

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO
FACT-FINDING REPORT

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MARCH 21, 1997

IN THE MATTER OF:

AUSTINTOWN FRATERNAL ORDER)
OF POLICE, LODGE NO. 126)
AND)
AUSTINTOWN TOWNSHIP TRUSTEES)

CASE NOS. 96-MED-12-1142
96-MED-12-1143

APPEARANCES

FOR THE UNION:

Dennis Haines, Representative
David Allen, Lieutenant
Bob Schaeffer, Detective Sergeant
Tom Collins, Police Officer
Dick Pacura, Police Officer
Melanie Viano, Police Officer

FOR THE EMPLOYER:

Michael Dockry, Representative
John Cannon, Chief of Police
Michael Kurish, Clerk

FACT-FINDER:

Joseph W. Gardner, # 0033400
Attorney-at-Law
4280 Boardman-Canfield Rd.
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INTRODUCTION

In February of 1997 the parties met with a mediator and conducted extensive mediation. Most of the time was spent on financial issues with primary focus on wages. The parties rescheduled and on March 7, 1997 the parties met for fact-finding. At the fact-finding conference, both sides introduced evidence in the form of expert witnesses, witnesses from the employer and from the bargaining unit, statistics, comparables and other documentary evidence. The parties further made arguments in support of their position statements.

Both at mediation and at fact-finding, the undersigned asked whether or not there was a claim on the part of the employer regarding "inability to pay". After a significant amount of time in mediation and further time in fact-finding regarding the issue of "inability to pay", the employer conceded that the employer was not claiming inability to pay, however, claimed that in meeting the demands of the union, different "priorities" would have to be made.

The undersigned finds that Austintown Township is a community in the population range of thirty (30) to forty (40) thousand people. There is moderate growth and moderate increase in property values.

After reviewing all of the financial evidence, it is found that Austintown Township is operating with a surplus with the general fund and further operating with a surplus in the police levy fund. It appears that the trustees, clerk and administrator have managed the township in a competent and professional manner.

One particular issue of interest has been a gift to the township of a building complex appraised at a little under Two Million Dollars (2,000,000.00). A request of the grantor of this gift was that this gift to be used for the park and recreational interests of the township. However, the intent of the grantor does not appear to be legally binding.

ISSUE NO. 1 FULL AGREEMENT

DISCUSSION

Both of the parties agree that all the terms and conditions of the former collective bargaining agreement, unless changed, shall remain in force and effect. Further, both parties agree that all monetary increases and benefits improvements are retroactive to January 1, 1997.

RECOMMENDATION

The following language shall be inserted into the contract:

All of the terms and conditions of the former Collective Bargaining Agreement shall remain the terms of the new Collective Bargaining Agreement except as changed or modified. All monetary increases and benefits improvements are retroactive to January 1, 1997.

ISSUE NO. 2

ARTICLE 15, PERFECT ATTENDANCE AND SICK LEAVE

DISCUSSION

The union desires to change the contract by deleting a perfect attendance bonus from the contract. Under this article, the employer seeks to require medical certification of an officer's fitness for duty after being off for three (3) consecutive days. The undersigned has reviewed all of the arguments of the employer and of the union and has reviewed all the appropriate contract sections. The undersigned finds no compelling reason to change the contract in any of these areas.

RECOMMENDATION

It is the recommendation that the undersigned that all the contract provisions under this issue remain the same.

ISSUE NO. 3

ACCIDENTAL UNIFORM LOSS PAYMENT

DISCUSSION

It has been the policy of the township for a significant period of time that the destruction or damaging of a uniform during an accident is paid by the township at the time of loss. The parties have agreed to insert this into the contract.

RECOMMENDATION

It is the recommendation that the following clause shall be inserted into the contract:

The township shall pay to repair or replace any loss or destruction of an employee's uniform at the time of the loss.

**ISSUE NO. 4
BUY-BACK OF ACCUMULATED TIME**

DISCUSSION

The union proposes to increase the amount of time that may be bought back to an amount of four hundred eighty (480) hours. There are certain caps on court time hours and for the first two hundred forty (240) hours the union proposes time off or Fifty Dollars (\$50.00) per court appearance at the officers' option. In response to the claim of the township of a "financial pinch" because of priorities that have to be made, the union is proposing that the township would have the option to provide time off or overtime after the two hundred forty (240) hours of accumulated time is reached. The township, according to the union proposal, would also be able to buy back up to two hundred forty (240) hours of accumulated time.

The use of accumulated time is considered a "necessary evil" by the undersigned when the public employer is unable, because of financial reasons, to meet its payroll. If an employee works overtime, than that employee should be paid the appropriate wage for the hours that employee worked.

The accumulation of overtime over a period of years requires the employer to become a "bank" and to pay an amount of money to the employee when the employee retires. While the employee who lawfully accumulates these hours is entitled to same, most political subdivisions do not plan properly for these types of withdraws on its general fund when these employees retire. It becomes the subject of litigation between long time loyal employees and their employer.

The much better alternative is to pay the employee when he or she works the hours and let the employee do with the money what he or she wishes.

RECOMMENDATION

It is the recommendation that the contract remain the same.

**ISSUE NO. 5
HEALTH INSURANCE**

DISCUSSION

After an extensive presentation regarding health insurance, the parties have agreed to the plan proposed by the employer and modified somewhat at the fact-finding hearing.

RECOMMENDATION

The health insurance shall be a PPO adding increased dental coverage of one hundred percent (100%) preventative maintenance and increasing from Seven Hundred Fifty Dollars (\$750.00) to One Thousand Dollars (\$1,000.00) the annual dental coverage plus adding a vision plan. The total limit shall be One Million Dollars (\$1,000,000.00). The drug card shall be 0/10 and the plan includes the dental and eye care as proposed by the representative from the Equitable Insurance Company. A written copy of said plan should be reviewed by both parties and shall be made a part of the contract.

ISSUE NO. 6 INJURED ON DUTY

DISCUSSION

The parties have agreed to the concept that the employee shall receive payment until he gets his first check from Worker's Compensation.

RECOMMENDATION

The contract shall provide that those officers injured on duty shall be paid until the officer receives his first check from Worker's Compensation.

ISSUE NO. 7 JURY DUTY

DISCUSSION

The parties have agreed to pay the employee, but the township may schedule the officer to day turn and require the officer to work if the officer is not in court. The officer shall earn full pay, however, the township shall be reimbursed the jury pay.

RECOMMENDATION

It is the recommendation that jury duty leave shall be in the contract and that the township may schedule the employee to work "day turn". The township may require the officer to work when the officer is not in court. During the time that the officer is on jury duty, the officer shall earn full pay. The township shall be reimbursed the jury pay.

**ISSUE NO. 8
MATERNITY LEAVE PROVISIONS**

DISCUSSION

The parties have agreed that the Family Medical Leave Act rights and coverage shall be included in this contract.

RECOMMENDATION

It is the recommendation that all provisions of the Family and Medical Leave Act shall become part of this contract as though written in the contract.

**ISSUE NO. 9
LIABILITY PROTECTION**

DISCUSSION

Both parties have agreed that the township will provide liability insurance and assume the risk of liability coverage for all its officers.

RECOMMENDATION

It is recommended that there should be language in the contract as follows:

The township shall procure liability insurance on behalf of all officers and the township shall assume all risks of liability of any officer not covered by the insurance purchased by the township for that purpose.

**ISSUE NO. 10
UNIFORM ALLOWANCE**

DISCUSSION

The union requests an increase in uniform allowance from Four Hundred Dollars (\$400.00) to Five Hundred Dollars (\$500.00) per year. The undersigned sees no compelling evidence to raise that rate.

RECOMMENDATION

It is recommended that the uniform allowance remain the same.

**ISSUE NO. 11
PERSONAL DAYS**

DISCUSSION

In the contract, the officers in the bargaining unit have no personal days. Under Article 15, Section 3 the employees have "emergency leave". The undersigned has reviewed the provision in the contract and has reviewed the changes that the employer wants made. The interpretation and the enforcement of "emergency leave" is a "misnomer" at best. The request of the union is not unreasonable, however, the two (2) days should not be used to supplement vacations or used to interfere with the scheduling of employees.

RECOMMENDATION

It is the recommendation that each employee shall receive two (2) personal days per year and those days may not be carried over to the next year if not used in that calendar year.

Personal days shall not be used as a supplement to or the extension of any scheduled holiday or vacation. Personal days shall not be cumulative and shall not be charged against sick leave. Notice of taking of a personal day shall be given by the employee to the Chief of Police not later than forty eight (48) hours in advance of the taking of the personal day. If the forty eight (48) hour notice is not given, a day taken off may be considered "personal day" upon recommendation of the Chief of Police with the final determination being made by the township administrator.

**ISSUE NO. 12
WAGES**

DISCUSSION

As expected, the vast majority of the time spent in mediation and in fact-finding dealt with wage rates and rank differential. Both sides presented compelling evidence and arguments regarding and supporting their respective positions. The undersigned is sensitive to the lawful authority of the trustees in paying of its employees. The trustees and the administration has done a competent and professional job in managing the affairs of the township. However, the employees in the Bargaining Unit are paid well below what other like employees are paid in similar communities throughout the State of Ohio. The police officers in Austintown Township are not paid as well as officers in similar communities throughout the State of Ohio. The officers in Austintown must deal with traffic offenses, vice, violent crime, such as robbery and murder, drug offenses and property offenses such as burglary and vandalism. The officers are forced to deal with crimes that are similar to big city situations and crimes that are found committed in bedroom communities.

After reviewing all of the evidence and with stating further, the township has not established "inability to pay" as a valid claim. While the trustees may be required to review their priorities, the officers are entitled to the wage rate increase that they have requested.

As to rank differential, the ranking officers have not "pushed" for the differential in order to come to an agreement with the entire union. The rank differential of the officers is well below the state and national average. Now appears to be the time that, from a historical basis and from a basis of comparables, these officers should be paid and adequate rank differential.

As a practical measure, rank differential is important in safety forces. Why should someone study and take the responsibility of becoming an officer when the additional pay is minimal. The attitude becomes that it is not worth the "headaches" unless the pay is commensurate to the increased duties. It is the recommendation of the undersigned that the rank differential proposed by the union be accepted.

RECOMMENDATION

It is recommended that the following language be placed in the contract and made a part thereof:

	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
0-1 Year	\$15.00	\$15.60	\$ 16.22
1-3 Years	15.83	16.46	17.12
Patrolman	16.66	17.33	18.02
Sr. Patrolman	17.49	18.20	18.93
Sergeant	19.24	20.02	20.82
Lieutenant	21.16	22.02	22.90

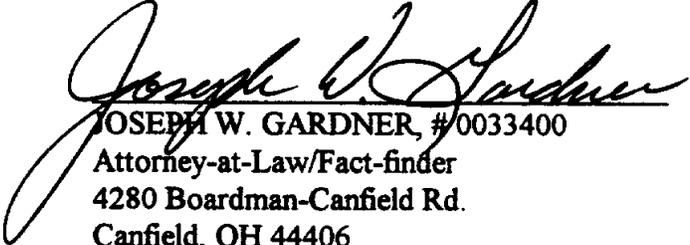
**ISSUE NO. 13
SIGNING BONUS**

DISCUSSION

In Article 7, Section 2 there is a signing bonus of Two Hundred Fifty Dollars (\$250.00). The employer, desires to delete this signing bonus. The undersigned finds no reason to do so.

RECOMMENDATION

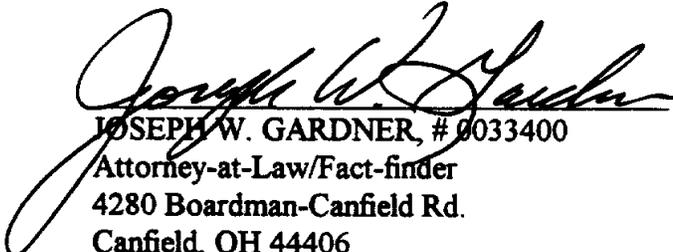
It is the recommendation that the signing bonus set forth in the contract remain the same.


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CERTIFICATION

A copy of the foregoing Fact-Finding Report was forwarded to Attorney Dennis Haines, Attorney for Austintown FOP, Lodge 126, Fourth Floor, National City Bank Building, P.O. Box 849, Youngstown, Ohio 44501 and Mr. Michael Dockry, Administrator, Austintown Township Trustees, 82 Ohltown Road, Austintown, Ohio 44515 via Overnight Mail on the 21st day of March, 1997.

A copy of the foregoing Fact-Finding Report was forwarded to Mr. G. Thomas Worley, State Employment Relations Board, 65 East State Street, Columbus, OH 43215-4213 via regular U.S. Mail on the 21st day of March, 1997.


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