

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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May 15, 2003  
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In the Matter of the Conciliation Between:

THE CITY OF SYLVANIA, OHIO	)	
	)	CONCILIATION AWARD
and	)	
	)	SERB Case No.02-MED-11-1186
FRATERNAL ORDER OF POLICE,	)	Police Officers
LODGE NO. 129	)	

APPEARANCES

For the City:

Michael J. Angelo, Esq.	Labor Counsel
Gerald Sobb	Chief of Police
George S. Eichenauer	Director of Personnel
James E. Moan	Director of Law

For the Union:

Joseph J. Allotta, Esq.	Counsel
Jamie L. Russell	Legal Assistant
Gregg A. Birr	Patrolman
Scott Kuebler	President, F.O.P. 129
Kevin Pooley	Patrolman

Conciliator:

Virginia Wallace-Curry

## BACKGROUND

The instant case involves the City of Sylvania, Ohio (the "City") and the Fraternal Order of Police, Lodge 129 (the "Union"). The bargaining unit consists of approximately twenty-four (24) full-time Police Officers below the rank of Sergeant.

The parties' collective bargaining agreement expired December 31, 2002. The parties began negotiations in October 2002 and bargained to impasse. A Fact-Finder was appointed and a Fact-Finding report was issued on December 17, 2002 by John S. Weisheit. There were two bargaining units, the Police Officers and the Telecommunicators, and three issues, Wages, Compensatory Time and Insurance, involved in the fact-finding. The Fact-Finding report was rejected by the Union, and an order for conciliation was issued on December 31, 2002. The parties continued to bargain in January and February 2003. As a result of these efforts, only one issue remains for conciliation, Article 29, Compensatory Time.

A conciliation hearing was held on April 22, 2003, before Virginia Wallace-Curry, Conciliator. In rendering a decision, the Conciliator is required to select one party's offer or the other without modification. Selection is based upon the criteria set forth in Section 4117.14(g)(7) of the Ohio Revised Code. They are:

- (a) Past collective bargaining agreement, if any between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit with those issues related to other public and private employee doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) 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 standard of public service;
- (d) the lawful authority of the public employer;

- (e) the stipulations of the parties;
- (f) such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in 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 in private employment.

## ISSUE

### ARTICLE 29 COMPENSATION TIME

#### Fact-Finders Recommendation

Section 4. An employee may request compensatory time off, as provided for in Section 3, provided it does not result in the payment of overtime or present a scheduling conflict or interfere with the orderly operation of the Division. **No employee shall be permitted to use more than sixteen hours (16) of compensatory time off in any pay period and shall not exceed one hundred (100) hours annually.** All requests will be submitted in writing, to his immediate supervisor who shall either approve or disapprove the request and if approved, will make the appropriate change to the work schedule. (Bold type is an addition to existing contract language.)

#### City's Proposal

The City proposes accepting the Fact-Finder's recommendations for Section 4 and proposes that the last sentence of Section 6 be changed to state that "Any compensatory time, regardless of how it was earned, that exceeds the maximum eight (80) hours an employee may accumulate will be taken in pay," as the parties had discussed during negotiations.

The City argues that the previous contract language on compensatory time did not restrict the number of compensatory hours that could be used in one month or pay period and did not restrict the annual use of compensatory time. This caused operations problems with scheduling

and keeping police officers on the street. The previous contract language allowed the situation to develop where a few employees took significant time off and were on the job only a few shifts some months. Employees can convert holidays (at time and one-half) into compensatory time without working an extra minute. Although presently the abuse of compensatory time is practiced by only a few employees, the situation has the potential to get worse.

The City argues that the expansive compensatory time provisions cause scheduling problems for sergeants. There are several reasons why an officer may be off duty. Compensatory time is one more situation which causes sergeants problems in covering shifts. The goal is to have the maximum number of Police Officers on the street. Less officers scheduled on a shift lessens the service to the public. Therefore, the City proposes limiting the number of compensatory hours an officer may take in one pay period to 16 hours and to limit the number of hours an officer may take annually to 100. Such a change will affect only four or five employees; will alleviate some scheduling problems; and put more police officers on the street.

The Union and the City had an opportunity to present evidence to the Fact-Finder for consideration. The Fact-Finder recommended limiting significantly the number of hours of Compensatory Time one may use in a year. The Union has provided no rationale why the Fact-Finders report was in error and should not be followed.

Proposed Contract Language:

Section 4. An employee may request compensatory time off, as provided for in Section 3, provided it does not result in the payment of overtime or present a scheduling conflict or interfere with the orderly operation of the Division. **No employee shall be permitted to use more than sixteen hours (16) of compensatory time off in any pay period and shall not exceed one hundred (100) hours annually.** All requests will be submitted in writing, to his immediate supervisor who shall either approve or disapprove the request and if approved, will make the appropriate change to the work schedule.

Section 6. An Employee may accumulate compensatory time as provided for in this Article but cannot accumulate more than eighty (80) hours at any one time regardless of how the compensatory time was earned. **Any compensatory time, regardless of how it was earned, that exceed the maximum eighty (80) hours an employee may accumulate will be taken in pay.**

(Bold type is an addition to existing contract language.)

### Union's Proposal

The Union rejects the recommendation of the Fact-Finder as too restrictive. Previously, employees had no restriction on the number of compensatory hours they could take per pay or per month and no limit on the number of hours they could use annually. There are only four employees who took large amounts of compensatory time in the past few years. Although the use of compensatory time did not negatively affect their productivity, the Union acknowledges the City's concern for having more Police Officers available for work and proposes some restrictions on compensatory time.

The Union proposes that employees be allowed to use only 40 hours of compensatory time per calendar month; that they be allowed to accumulate only 200 hours annually and use only 160 hours annually. This proposal is a major change in the contract language, significantly reducing the number of compensatory hours that an employee may take, which should ease the scheduling problems cited by the City.

The Union cites state-wide and area comparable data on compensatory time to show that its proposal is more restrictive than nearly all jurisdictions in all aspects. Most jurisdictions cited have a rolling tally for maximum accumulation of time with bank restrictions between 40 hours at any one time (with no hourly use restrictions) to 240 hours at any one time (with no hourly use restrictions). The lowest bank restrictions would allow an employee to use a maximum of 480

hours a year theoretically. All jurisdictions, including the City of Sylvania, have the restriction that the use of compensatory time cannot cause overtime at the time of scheduling. In addition, the City and the Union have agreed that compensatory time may be canceled with five days written notice for sick time or in the case of an emergency. All other jurisdictions cited may cancel compensatory time only in an emergency.

The City's concern that it must have even more drastic reductions in the use of compensatory time to prevent the problem from worsening is purely speculative. The trend is that the same employees are the prime users of compensatory time year after year. There is no evidence to support the concern that others will begin to use significant amounts of compensatory time in the future.

Proposed Contract Language:

Section 4. An employee may request compensatory time off, as provided for in **this Article**, provided it does not result in the payment of overtime or present a scheduling conflict or interfere with the orderly operation of the Division. **An employee shall be limited to use a maximum of forty (40) hours of compensatory time per calendar month.** All requests will be submitted in writing to his immediate supervisor who shall either approve or disapprove the request and if approved, will make the appropriate change to the work schedule.

Section 6. An Employee may accumulate compensatory time as provided for in this Article but cannot accumulate more than eighty (80) hours at any one time or **two hundred (200) hours annually, regardless of how it was earned. Any compensatory time, regardless of how it was earned, that exceeds the maximum eighty (80) hours at any one time or two hundred (200) hours annually an employee may accumulate shall be taken in pay. No employee shall be permitted to use more than one hundred and sixty (160) hours of compensatory time annually.**

Discussion and Decision

The Conciliator chooses the proposal of the Union. There is scant evidence or rationale

to choose the position of the Fact-Finder which is essentially the position of the City. The Fact-Finder offered no rationale for the positions in his report, beyond the note that he was privy to “particular concessions, counter offers, revision of positions and withdrawals offered ...during the mediation session” which the Conciliator did not hear. (Pg. 6) The Fact-Finder stated that “the issues at impasse are considered in [a] collective manner, [but] the recommendations are addressed separately.” (Id.) Therefore, because the compensatory time was considered as part of a package recommendation, and two of the three issues were resolved prior to conciliation, the Conciliator does not feel obliged to blindly follow the Fact-Finder’s recommendation when the issue is separated from the package and addressed on its own merits. The merits of the compensatory time issue must be evaluated on the evidence presented at the hearing.

On the merits, the compensatory time “problem” cited by the City will be adequately addressed by the less restrictive language proposed by the Union. The statistics show that there are only four or five employees who use significant amounts of compensatory time. Presumably, these are the scheduling nightmares described by the City. The major user of compensatory time used 214.5 hours in 2000, 250 hours in 2001 and 419 hours in 2002. That means that in 2002, that employee had approximately 10.5 weeks of time off in addition to his contractually allotted vacation time. Not all of that time was earned by overtime work. Some was conversion of holidays and some for training. The next highest user logged less than half the number of compensatory time hours taken, 198. The Union’s proposal of an annual 160 hour maximum would significantly limit highest users of compensatory time and ease the scheduling problem.

Furthermore, the Union’s proposal is more in line with the comparables submitted by the Union for the surrounding area and state-wide by similar population. The City did not submit

any comparables, mainly because the Union's position is even more restrictive than the comparables available.

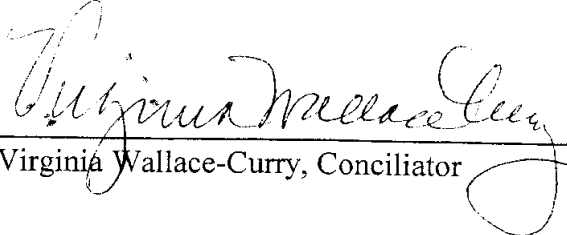
Therefore, because the City did not submit any compelling evidence as to why the Union's proposal would not alleviate the problems with the top users of compensatory time, and because the Union's position is the most restrictive of the comparables submitted and would significantly reduce the number of compensatory hours any one employee may use, from an all time high of 419 hours down to 160 hours, the Union's proposal is recommended.

New Contract Language for Article 29 - Compensatory Time

Section 4. An employee may request compensatory time off, as provided for in this Article, provided it does not result in the payment of overtime or present a scheduling conflict or interfere with the orderly operation of the Division. An employee shall be limited to use a maximum of forty (40) hours of compensatory time per calendar month. All requests will be submitted in writing to his immediate supervisor who shall either approve or disapprove the request and if approved, will make the appropriate change to the work schedule.

Section 6. An Employee may accumulate compensatory time as provided for in this Article but cannot accumulate more than eighty (80) hours at any one time or two hundred (200) hours annually, regardless of how it was earned. Any compensatory time, regardless of how it was earned, that exceeds the maximum eighty (80) hours at any one time or two hundred (200) hours annually an employee may accumulate shall be taken in pay. No employee shall be permitted to use more than one hundred and sixty (160) hours of compensatory time annually.

Cuyahoga County, Ohio  
May 15, 2003

  
Virginia Wallace-Curry, Conciliator




**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Conciliation Report for the City of Sylvania and the Fraternal Order of Police, Lodge 129 was sent to the parties and the State Employment Relations Board by regular U.S. Mail on this day, May 15, 2003. The Conciliation Report was served upon:

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