

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
August 11, 2014

In the Matter of:)	
)	
Ohio Patrolmen's Benevolent)	
Association)	
)	SERB Case No.
)	14-MED-01-0041
vs.)	
)	
The Austintown Board of Trustees)	
)	
)	

APPEARANCES

For the Union:

Jeff Perry, Bargaining Representative for the OPBA
Jessica Pickard, OPBA Bargaining Unit Representative
Frank Yacucci, OPBA Bargaining Unit Representative

For the Austintown Board of Trustees:

Robin Bell, Clemans, Nelson and Associates; Attorney for the Township
Mike Dockry, Austintown Township Administrator

Fact Finder: Dennis M. Byrne

Background

This fact-finding involves the members of the Austintown Township Dispatchers represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union) and the Austintown Township Board of Trustees (Township/Employer). There are eight (8) members of the Union. Prior to the Fact Finding Hearing, the parties held a number of negotiating sessions, but were unable to come to an agreement, and there are seven Articles of the Parties' Labor agreement encompassing eleven issues still on the table. The Articles are: 1) Article 17, Compensation including Section 1 wages; Section 5, Lead Dispatcher/Working Supervisor; Section 7 (New) mid-term bargaining, Section 8 (New) Union Representative Pay; Section 9 (New) Senior Dispatcher Pay; and Section 10 (New) Signing Bonus. 2) Article 18, PERS Pickup. 3) Article 20 Out of Classification Pay. 4) Article 24, Sick and Vacation leave Conversion Plan. 5) Article 24, Insurance; Section 7, Insurance Opt-Out. 6) Article 32, Holidays/Personal Leave. 7) Bereavement Leave.

Despite their efforts, the parties were unable to reach an agreement on these issues and scheduled a Fact Finding Hearing. Before the start of the Hearing, the Fact Finder attempted to mediate the dispute, and the parties did make some progress toward an overall settlement, but they were unable to reach a final agreement. The Fact Finding was held on July 11, 2014 at the Austintown Township Administration Building. The mediation effort started at 10:00 A.M., and the formal Hearing began at 2:00 P.M and ended at approximately 3:30 P. M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria 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.

Introduction:

The genesis of the parties' disagreement is the Union's firm belief that the Austintown Dispatchers are underpaid. The Union negotiating team made demands on almost all of the economic items in the contract in an attempt to increase the take-home pay of the membership and the Union made demands on almost all economic clauses found in the contract. Almost all of these demands were rejected by the Township. The Township's position was based on a belief that the evidence proved that the Dispatchers were not underpaid when compared to other individuals performing similar duties.

There was a second disagreement that manifested itself in the parties' discussions. Currently, the contract's insurance language contains a provision that states that any premium increases will be split 50%-50% between the parties. The Union believes that this uncapped liability is unreasonable. That is, the Union believes that its membership faces a situation where it may face increasingly large premium contributions in the coming years. The Union argued that SERB data proves that other public sector employees do not pay as much for insurance as the Austintown employees. Therefore,

the Union argues that the current contract language will cause increasing problems for its membership in the coming years. Consequently, the Union is proposing language that it believes will work to the benefit of all employees, union and nonunion, in Austintown. The Township disagrees with the Union's analysis.

Finally, these negotiations take place against a background of the Great Recession and the just expired agreement. The Township went through the same financial storm that engulfed the nation and the state over the last five to ten years. The Union testified that its membership made concessions over the last few years because of Township's financial problems. For example, the base wage was frozen over the life of the just expired contract. However, the situation has changed and the Township's financial outlook is much brighter. The Union believes that the Township's current financial condition means that it can easily fund the Union's demands and that the Township should meet these demands.

The Township does not dispute the fact that its financial condition has improved. But, the Township argues that its finances are not nearly as robust as the Union believes. The Township pointed out that two of its main income streams had dried up. That is, the State's local government funding has been drastically reduced. In addition, the inheritance tax has been abolished. The Trustees contend that Austintown is similar to all other local governments that must find new revenues sources to offset the fall in State aid. Consequently, the Township argues that it would be fiscally irresponsible for it to meet the Union's demands. The Township argued that it must control expenditures and at the same time it finds new sources of revenue.

The Union countered this argument with testimony about the Racino that is located in Austintown. The Union argues that the Township has a new revenue stream and that its financial condition has improved to the point that it can and should make its members whole for the concessions that were necessary over the last few contracts. It should be noted at this point that the Township never claimed that it had an inability to meet the Union's demands, i.e., an inability to pay. Rather, the Township believes that its offer to the dispatch unit is reasonable. Therefore, the Township has an unwillingness to meet the Union's demands.

There is one other unique aspect to these negotiations. The Township has a number of organized bargaining units, and the Teamsters represent most of these units. The traditional public sector safety forces unions represent the public safety forces. That is, the firefighters are represented by the IAFF, and the FOP and the OPBA represent the police. This dichotomy creates problems when considering internal comparability. The Teamsters units have different contract language than the public safety forces on many issues. Therefore, it is possible to find different contract language (benefits) between different bargaining units within Austintown. In general, the Fact Finder believes IAFF and FOP contracts are the applicable internal comparables for the dispatchers when discussing wages and other issues unique to safety forces. When discussing issues that cross jurisdictional bounds, e.g., health insurance, number of holidays, sick leave and vacation accrual, etc., then the internal comparable is all township employees and bargaining units.

Issue: Article 17 (3) – Wages

Union Position: The Union demands a two and one-half (2 ½%) percent wage increase in each year of the proposed contract. In addition, the Union demands an annual (signing) bonus of seven hundred and fifty (\$750.00) dollars.

Township Position: The Township is offering one and one quarter (1¼%) percent in the first year of the new contract, and one percent (1.0%) percent in the second and third years of the agreement. The Township also rejects the Union’s demand for a bonus payment.

Discussion: The parties presented evidence from comparable jurisdictions in support of their respective positions. The Union presented evidence from Boardman, Canfield, and Warren. The Township presented data from Boardman, Beaver, and Perry Township. The only jurisdiction that is on both lists is Boardman. According to the Township’s data, the Austintown Dispatchers are paid more than the average wage paid to other comparable dispatch units. The only jurisdiction that pays its dispatchers more is Boardman. According to the Union’s data, the Austintown dispatchers make significantly less than other comparable dispatchers. Both parties base their positions on their respective comparables data, and both objected to the inclusion of some jurisdictions on the other’s list.

The Fact Finder notes that there are area wide dispatcher services in the Mahoning Valley and that fact probably explains the small number of comparable jurisdictions on both lists. The Fact Finder finds that Beaver Township on the Employer’s list is not comparable to Austintown. It is true that both jurisdictions are townships located in Mahoning County, but they have different demographics and

markedly median family income. In the same vein, the Fact Finder also finds that Canfield on the Union's list is not really comparable to Austintown. Canfield's population is 7,515 compared to Austintown's population of 36,700. In addition, Canfield has a median family income of over \$71,000.00 compared to Austintown's median family income of \$57,000.00.

Consequently, the Fact Finder finds that Boardman, Warren, and Perry are comparable to Austintown. Using these three jurisdictions as comparables, shows that Austintown pays a top wage of \$19.66 and that the comparable jurisdictions have an average wage of \$19.44. Consequently the data, such as it is, does not show that that the Austintown dispatchers are paid less than dispatchers in surrounding comparable jurisdictions.¹ It also must be noted that the data do not show that the Austintown dispatchers are paid significantly more than other comparable dispatchers.

The Union also presented evidence on the continuing growth of Austintown. There is significant new business activity including the Racino and the ongoing shale drilling in the area. The Township pointed out that it did not benefit from the actual drilling operations, the Union contends that the spending on lodging, entertainment, etc., will increase and that this will generate income and employment in Austintown. The Employer believes that any impact will be minimal. Regardless of the overall impact, the Fact Finder believes that the Racino will have a somewhat positive impact on the local economy. The Union also pointed out that the call volume was rising and that the

¹ The data for the hourly salary of a Warren dispatcher come from State Trooper.com Warren Police Dispatch. The data show that the highest rate for a dispatcher is \$19.00 per hour. The average cited above uses this number for the Warren dispatcher top rate.

dispatchers were doing more work. The call volume should continue to increase as the local and state economies continue to strengthen.

The parties also submitted data from SERB on wage settlements throughout Ohio and the surrounding area. The data show that the wage increases negotiated for Township workers rose by one-half (1/2%) percent from 2012 to 2013. For police departments the average raise in 2012 was just over one (1.01%) percent rising to approximately one and seven-tenths (1.66%) percent in 2013. There is no data for 2014 settlements. These data show that the public employers are beginning to pay their employees more as the economic outlook brightens.

Given the fact that the Austintown dispatchers received no base rate increases during the term of the last contract, and in light of the fact that the Township's economic situation is improving, the Fact Finder believes that the Union has proven that its membership should be paid more than the Township is offering.²

Finding of Fact: The Union proved that its membership deserved a wage increase in excess of the Township's offer when all of the evidence was considered.

Issue: Article 17 (10) Signing Bonus

Union Position: The Union is demanding a seven hundred and fifty (\$750.00) dollar signing bonus in each year of the prospective contract.

Township Position: The Township rejects the Union's demand.

Discussion: A signing bonus is usually given in lieu of a wage increase. It is a way to compensate employees without having the payment continue into perpetuity.

² The Union membership did receive lump-sum payments over the course of the preceding years, but they did not receive a general base rate increase.

Consequently, it is less valuable to the employees that a base rate increase. Because the Union is adamant that its membership is underpaid, it is demanding a bonus payment on top of a base rate increase. The Union also pointed out that at least one of the Teamster Units was receiving a bonus. The Township countered this argument by stating that the payment in question was an equity adjustment for a specific unit.

Regardless, the data discussed above does not show that the dispatchers are poorly paid when compared to other similarly situated employees. Consequently, the Fact Finder does not believe that the Union proved that there is a need for a bonus payment in the prospective contract.

Finding of Fact: The Union did not prove that there was any reason to include a bonus payment in the prospective contract.

Suggested Language: For each year of the prospective contract, the wage rates shall be adjusted by two and one-quarter (2 ¼%) percent in 2014; two and one-half (2 ½%) percent in 2015, and two and one-half (2 ½%) percent in 2016.

Note: The wording of Article 17 (10) concerns the lump sum payments and should be deleted from the contract.

Issue: Article 17(5) – Lead Dispatcher/Supervisor

Union Position: The Union is demanding a one (1.0%) percent yearly increase for the Lead Supervisor.

Township Position: The Township rejects the Union's demand.

Discussion: The Union is equating the Lead Dispatcher position to the supervisory positions in the Police Department. According to the Union's analysis the lead dispatcher

is underpaid when compared to police supervisors. The Union testified that a police lieutenant is paid thirty one and six-tenths (31.6%) percent more than a patrol officer. A police sergeant is paid seventeen and six-tenths (17.6%) percent more than a patrol officer. The corresponding number for the lead dispatcher is fifteen (15.0%) percent.

In addition, the Union presented testimony from Frank Yaccuci, the lead dispatcher, about his duties. Yaccuci testified that his dispatch duties have increased significantly over the years. Moreover, he has also become the lead IT person in the department and he deals with all of the computer problems, updates, etc., that the IT department in any organization is responsible for. He also stated that he is expected to be on call 24/7. The Township did not present any testimony on this issue. The Fact Finder believes that the rank differential between the lead dispatcher and the dispatch staff should be at least the same as the difference between a police sergeant and a police patrolman. Therefore, the Fact Finder is recommending that the Lead Dispatcher wage rate should be adjusted to be seventeen and six-tenths (17.6%) percent over the top rate for a dispatcher.

According to any theory of compensation, an individual should be paid for the work that he/she actually performs. Moreover, that compensation should reflect the training and skill that is necessary to complete the job requirements. The record is clear that the Lead Dispatcher is not being compensated for some of his many contributions to the Department. In addition, Yaccuci also testified that he believed that he has saved the Township over a quarter of a million dollars over the years that he has performed the IT function. This totality of this testimony convinces the Fact Finder that the Yaccuci's wage should be adjusted in recognition of the fact that his job duties have changed.

The question is how to fairly compensate Yaccuci. An increase in his base rate is an obvious method of increasing his pay. However, if Yaccuci leaves his position with Austintown, then his replacement will be receiving payment for duties that he/she does not perform. Therefore, the Fact Finder is recommending that Yaccuci be paid a stipend. The second question is the amount of the stipend. According to the data presented by the parties, Yaccuci is paid fifteen (15.0%) more than the top rate of \$41,642.00. That is Yaccuci is paid approximately \$47,888.00. The Fact Finder is recommending a twenty-five hundred (\$2,500.00) dollar stipend to compensate Yacucci for his contributions to the IT functions in the Department. This works out to be approximately a five percent increase in his salary. If for some reason, the Township decides that it wishes to hire out the duties currently performed by Yaccuci then he will not be eligible for the stipend, and the payment will cease.

The Fact Finder recognizes that a five (5.0%) percent stipend is not a large percentage amount for a person with IT skills. However, there was no evidence given on the amount of time Yaccuci actually spends on his IT assignments. The example given in the Union's submission was for a five hundred (500) hour commitment. There was no testimony on whether five hundred (500) hours is a realistic number. That is, five hundred (500) hours would be approximately twenty-five (25.0%) of Yaccuci's time. If his IT duties amount to one-quarter of his workday, then the stipend should be higher. However, the Fact Finder is recommending a new payment, and future negotiations can fine-tune the amount of pay to the amount of effort expended.

Finding of Fact: The lead dispatcher pay rate should be seventeen and six-tenths (17.6%) percent higher than the top pay rate for a dispatcher. In addition, the current

Lead Dispatcher's job duties have increased to encompass the IT functions within the Department. In recognition of that fact the current Lead Dispatcher should receive a stipend of twenty-five hundred (\$2,500.00) dollars to compensate him for his extra duties.

Issue: Article 18 (1): PERS Pickup

Union Position: The current contract calls for a six (6.0%) percent PERS pickup. The Union demands that this amount be increased to ten (10.0%) percent over the life of the contract.

Township Position: The Township rejects the Union's demand and counters with current contract language.

Discussion: The Union uses an internal comparability argument to prove its case with respect to the PERS issue. That is, the Union claims that the Teamster's contracts with the Township contain a ten (10.0%) percent pickup. The Union believes that internal comparability (equity) demands that the dispatchers' contract should have the same benefit. The Township countered with two arguments. First, the Township's representative testified that the Teamster's PERS pickup language was the result of a series of quid pro quo arrangements in prior negotiations. Second, the testimony shows that the public safety units do not have the same benefits as the Teamster bargaining units. That is, there is no general internal comparability between the Teamster contracts and the public safety forces' contracts. Therefore, without a quid pro quo, the Township was unwilling to meet the Union's demand on this issue.

The Fact Finder does not believe that the Union proved that its position was warranted on this issue. The internal comparability argument is not persuasive on this issue. The record shows that the police contracts contain no pickup and the fire contract contains a six (6.0%) pickup. Therefore, the dispatchers are treated equitably when compared to other public safety forces.

Finding of Fact: The Union did not prove that internal comparability considerations proved the need for a full PERS pickup.

Suggested Language: Current Contract Language

Issue: Article 20 (1) Leads/TAC Officer

Union Position: The Union demands an increase in the Assistant TAC officer's pay to fifteen (15.0%) percent per hour worked from the current ten (10.0%) percent premium. In addition, the Union wishes to delete the phrase "for all hours worked in that capacity" from the contract.

Township Position: The Township rejected the Union's demand and countered with current contract language.

Discussion: The TAC officer is the person who works with confidential material while at his/her console. At the present time, Frank Yaccuci is the LEADS officer and the TAC Officer. Therefore, because the contract contains language against the pyramiding of pay, he does not get paid for occupying the TAC position. Furthermore, he is often busy or working on IT matters and is unavailable to serve as the TAC officer. Consequently, the position of Assistant TAC officer was created. Currently, the officer in this position

receives the ten (10%) percent premium pay specified for the TAC officer when the TAC officer is absent.

The Assistant TAC officer does not believe that he is adequately compensated because he is often acting as the TAC officer rather than the Assistant TAC officer. This is a difficult situation. The TAC officer does not have a complaint with the ten (10.0%) premium pay, but the Assistant TAC officer who is often acting as the TAC officer has a demand for more pay.

There are two questions involved in this issue. First, are the duties of the TAC officer adequately compensated with a ten (10.0%) percent pay increase? Second, how many hours does the Assistant TAC officer fill in for the TAC officer? The testimony at the hearing did not show that the ten (10.0%) percent pay premium was too low. However, the testimony did show that the person working as the TAC officer is also usually working at his console and is often performing multiple functions. That means that the Assistant TAC officer has to estimate the time he is working as a TAC officer rather than dispatching. The Fact Finder does not know if the estimation procedure is precise. The testimony at the hearing showed that the Assistant TAC officer turned time sheets for approximately six (6) hours per week. The Fact Finder believes that is a conservative number based on the testimony at the hearing. The Fact Finder believes that the actual number of hours worked as the TAC Officer may be greater than six (6). Therefore, the Fact Finder urges the parties to ensure that the Assistant TAC officer is paid for the number of hours actually worked.

The second part of the Union's demand is for the TAC Officer (meaning the Assistant TAC Officer in this case) to be paid a premium for all hours worked. This

demand is usually found when considering working out of classification language. It is standard that a police officer and/or dispatcher who is working out of classification is paid for the hours actually worked in the different classification. There was no testimony to prove there was a need to deviate from usual industrial practice on this issue.

Finding of Fact: The current TAC officer cannot be compensated for working in that capacity. The Assistant TAC officer receives the pay premium when he/she fills in for the TAC officer. The testimony at the hearing indicated that the number of hours worked as the TAC officer may be being incorrectly estimated. Consequently, before any change in pay is considered, the Assistant TAC officer should make sure that he is correctly calculating hours worked.

Suggested Language: Current contract language

Issue: Article 17 (New): Union Representative/OPBA Director Pay

Note: These were raised as separate issues but they are being discussed as one issue.

Union Position: The Union is demanding twenty-five (\$.25) cents per hour for the positions of Union Representative/OPBA Director.

Township Position: The Township rejects the Union's demand.

Discussion: The Union is demanding twenty-five (\$.25) cents per hour for two positions. This seems exorbitant for an eight (8) person unit. The Union testified that the Teamsters units had these as paid positions. The Township countered with the fact that no public safety unit had paid positions for these classifications.

The Union then argued that it was hard to find qualified individuals to do the work of the union representative and/or director and that fact worked to the detriment of

both the union and the Township. The Union believes that many day to day matters could be handled in house, but the problems getting someone to fill the bargaining representative and/or director's positions often leads to the OPBA representative becoming involved in many matters that would be better handled at the local level.

The Township iterated its position that no public safety unit had these as paid positions and that it did not see any reason for it to pay for union activity.

The Fact Finder understands the Union's position on this issue, but in light of the fact that no public safety unit has these as paid positions, this benefit would be copied by the other public safety units and the cost of this issue is much greater than it appears on the surface. Given all of the facts of this matter, the Fact Finder does not believe that the Union's suggested language should be added to the contract.

Finding of Fact: The Union did not prove its position on this matter.

Suggested Language: None

Issue: Article 17 (New) Senior Dispatcher Pay

Union Position: The Union is demanding that any dispatcher with more than fifteen years of service receive an extra five (5.0%) percent.

Township Position: The Township rejected the Union's demand.

Discussion: The Union made a number of arguments in support of its position. First, it argued that there was high turnover in all dispatch units and the title of Senior Dispatcher was an incentive to stay with the Communications Department. Second, the Union also testified that the Senior Dispatcher title was a low cost way to reward those dispatchers who showed loyalty to Austintown. Finally, the Union's submission proved that both

some Teamster Unit (clerical workers) and one public safety unit (police) already had a senior patrol title.

The Township argued that this was a new benefit and given the state of its finances that it would not be fiscally responsible to accede to the Union's demand. The Township also testified that while some bargaining units had language similar to the Union's demand, the benefit was not contained in most union contracts.

The Fact Finder has examined the contracts in question. The police contract, which is the pattern agreement in this situation, does have a senior patrolman designation. However, that contract limits the number of senior patrolmen to five individuals. Therefore, the Township's financial exposure is limited.

The Union's position on the turnover in dispatch departments is well documented. The pressure associated with the job, the hours required to man a twenty-four (24) hour a day operation, the workload, and the overall stress tend to lead to a high rate of turnover for dispatch departments. The Fact Finder believes that any incentive that keeps experienced dispatchers on the job is a benefit to the jurisdiction that employs them. In addition, the increased cost can be managed by limiting the number of dispatchers who receive the benefit.

In this instance there was no information presented on the age/service distribution of the labor force. The information presented to the Fact Finder does show that at least five (5) members of the dispatch staff have been on the job for a number of years. However, there was no information on the overall number of dispatchers that are at or approaching fifteen (15) years of continuous service.

Finding of Fact: The Union's proposal for a classification of senior dispatcher is a way to recognize long-term employees and reward them for years of loyal service. It also should help to reduce turnover in the Communications Department.

Suggested Language: Article 17 (new): A Dispatcher with fifteen (15) years of continuous service with the Austintown Township Communications Division shall be known as a Senior Dispatcher. At any time there shall only be two (2) Senior Dispatchers, so that the two (2) most senior will qualify in the event there are more than two (2) at any one time. There shall be no pyramiding of benefits associated with the Senior Dispatcher classification. Upon achieving the Senior Dispatcher rank, the base wage of the employee will be increased by five (5.0%) percent.

Issue: Article 32 – Holidays

Union Position: Add Christmas Eve day to the list of approved holidays.

Township Position: The Employer is opposed to the Union's demand.

Discussion: A number of other contracts between the Employer and its organized units have Christmas Eve day as a contract. The Employer also offered to add the day to the list of approved holidays as part of a package settlement offer. This is a situation where internal comparability between the Teamster units and the public safety units must be considered. It is difficult to see how some employees can be granted a holiday while other employees must work. The only way that could happen is for a mutually agreed upon quid pro quo. In this instance there was no discussion of a quid pro quo. Therefore, the Fact Finder believes that the Dispatchers should be treated the same as other Township employees with respect to this issue.

Finding of Fact: Current industrial practice in both the public and private sectors is that employees of a single employer have the same paid holidays.

Suggested Language: Christmas Eve day shall be added to the list of approved holidays found in Article 32.

Issue: Article 31: Bereavement Leave

Union Position: The Union wishes to increase the individuals covered by the bereavement language by adding step/half siblings, brother in law, and sister in law to language of paragraph Article 31. The Union also wishes to change paragraph 3 to include ant, uncle, nieces or nephews to the list of individuals covered by the bereavement clause.

Township Position: The Township rejects the Union's demand.

Discussion: This issue is somewhat more complex than it appears based on the parties' bargaining positions. Article 31 does not contain the usual assortment of individuals covered by the bereavement language. Rather, the definition of "Immediate Family" is found in the Sick Leave provision, Article 26 (3). The Union wishes to amend the list to include a number of other (extended) family members. The Union's rationale is that the American family is changing because of divorce, etc., and the definition of family in the contract should reflect the reality of present day relationships.

The Township's objection to the Union's proposal is directed at the use of bereavement leave as written in the contract. The current language allows an employee to take off three days for bereavement for a wide number of individuals without attending calling hours and/or the funeral. That is, if a relative that an employee has never seen

dies, the employee gets three (3) days off. The Township believes that this language is, at the very least, open to abuse. The Township did offer to allow the employee to use sick leave to attend the funeral of family members outside of the immediate family. The Township also testified that most other contracts contain some combination of bereavement leave and sick leave to cover all possible bereavement situations.

This ties into the Union's second demand on this issue. That is, the affected employee should be able to use sick leave for bereavement and that sick leave use should not affect the sick leave incentive plan found in the contract. The Township offered to add a MOU to the contract stating that the use of sick leave would be allowed to attend the funeral, etc. The Township is adamant that it does not want to increase the list of individuals that are covered by the language that allows an employee to have three (3) days off with no requirement to use the time for attending the funeral, etc.

The Fact Finder is unaware of many contracts that contain bereavement language that allows a person to take time off without attending a funeral. However, there is no real disagreement between the parties on the basics of the issue. The Union wishes to add extended family members to the list of individuals covered by the clause and the Township has offered to deal with the language in a MOU. The Fact Finder believes that this is a reasonable way to handle this dispute. However, the Fact Finder also believes that the entire article should be reworked to say exactly what it means. The definition of immediate family members covered by the language should be found in the article. Also the use of sick leave to attend the funeral of other, extended family members is standard contract language. The question of whether the use of sick leave will affect the attendance incentive should also be standard throughout the Township.

Therefore, the Fact Finder's recommendation is that the parties rework Article 31. The Fact Finder is not recommending a change in the substance of the provision, but a reworking of the Article to say what the parties agree to. This should include the definition of immediate family and a MOU dealing with the use of sick leave to for other, extended family members.

Finding of Fact: There is no real disagreement over sick leave. The parties should be able to reduce their agreement to reasonable contract language.

Suggested Language: To be worked out be the parties.

Note: The Fact Finder will retain jurisdiction over this article and will rewrite the Article if the parties are unable to come to a final agreement.

Issue: Article 23 (New): Sick Leave Conversion Plan

Union Position: The Union wants to rewrite the entire Article using the language found in The Trumbull County contracts as a guide. The Union plan would remove the cap on sick leave conversion.

Township Position: The Township countered with a plan that allows the employees the right to cash in eighty (80) hours of sick leave per year.

Discussion: The parties have an agreement in principle for a sick leave conversion plan. However, the details of the two parties' positions are markedly different. In effect, the Union wants the employees to be allowed to cash out one hundred and twenty (120) hours of sick leave per year with no cap on the total number of hours cashed out. The Township plan envisions a cash out of up to eighty (80) hours per year with the total, lifetime conversion is limited to fifty (50%) percent of up to sixteen hundred (1600)

hours or eight hundred (800) hours. Both plans require that the employee leave four hundred and eighty (480) hours in the sick leave bank, or at least six (6) times as many hours in the bank as are cashed out. For example, if a dispatcher wishes to cash out sixty (60) hours of sick leave, his/her bank must be at least three hundred and sixty (360) hours.

The major difference in the parties' positions is the cap on the total amount of sick leave converted. Currently, the employee can only cash out a maximum of eight hundred (800) hours either during his/her employment with Austintown or up retirement (separation). The Union plan removes the cap. The other difference is that the Union plan allows the employee to convert one hundred and twenty (120) hours and the Township plan allows the conversion of eighty (80) hours.

Article 23 of the current contract is labeled Attendance Incentive Program but the Article outlines a sick leave sell-back proposal. That language limits the employee to a sick leave conversion of up to two hundred and forty (240) hours. If the employee avails him/hers self of the language in Article 23, then he/she cannot convert unused sick leave at retirement.

Therefore, the language proposed by the Township is superior to the current plan. While it maintains the overall eight hundred hour (800) hour cap on sick leave conversion, it does allow the employee the ability to convert sick leave hours over time or if an emergency arises and the employee needs access a source of cash. Moreover, the plan has some benefit to the employees in terms of pension payments.

The Union's plan is superior from the employees' point of view. However, it increases the Township's unfunded liability for sick leave (essentially doubles the liability) at the signing of the contract.

The Fact Finder believes that the Township's suggested language benefits the employees. While the Township's suggested language is not what the Union desires, it is an improvement over the current contract language, and as such, it is acceptable. If the Union wishes to make further changes in the sick leave conversion language, future negotiations are the place to make further demands and tradeoffs.

Finding of Fact: The sick leave conversion plan put forth by the Township is superior from the employees' perspective when compared to current contract language.

Suggested Language:

Section 9. Annual Conversion of Sick Time: An employee may submit in writing no later than December 1 of each year a request to convert sick leave time to earnable salary. The principal of Last in First out applies. The sick leave time converted shall be that which is earned during the calendar year and not taken and shall be paid to the employee by January 30 of the following year. The maximum amount of converted sick leave that can be considered earnable salary under OPERS regulations is the amount the employee earns in the calendar year, less any amounts taken during the calendar year.

An employee may elect to convert up to a maximum of eighty (80) hours each year as long as the employee has an unused accumulated sick leave balance of four hundred and eighty (480) hours at the time the conversion takes place. If the employee wishes to convert less than eighty (80) hours of leave, he must have an unused accumulated sick leave balance equivalent to six (6) times the amount of sick leave he wishes to convert, e.g., to convert forty (40) hours, he must have a balance of two hundred and forty (240) hours at the time of conversion, etc.

No employee shall receive more through this annual conversion option than the employee would have received at retirement had the employee not elected to do a conversion prior to retirement. Any leave time converted under this provision shall be subtracted from the employee's eight hundred (800) hour maximum final payout of sick leave pursuant to Section 6.

Note: This language replaces Article 23 and that Article should be removed from the contract.

Issue: Article 33 (6) Vacation Cash Out

Union Position: The Union demands that the employee be allowed to cash out up to two hundred (200) vacation hours per year.

Township Position: The Township rejected the Union's demand. However, the Township modified its proposal during mediation with a counter offer of a forty (40) hour cash out.

Discussion: The vacation cash out provision is somewhat different from the sick leave cash out provision because once vacation is earned all hours must be paid to the employee. In the event of an employee's death or separation all accrued hours must be paid to the employee or his/her estate. Therefore, a cash out provision benefits both parties. The Township reduces an unfunded liability that must be paid to the employee at the end of his/her employment, and the employee is able to get cash for unwanted (unneeded) vacation hours. Ultimately, the parties disagreed on the number of hours that could be cashed out.

The Fact Finder believes that there is a partial agreement between the parties on this issue. That is, the parties do agree that the employees should be allowed to cash out some hours. However, because of the stress associated with dispatching, vacation is important and the employees need to take some time away from the job. Consequently, the Fact Finder believes that the employees should not be allowed to cash out all vacation hours.

Finding of Fact: There is a benefit to both parties if some vacation can be cashed out prior to an employee's final separation from his/her employment with the Township.

Suggested Language: Article 33 (6) Annual Conversion of Vacation Leave

An employee may submit in writing no later than December 1 of each year a request to convert to pay up to eighty (80) hours of vacation time. The principal of Last in First out applies. The vacation time converted shall be that which is earned during the calendar year and not taken and shall be paid to the employee be January 30 of the following year. The maximum amount of converted vacation time that can be considered earnable salary under OPERS regulations is the amount the employee earns in the calendar year, less any amounts taken during the calendar year. In order to participate in the conversion program, the employee must use at least forty (40) hours of vacation leave per year.

Note: There were other language changes agreed to in Sections 3 and 5 that are incorporated into the Fact Finder's Recommendation.

Issue: Article 24: Insurance

Union Demand: The Union is demanding a change in the current language that mandates that all insurance premium increases by split 50% - 50% by the parties.

Township Position: The Township countered with current contract language.

Discussion: The parties' current contract requires that after certain premiums for coverage are reached, that any further premium increases are to be evenly split by the parties. The current premiums for insurance are listed in the contract for the Employee, an Employee with children, an Employee and spouse, or a family plan. In addition, the parties both testified that the Township belongs to an insurance consortium that has negotiated insurance premiums are fixed through 2015.

The problem is that the Union believes that 1) its membership is already paying more for insurance than other public-sector employees, and 2) premiums are sure to rise in the future. In addition, the Affordable Care Act has added uncertainty to the health

insurance market. The Union contends that the language in question was negotiated into the contract during the 2011 round of negotiations when the Township faced serious financial problems. The Union argues that because the Township's finances have rebounded and the future looks bright, that the 2011 concession is no longer needed. As a quid pro quo the Union is offering to change its current premium share to fifteen (15%) percent from ten (10%) percent. That is, current and future premiums will be split eighty-five (85%) percent to the Township and fifteen (15%) percent to the employees.

The Township disagrees with the Union's analysis. The Township pointed out that the contract contains language for a health insurance committee made up of all stakeholders in the Township's insurance plan. This Committee is charged with making recommendations about all facets of the health insurance plan including cost., and the current plan mandates that all other employees pay the same fifty-fifty split. The Township also stated that the consortium will help to hold down premium increases. However, the Township's main argument is that internal comparability means that all employees should pay the same amount for health insurance.

The Union presented evidence in support of its position. It introduced SERB's Annual Cost of Health Insurance Survey. The Survey shows that Austintown employees pay more for insurance than other Townships of similar size.³ Currently, the Austintown employees pay ten (10%) percent of the premium. This is somewhat more than other public employees working in large townships pay for insurance. However, it must also be pointed out that the Warren/Youngstown area employees pay less for insurance than

³ The sample size of large Townships is 12. This sample size is not abnormally small, however it is a self-reported (selected) sample. Consequently, the data must be used with some caution.

any other area of the State, so that comparison may be skewed. Moreover, without information about the individual plan designs, it is hard to make informed judgments about the cost of services provided. That is, better plans cost more, and without knowing what the other Township plans cover; it is hard to understand exactly how these plans compare to the Austintown insurance plan.⁴

The Fact Finder has carefully studied all of the information provided by the parties. He believes that there is some basis for finding that the parties' current language with regard to the premium split is somewhat high compared to other similarly situated employees. However, there are other factors that must be considered. First, there is an insurance committee that is charged with the insurance plan design. This group will try to keep the insurance affordable for all Austintown employees. Also, the Township is a member of an insurance consortium that negotiates with insurers for the best rates for the selected coverage.

However, the main factor that must be considered in this case is internal comparability. No public jurisdiction that the Fact Finder is aware of has more than one insurance program. This means that everyone in Austintown pays the same amount for insurance. If the Union's position is accepted, then the dispatchers will pay a different amount for insurance than all other employees. Without some overwhelming evidence that proves either a) that the dispatchers have a significantly different need for insurance than other employees, b) that for some reason the dispatchers are being unfairly treated when compared to other employees, or c) there is a quid pro quo that necessitates that the dispatchers be treated differently than other employees, the Fact Finder cannot

⁴ This is not meant to be a criticism of the SERB Report. Rather, it is a common problem with using self-reported survey data.

recommend treated one group of employees differently than all other Township employees.

In this context it must also be noted that the Township insurance committee will examine the insurance plan design and make recommendations. If the committee finds that the cost of insurance is too high, then it will make recommendations about ways to reduce the cost. This is a Township wide concern that should not be attacked in a piecemeal fashion.

Finding of Fact: The Union did not prove that it should be treated differently than all other employees with regard to insurance coverage.

Suggested Language: Current Contract Language

Issue: Article 24: Insurance – Opt Out Language

Union Position: The Union is demanding a doubling of the insurance opt-out payment language found in the contract.

Township Position: The Township rejects the Union's demand and counters with current contract language.

Discussion: All insurance plans have an opt-out provision. This allows an employee who has access to insurance to decide not to be covered by his/her employer's plan. The usual reason for a person to opt-out of an employer plan is that the employee has a spouse who can provide insurance. The Fact Finder is unaware of any plan that allows a person with no access to insurance to opt-out of an employer's plan. Over time opting out of a plan has become less prevalent because most employers are trying to insure that they do not pay for a spouse who has access to insurance from a different employer (source).

On the other hand, there is a real benefit to an employer when an employee opts out of the employer's plan. In this case, the monthly premium for a single employee is four hundred and twenty-two (\$422.00) dollars. The opt-out payment is one hundred (\$100.00) dollars. The Union wants to double this to two hundred (\$200.00) dollars. The Township believes that an increase of this magnitude is unwarranted. However, if the marginal increase led to a significant increase in the number of individuals opting out of the Austintown plan, then the Township would benefit.

The only time an increase in an opt-out payment does not benefit an employer is when the only individuals that it only affects individuals who have already opted out of the employer's plan. In that case, there is an increase in cost with no corresponding benefit. However, there is nothing in the record about the number, if any, dispatchers who have opted out of the Township's insurance plan.

Therefore, given the fact that there are fewer individuals who benefit from opt-out language, and without any information on the number of individuals who are potentially affected, the Fact Finder does not believe that Union conclusively proved that there is a need for an increase in the payment. At the same time, there probably is no real added cost because very few, if any, dispatchers will choose to opt-out of the Township's plan. Consequently, the Fact Finder is recommending a fifty (\$50.00) dollar increase in the opt-out payment.

Finding of Fact: An increase in the insurance opt-out payment benefits the Employer as well as the Employees.

Suggested Language: Article 24 (7):

Section 7: Opt-Out: ... The employee is eligible to receive One hundred and fifty (\$150.00) dollars per month, minus taxes, to be paid bi-weekly. ...

All other articles tentatively agree to by the parties are included in the Fact Finder's Recommendations by reference.

Signed this 11th day of August at Munroe Falls, Ohio

/Dennis Byrne/

Dennis M. Byrne, Fact Finder