

THE STATE EMPLOYMENT RELATIONS BOARD
September 25, 2013

**OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION (OPBA))
UNION**

CASE NO. 12-MED-11-1334

and

FACT FINDER: **JOSEPH W. GARDNER**

**VILLAGE OF GRAFTON, OHIO
EMPLOYER**

FACT FINDING REPORT

APPEARANCES

For the **UNION:**

For the **EMPLOYER:**

Kevin Powers,
Union Representative

Robin L. Bell
Employer Representative

Scott Kilgore
Patrolman

Linda Bales
Village Clerk Treasurer

INTRODUCTION

The parties and representatives timely met, and both consented to mediation. The parties relocated to separate rooms and this fact-finder met first with the Union and then with the Employer. There were several issues where the parties were "close." This fact-finder asked the representatives and parties to meet to determine if the parties could reach an agreement on some of the issues.

Of the twelve issues set for fact-finding, the parties reached an agreement on five of the issues. All of the issues are as follows:

- | | |
|--------------------------------|----------------------------------|
| 1. Layoffs/Recall | 7. Sick Leave |
| 2. Wages | 8. Injury Leave |
| 3. Duty Hours | 9. Uniform Allowance |
| 4. Overtime/Call Out/Court Pay | 10. Duration |
| 5. Holidays | 11. Field Training/Officer's Pay |
| 6. Vacations | 12. Hours of Work and Scheduling |

The parties reached agreements on the following issues:

- | | |
|-----------------|----------------------------------|
| 3. Duty Hours | 9. Uniform Allowance |
| 7. Sick Leave | 12. Hours of Work and Scheduling |
| 8. Injury Leave | |

All of the below factors set forth in section 4117.14 (G)(7)(a)-(f) of the Revised Code were reviewed and considered:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved, that those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties; and
- (f) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration and the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or private employment.

The fact-finding conference was opened. The parties each made an opening statement. During the opening statement, each party reviewed the financial condition of the Village. The

Union has shown that the Village has a “contingency” fund of over \$1.2 Million. The Union showed that there is enough money in the fund to meet the demands of the Union.

The Village stated that it possessed funds to meet the Union’s demands. However, the Village stated that the issue is “not are we broke, but how we want to spend the money.” The Village maintains that payment is a “managerial right” that the Village Council intends to exercise. The Village argues that it does not receive yearly income of \$1.2 Million. That money is set aside, so in the event an emergency came up, the Village would not be forced to request money from the County. The Village states that money is now needed for the improvements of state route 57 and that funds from the state have been cut in recent years.

The state has a large inmate population due to the state prison facilities located within the Village. The Village fears that if there is some drastic cut in the state penal system, the Village will be directly affected. However, no evidence was introduced about the closing of any facilities in Grafton, nor was there any evidence presented of any layoff of state employees working at the state penal facilities.

Because of the prison facilities within the Village, there exists, approximately 2000 inmates who are counted as residents of the Village. Because of the prison’s population, the Village is governed by the collective bargaining laws of Ohio. Any crimes investigated on prison property are investigated by the Ohio State Patrol. The Village’s police may provide emergency backup, like the County Sheriff’s department, but the OSP has primary jurisdiction and responsibility.

The Village states that there is no more estate tax in 2013 and there has been a loss of interest income. State funding is decreasing.

This is the first collective bargaining agreement between the parties. The Union’s bargaining unit is comprised with one (1) patrolman. This patrolman works the midnight shift

during the week. Part time officers cover the other days and times not worked by the one bargaining unit member. The part time employees are not in the bargaining unit.

Issue No.1 Layoff/Recall

Discussion

Because of the present status of the law, both parties agree that neither the Village nor the Bargaining Unit is subject to State Law regarding layoff. Under State law, both parties agree that State law requires the laying off of part time employees first. The Union proposes that part time employees must be laid off before the full time employee. The Union proposes State Civil Service language to govern Layoffs and Recalls as it deals with full time and part time employees.

The Village accuses the Union of seeking to curtail management rights. Because of its population, the Village is not under Civil Service Law and need not, under State law, layoff part time employees before the Village makes layoffs of full time employees. As was stated earlier, this bargaining unit has only one full time employee. Also, State law requires full time employees be recalled before part time employees are recalled. But because of its population, the Village need not comply with State law when making with recalls.

The present state of the law vests with the Village government, the layoffs and recalls of Village employees. As was set forth above, the Village accused the Union of seeking to curtail the current management rights regarding layoff and recall of police officers regardless of full time versus part time status.

There has been no evidence presented that this issue, as it stands, is a financial issue for the Village. In other words, would the Village, at this time, be financially better off with part time officers versus a full time officer? No evidence was directly presented that the pay and benefits of the full time officer is higher than or includes more benefits as the part time officers.

Experience shows, however, that full time employees have costs to the management that part time employees do not.

There was no evidence that full time officers are better police officers than part time officers.

The Village has stated that its "proposal is in line with the management rights expressed in R. C. 124.321 and is thus fair and reasonable." Although preference for full time employees may help the Union, this public employer has the lawful authority to decide to hire full time or part time employees. Ohio Revised Code 4117(G)(7)(d).

Recommendation

The undersigned recommends that the following language suggested by the Village to be part of the Collective Bargaining Agreement:

Layoffs/Recalls

Section 1. Where the Village determines it is necessary through its governmental powers to make layoffs or reductions in force (i.e., job abolishment, furlough, etc.) in the number of personnel employed by the Village Police Department, the layoffs or reductions in force will be made in accordance with the below listed guidelines. An employee subject to layoff or reduction in force shall be given fifteen (15) day notice prior to the effective date of action. This notice period only applies to the individual(s) initially selected for layoff or reduction, and does not apply to any individual(s) reduced as a result of the bumping and displacement process.

Section 2. Procedure. Whenever the Employer determines that a layoff or reduction in force is necessary, the Employer shall first determine the classification where the reduction is to occur. The bargaining unit member(s) with the least amount of departmental seniority in the classification selected by the Township shall be the first subject to reduction. If a Sergeant's position is eliminated, the Employee who held the eliminated position may displace (bump) another Employee with less departmental seniority in a lower classification provided the Employee has held the position in the lower classification. Provided the Employee held the lower position and had greater seniority, a Sergeant will displace a Patrolman, with the Employee displaced from the lower classification being the Employee laid-off from the Village.

Section 3. Recall. Recalls shall be in the inverse order of layoff to the classification from which the Member was laid off from the Village. A laid-off Member shall retain his/her right to recall for twenty-four (24) months from the date he/she is laid-off from the

Village. Notice of recall shall be sent to the Employee's address listed on the records of the Village. The Bargaining Unit Member must provide current address, phone number and e-mail address to the Village and advise the Village of any changes to his/her address, phone number and e-mail address. Notice of recall shall be sent to the Employee via certified mail, return receipt; UPS; or personal delivery. An Employee who refuses recall or does not report to work within ten (10) calendar days from the date the Village provides recall notice (as stated herein) shall be considered to have resigned his/her position and forfeits all right to employment with the Village.

Issue No.2 Wages

Discussion

In issue No. 1, the Village was able to take advantage of the current state of the law. Because of the current state of the law, the State Civil Service law does not apply to the Village of Grafton. The parties agree that the State law regarding collective bargaining does apply to the Union and to the Village. The factors set forth in ORC 4117.14 (G)(7)(a)-(F) are factors that must be considered.

There are no previous collective bargaining agreements between the parties. ORC 4117.14(G)(7)(a). Therefore, there is no history regarding collective bargaining between the parties. There are no maximum or minimum norms on pay raises or pay concessions. The parties did not make internal comparisons between the Village and any other safety bargaining unit such as fire fighters. Nor was there any comparison between non-safety forces employees in the Village.

Comparables between similar employers and similar unions, public or private, become very important in this fact-finding. ORC 4117.14(G)(7)(b). There has been no evidence that this public employer, the Village, does not have the ability to pay for the service provided to the public by this bargaining unit and its one member.

The bargaining unit member works the midnight shift each weekday, alone. There was no evidence introduced that this officer was not a qualified professional law enforcement officer. There are no allegations of absenteeism and no allegations of malfeasance or misfeasance.

Although there is no evidence that there are calls that overwhelm him every night, this is a good sign. The Village people are able to sleep well at night knowing that this law enforcement officer is patrolling the streets. The undersigned was concerned and disappointed to learn that Village Council members may threaten to abolish the bargaining unit member's position because he is asking for a raise in pay and benefits. This type of conduct may be legal, but it does not promote a good employer-employee relationship.

Both parties have provided comparables for wages. The "comps" provided by the Union are more "comparable" to the Village of Grafton. Lordstown, for instance, has a large GM plant employing a large number of blue collar and white collar employees. Although there are "rumblings" frequently that the company will close the plant and relocate, those same "rumblings" come from state officials that closure or relocation of prisons are upon us.

The other communities of Madison, Northfield and Sheffield are similar comparables to Grafton.

Grafton's wage rate for this case trails the average of the others by 15%. This gap is significant. There is no compelling reason why this gap is so large.

The Union's request is reasonable given the factors set forth in 4117.17(G)(7)(a)-(f).

Recommendation

The undersigned recommends that the following language as proposed by the Union become part of the collective bargaining agreement:

Wages

Section 1: As of the effective date of this Agreement, the minimum hourly rates for the Grafton Police Department Employees are as follows:

Starting:	\$17.69/hour
After one year:	\$20.49/hour

Section 2: Full time Employees shall receive a 3% increase effective 1/1/2014 and 1/1/2015.

Issue No.3 Duty Hours

The parties settled this issue before fact-finding.

Issue No.4 Overtime/Call Out/Court Pay

Discussion

The Union seeks a more expensive method of calculating overtime pay that is more in line with the public sector generally. The Union seeks to have overtime paid for actual hours worked over eight in a day or 40 in a 7 day work period. The Union also proposes that all paid time off (i.e., sick, vacation, personal, bereavement) be considered actual hours worked.

The Village proposes that overtime be based upon time actually worked and that vacation, sick time, bereavement time and personal time off not be considered in the determination of actual hours worked.

After reviewing the agreements and exhibits and reviewing the fact finding report as a whole, the proposal of the Village is recommended.

Recommendation

The undersigned recommends the following language become part of the Collective Bargaining Agreement:

Section 1. FLSA Overtime Definition. The parties acknowledge that the Employer has established an FLSA 207(k) alternative schedule for overtime. Overtime for sworn police officers shall be defined as any time worked in excess of twenty (20) eight (S) hour shifts, one hundred sixty (160) hours, during a regular twenty-eight (2S) day work cycle . FLSA overtime shall be paid in accordance with the FLSA. Contractual overtime shall be paid in accordance with the contract.

Section 2. Contractual Overtime Compensation. Overtime in the amount of one and one half (1-1/2) times the Employee's regular pay rate shall be paid for actual hours worked in excess of eighty (80) hours in a fourteen (14) day pay period.

Section 3. Call In Pay. Whenever approved by the Employer, Employees called in to work for any time period shall be paid for not less than two (2) hours of work, or actual time spent, whichever is greater, at the applicable rate of pay.

Section 4. Court Time. When an Employee appears in court during off duty hours on behalf of the Employer, the Employee shall be paid for not less than two (2) hours of work, or actual time spent, whichever is greater at the applicable rate of pay.

Section 5. Vacation time, sick time, bereavement time and personal time taken in a work week/pay period are not considered actual hours worked for purposes of calculating overtime.

Issue No.5 Holidays

Discussion

The Union seeks to increase the number of paid holidays from seven to ten. The Union maintains that seven holidays is extraordinarily low in the public sector while ten is closer to the norm. The Union has produced evidence that comparable jurisdictions have significantly higher days off for holidays and personal days than this bargaining unit has off.

The Village's exhibit demonstrates that the other Village employees have seven paid holidays. The bargaining unit member has three paid personal days in addition to the holidays. The Village has presented an internal comparable that counters that other Village employees have nine holidays and three personal days via the Village Codified Ordinances. The Village's proposal is recommended on this issue.

Recommendation

The undersigned recommends the following language become part of the Collective Bargaining Agreement:

Section 1. The following days shall be observed as holidays by full-time Employees of the Police Department:

New Year's Day
Good Friday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Full-time police officers who are scheduled to work and work on the actual holiday will receive one and one half (1.5) times their regular rate of pay for hours worked in addition to eight (8) hours of regular holiday pay.

Section 2. Full-time police officers who are not scheduled to work on the actual holiday, but who are called out to work because of one or more emergencies, will receive one and a half pay for all hours worked.

Section 3. Any unexcused absence on the last scheduled day before a paid holiday or on the first scheduled day after a paid holiday shall disqualify an employee for holiday pay.

Issue No.6 Vacation

Discussion

The Union proposes vacation accrual more in line with the public sector. In the Union's exhibit 10, this Village has less vacation benefits than the other external comparable jurisdictions. Like the previous issue, the Village proposes to maintain the same vacation schedule and benefits it has for all of its full time employees.

There is a situation that occurs that is unfair to the bargaining unit member, the employer and the taxpayers. The parties bargained for a specific amount of vacation time to be used within the fiscal year. At the end of the fiscal year, if the employee had not used his/her vacation time, and the parties agree to the accrual of vacation, at some point in the future, that vacation time must be paid.

Usually at retirement age, the employer (i.e. the taxpayers) must pay that accrued amount to the retiring employee. More often than not, either the taxpayers or the employee or both are treated unfairly.

Recommendation

The undersigned recommends the following language become part of the Collective Bargaining Agreement:

Section 1. Accrual. Full-time employees are entitled to vacation leave after one (1) year of continuous full-time service with the Employer. The amount of vacation leave to

which an employee is entitled is based upon length of continuous full-time service with the Employer as follows:

<u>Years of Service</u>	<u>Vacation</u>
After the completion of 1 year	1 week, 5 working days or 40 hours
After the completion of 2 years, until the completion of 10 years	2 weeks, 10 working days or 80 hours
After the completion of 10 years, until the completion of 20 years	3 weeks, 15 working days or 120 hours
After the completion of 20 years	4 weeks, 20 working days or 160 hours

Section 2. All vacation time must be used within the anniversary year in which it is granted. No unused vacation time will be permitted to carry-over into a new anniversary year.

Section 3. Any full-time employee who is entitled to vacation time and does not use the vacation time, for any reason, shall be paid for all unused vacation time on or before the end of his/her anniversary year.

Section 4. Vacations shall be scheduled in accordance with the workload requirements of the Employer and the Employer reserves the right to deny vacation requests if workload requirements so mandate.

Section 5. New employees shall not be entitled to vacation service credit or prior service credit for tenure with the state or any other political subdivision of the State of Ohio.

Section 6. Payment upon retirement. Employees who elect to retire shall be paid a lump sum of the vacation days accrued during the last year of service will shall be equal to an equation of:

$$\frac{\text{The number of days into the retiring anniversary year}}{365} \times \text{The time of vacation owed if the retiring Employee finishes the year}$$

Issue No.7 Sick Leave

The parties settled this issue before fact-finding.

Issue No.8 Injury Leave

The parties settled this issue before fact-finding.

Issue No.9 Uniform Allowance

The parties settled this issue before fact-finding.

Issue No.10 Duration

Discussion

The Village proposes a three year agreement, beginning October 1, 2013. The Village reasons that since this is a new agreement, “there is no need to have any retroactive provisions.”

The Union states that the Village delayed the process.

The Union states that notice was given to the Village in November of 2012 that a Union was formed and a Collective Bargaining Agreement was requested by the Union.

This is a new contract. Both representatives have presented well-reasoned presentations on behalf of the respective parties. Several of the issues were resolved before the fact-finding conference.

Unless retroactivity is allowed, the time available for negotiations would be compromised. Union representatives would ask for early arbitration dates. If retroactivity was not permitted, “stalling” would be a tactic used by management.

Permitting retroactivity allows the parties to fully discuss the issues with the hope of reaching an agreement and if an agreement cannot be met, to set the hearing date when both parties will appear well prepared.

Recommendation

The undersigned recommends the following language become part of the Collective Bargaining Agreement:

Section 1. This Agreement shall be effective January 1, 2013, and shall remain in full force and effect through December 31, 2015.

Section 2. Any amendments to this Agreement, in order to be binding on the Parties hereto, shall be written, signed by the Parties and attached to an original, executed copy.

Section 3. The Parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter and that the understanding and Agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Issue No.11 Field Training Officer's Pay

Discussion

The Union proposes a \$1.00 per hour supplement for any time spent by the single bargaining unit employee training other police officers. The Village does not agree that this supplemental pay is warranted.

This unit is not part of a large police department like Cleveland. In this situation, the bargaining unit member must do different and many jobs during the shift. This training is probably done with one or two "student" police officers. This type of pay differential is not warranted here.

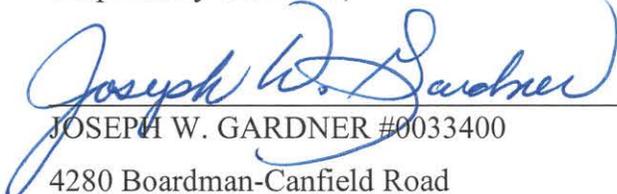
Recommendation

The undersigned recommends that the \$1.00/hour pay supplement for training other officers should not be in the Collective Bargaining Agreement.

Issue No.12 Hours of Work and Scheduling

The parties settled this issue before fact-finding.

Respectfully submitted,



JOSEPH W. GARDNER #0033400

4280 Boardman-Canfield Road

Canfield, Ohio 44406

Phone: (330) 533-1118

Fax: (330) 533-1025

Fact-Finder

CERTIFICATION

I hereby certify that on Wednesday, September 25, 2013, a copy of the foregoing Fact Finder's Report was sent via e-mail or regular mail to the following:

Representative for the Union:

KEVIN POWERS

10147 Royalton Road, Suite J

PO Box 338003

North Royalton, OH 44133

kpowersopba@sbcglobal.net

Representative for the Employer:

ROBIN L. BELL

Clemans, Nelson & Associates

2351 South Arlington Road, Suite A

Akron, OH 44319-1907

rbell@clemansnelson.com

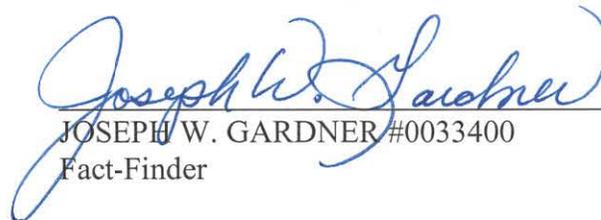
Bureau of Mediation:

EDWARD E. TURNER

Administrator, Bureau of Mediation

65 East State St., 12th Floor

Columbus, Ohio 43215-4213



JOSEPH W. GARDNER #0033400
Fact-Finder