatory time provision.

After the rejection, the bargaining teams met again and addressed these issues.

They reached a tentative agreement on the following modified terms:

Specialty Pay, Article 13, Section 15: Eliminate this Section from the collective bargaining agreement, provided that specialty pay will be paid in 2014.

Filling of Overtime, Article 13, Section 3): Change subsection (B) by changing the phrase “any supervisor” from the first tentative agreement to “Staff Sergeant,” and add the following language: “In the event that a Staff Sergeant is no longer a part of the Miami Township; chain-of-command, members of the command staff above the rank of Sergeant will be eligible to fill the vacancy”; and delete the following language from subsection C: “provided the vacancy occurs during day shift Monday through Friday, excluding holidays.”

Article 13, Sections 6 – 8: Remove compensatory time from the contract, with the clarification that currently accrued compensatory time must be used by November 15, 2014, and that, on that date, any remaining, accrued compensatory time will be paid out.

This modified tentative agreement was again recommended by the Union team to to the OPBA membership, but the vote resulted in a tie and it was not ratified.

The parties then initiated fact finding, and SERB appointed the undersigned to serve as Fact Finder. The parties met with the Fact Finder on April 15, 2014. Appearing on behalf of the Union were: OPBA Legal Counsel Joseph Hegedus, Sgt. Scott Fitzgerald, and Sgt. Paul Nienhaus. Appearing for the Employer were: Attorneys Joseph Scholler and Lauren Hunter of Frost Brown Todd LLC and Police Chief Ron Hess. By agreement, the proceeding was conducted in mediation format. The parties presented their positions and justifications for them. The Employer held to the changes to which it had agreed in the “Second Tentative Agreement,” see above. The Union submitted the

following new proposal on the compensatory time issue:

#### COMPENSATORY TIME

Compensatory time shall be applied so as to permit the employee to utilize any of the following methods of receiving compensation for hours worked outside of their normally scheduled hours during a twenty-eight (28) day period:

(A) Payment for overtime hours actually worked at time and one-half or,

(B) Allowing an employee to accumulate up to (Delete 80 hours) a maximum 42.5 hours of compensatory time each year, which shall be accrued on the basis of one and one-half hours of compensatory time for all time worked outside of their normally scheduled hours during a twenty-eight (28) day work period. Employees will also be capped at 42.5 hours of compensatory time which may be used during each year.

(C) Any combination of A and B.

The Fact Finder has evaluated the proposals and evidence submitted by the parties. In making his recommendations, the Fact Finder has given consideration to the following criteria prescribed by the Ohio Collective Bargaining Law and listed in SERB Rule 4117-09-05:

- (1) Past collective bargaining 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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

“Other factors” referenced in criterion no. 6 may include the practice of many fact finders to give substantial, though not necessarily controlling, weight and deference to tentative agreements reached in good faith by the bargaining teams.

### **RECOMMENDATIONS**

Having considered these factors, the Fact Finder now makes the following recommendations:

**Specialty Pay, Article 13, Section 15:** Eliminate this Section from the collective bargaining agreement, provided that specialty pay will be paid in 2014. (As agreed by the bargaining teams in their “Second Tentative Agreement.”)

**Filling of Overtime, Article 13, Section 3:** Change subsection (B) by changing the phrase “any supervisor” from the first tentative agreement to “Staff Sergeant,” and add the following language: “In the event that a Staff Sergeant is no longer a part of the Miami Township; chain-of-command, members of the command staff above the rank of Sergeant will be eligible to fill the vacancy”; and delete the following language from subsection C: “provided the vacancy occurs during day shift Monday through Friday, excluding holidays.” (As agreed by the bargaining teams in their “Second Tentative Agreement.”)

### **Compensatory Time, Article 13, Sections 6 – 8:**

Revise Section 6 to state:

Section 6. In 2014 and 2015, compensatory time shall be applied so as to permit the Police Chief to utilize any of the following methods of receiving compensation for hours worked outside of their normally scheduled hours during a twenty-eight (28) day period:

(A) Payment of overtime hours actually worked at time and one-half or,

(B) Allowing an employee to accumulate up to a maximum 42.5 hours of compensatory time each year, which shall be accrued on the basis of one and one-half hours of compensatory time for every hour worked outside of their normally scheduled hours during a twenty-eight (28) day work period. Use and accrual of compensatory time shall be subject to restrictions, as follows: (1) No more than 42.5 hours can be used in any calendar year. (2) No more than 42.5 total hours can be accrued by an employee in a calendar year. This is a total accrual limit. If any employee accrues 42.5 hours and uses some of it, he cannot then accrue additional compensatory time that year even though his total drops below the cap. (3) Compensatory time accrual is capped at 42.5 hours. An employee may not have more than 42.5 hours, even if some of it was not accrued in the current year.

(4) Employees who currently have more than 42.5 hours compensatory time must use enough to bring the total down to 42.5 hours by November 15, 2014 or the excess will be paid out.

(C) Any Combination of A and B.

(D) Current Contract.

(E) Compensatory time accrual will be abolished effective on January 1, 2016. Employees with accrued compensatory time on January 1, 2016 will have until June 30, 2016 to use it or it will be paid out.

Section 7: Current contract.

Section 8: Current Contract.

The Fact Finder further recommends that the parties reinsert reference to “compensatory time” in their tentative agreements on the following articles: Article 13, Section 4 & 5; Article 19, Section 10; Article 20, Section 6; Article 25, Section 2.

**Other Tentative Agreements**: The Fact Finder incorporates by reference the tentative agreements of the parties on all issues not specifically addressed in this Report and recommends that they be made part of the new 2014-2016 collective bargaining agreement.

These Findings and Recommendations are issued this 18<sup>th</sup> day of April, 2014.

Shaker Heights, Ohio

/s/John T. Meredith  
John T. Meredith, Fact Finder

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Report was electronically filed with the State Employment Relations Board and electronically served upon the parties by e-mailing same to their representatives, listed below, this 18<sup>th</sup> day of April, 2014.

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Representatives of the Employer

*/s/John T. Meredith* \_\_\_\_\_

John T. Meredith, Fact Finder