

Background

The fact-finding involves the City of Girard (Employer/City) and the full time Police Patrolmen and Dispatchers in the Girard Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA/Union). The parties held two negotiating sessions in an attempt to find mutually agreeable language for a successor agreement for their contract that expired on December 31, 2015. In spite of their efforts, the parties were unable to reach a final agreement; and eight (8) issues remain on the table. The open issues are: 1) Article 23: Scheduling, 2) Article 24: Overtime/Call in pay; 3) Article 25: Compensation-Sections 1 and 6; 4) Article 27: Uniform Allowance; 5) Article 28: Medical Insurance; 6) Article 30: Holidays; 7) Article 42: Minimum Manning and 8) Article 43: Training.

Since the parties were unable to reach an agreement on the issues, they scheduled a Fact Finding Hearing. The Hearing commenced at 1:00 P.M. on Wednesday April 22, 2015, at the Sidney City building. The hearing ended at approximately 3:30 P. M.

Prior to the hearing, the Fact Finder attempted to mediate a settlement, and that effort was partially successful. The Parties were able to reach agreement on the Holiday, Minimum Manning, and Training Articles. The Parties were also able to fully discuss their respective positions on the other outstanding issues; and after the hearing but before the issuance of the Fact Finder's Report, the Parties contacted the Fact Finder and stated that they were able to tentatively agree on the Overtime/Call in Pay, Compensation, Uniform Allowance, and Medical Insurance Articles. Therefore, the only open issue is the Scheduling Article.

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 major disagreement between the parties was over the City's financial condition. The Union believes that the City has the ability to fund its demands. In addition, the Union pointed out that the City did not claim that it had an "Inability to Pay" for wage and benefit increases. The City agreed that it had emerged from a Financial Emergency situation in 2012, but it stated that it had a negative general fund balance at the end of 2015. Therefore, the City argued that its financial condition did not allow it to meet the Union's demands. The City stated that it wished it could afford to pay all of its employees more, but that its financial situation precluded any across the board wage and benefit increments. It was against this backdrop that the parties were able to close the gap in their positions on most of the outstanding issues.

The remaining issue on the table is the scheduling issue. This is not related to the City's finances per se, but it does relate to the overall working of the Police Department.

The City demands that the Chief be given more latitude to set the patrolmen's schedules than the current contract allows. The Union desires to maintain the current scheduling practice. The Union pointed out that the current scheduling practice was negotiated into the contract during prior negotiations because its members did not like the rotating scheduling pattern that the City is demanding. The issue will be discussed below.

Issue: Article 23 – Scheduling

City Position: The City demands that the Chief have the ability to schedule the officers in the way that he believes will be of the most benefit to the Department, i.e., a rotating schedule.

Union Position: The Union counters with current contract language, i.e. shift bidding.

Discussion: The language in question reads:

Section 1. Scheduling/Shift Bidding. The City and the Union agree that the City shall establish and post the available shifts for bid by bargaining unit members. Every six (6) months employees will bid by seniority within each classification for a permanent schedule of hours worked and days off.

Section 2. Operational Need Adjustments. Notwithstanding the bidding procedure, the schedule shall be subject to the approval of the Chief of Police which shall not be withheld unreasonably. Different methods of scheduling may be implemented at any time upon agreement of the union and management.

The City's proposed language would add the phrase *upon a fourteen (14) day notice prior to the posting of the available shifts for bid.* The words "at any time upon agreement of the union and management would be stricken from the contract."

The new language proposed by the Employer would read:

Section 2: Scheduling/Shift Bidding. Notwithstanding the bidding procedure, the schedule shall be subject to the approval of the Chief of Police which shall not be withheld unreasonably. Different methods of scheduling may be implemented *upon a fourteen (14) day notice prior to the posting of the available shifts for bid.*

There was a discussion of this issue and the Employer stated that the amount of overtime caused by the current schedule was not sustainable. The Employer believes that overtime must be controlled. The Union refuted this charge by pointing out that the Street Crimes Unit caused much of the Department's overtime use. The Union believes that a change in the scheduling pattern will not affect the amount of overtime charged to the Street Crimes Unit.¹

The impact of that language would be that the Chief could change the officer's schedule at any time with fourteen (14) day notice; the officers (union) would have to accept the new schedule. The Union adamantly rejects this demand. The Union argued that the Department had a rotating schedule in the past, and that the patrolmen bargained to change that schedule to the current six month bid system. According to the patrolmen, the current schedule works fine.

The Employer's Pre Hearing Submission succinctly outlines the Department's arguments. The Employer claims that the rotating shift proposed by Management would:

1. Put an extra officer on the road for every shift.
2. Increase performance and productivity while providing additional backup and support.
3. Provide for consistency of supervision and officer development.
4. Provide for equality and fairness in scheduling.
5. Help eliminate complacency and boredom, which might lead to decreased sick leave usage.

The Union contested each of these items, and each will be discussed below.

¹ The City also offered a \$.75 rate increase to the officers to be paid for from savings from the new schedule. The Officers rejected that offer.

The Employer's first reason for its demand is that the rotating schedule will add an extra officer per shift. This officer will be the School Resource Officer for the short term (summer months), and then the Employer testified that it would hire a new full time patrolman. The Union disagreed with this scenario, and the Employer admitted that it believed that the rotating schedule would save the Department enough money so that it could hire a new officer with no increase in its budget. Given the City's financial condition, the Union argued that there is little chance that the Department will be able to hire new personnel in the near future. In addition, the Union contends that overtime use is not directly linked to the shift scheduling process.

The second rationale for the rotating shift is that productivity would increase. This is actually the same as the Employer's contention that a rotating shift will eliminate boredom and complacency. The Employer, especially the Chief, believes that the rotating shift is the best way to schedule. The patrolmen disagree. The argument that productivity would increase devolves into an argument that a scheduling system that the patrolmen negotiated out of their agreement and do not want to be (re)implemented will lead to higher productivity and less sick time off. The Fact Finder does not believe that there is any reason under the circumstances described above to expect productivity to increase. It may, but with the patrolmen's desire to maintain the current scheduling language, there is no logical reason to expect a productivity increase.

The Employer's third reason for demanding a rotating shift is that it will lead to consistency of supervision and officer development. These are legitimate concerns. The testimony at the hearing was that the Supervisors have agreed to move to a rotating schedule; and consequently, the patrolmen will have different supervisors during their

six-month bidding periods. However, there are also some benefits to this system because all members of the Department work with each other. The officer development argument is valid. New officers would have to work different shifts with different Supervisors and there may be some advantages to having less experienced officers working with the same supervisor. However, there was no evidence put into the record that the current system is not working.

Finally, the Employer argues that the rotating shift leads to equality and fairness in scheduling. This may be true in some senses. However, equality and fairness may mean different things to different individuals. In this case, the Employer's belief is that a rotating schedule leads to greater "equality and fairness" for the patrolmen. For example, no patrolman will have to work the third shift everyday. However, the patrolmen's bargaining position undercuts that argument. That is, the patrolmen demand the current scheduling practice. The Employer wants to make the system fairer, but the individuals affected are satisfied with the status quo.

The result of all of the discussion is that the Fact Finder agrees that there are probably some benefits to the Department in having a rotating schedule. This finding must be weighed against the fact that there was no real evidence presented that the current scheduling pattern has caused any problems. There was testimony that sick leave use was higher than the Department believed was reasonable, and the Employer believes that there is a link between sick leave use and the current scheduling pattern. However, there was no evidence presented to support that contention.

Therefore, given the fact that the officers affected do not want a rotating schedule, and there was no real evidence proffered that the current schedule is unworkable, the Fact

Finder is not recommending the Employer's position on this issue. The Fact Finder understands that the Chief believes that a rotating schedule is the best way to schedule. However, without some *evidence* (emphasis added) that the current scheduling pattern is causing problems for the Department, the Fact Finder does not believe that the Employer proved that the current scheduling pattern should be changed in light of the patrolmen's desire to maintain the current bidding system.

Finding of Fact: The Employer did not prove that there was a need to change the current shift bidding language found in the contract.

Suggested Language: Current Contract Language.

Note: All other tentative agreements are included in this recommendation by reference.

Signed this 13th day of June 2016, at Munroe Falls, Ohio.

/Dennis Byrne/

Dennis M. Byrne, Fact Finder