

**IN THE MATTER OF CONCILIATION**

2008 DEC 17 P 1:20

**BETWEEN**

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION**

**AND**

**THE CITY OF GIRARD**

**SERB CASE # <sup>02</sup>~~07~~-MED-10-1300**

**ADVOCATE FOR THE UNION:**

**Jeffrey D. Perry, Business Agent  
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION  
10147 Royalton Road, Suite J  
North Royalton, Ohio 44133**

**ADVOCATE FOR THE EMPLOYER:**

**Michael D. Esposito, Esq.  
Senior Consultant  
CLEMANS, NELSON AND ASSOCIATES, INC.  
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Akron OH 44319**

## INTRODUCTION

The Ohio Patrolmen's Benevolent Association represents the bargaining unit (hereinafter "Union") and the Employer is the City of Girard (hereinafter "Employer", "City"). The bargaining unit involved in this case is comprised of approximately five (5) police captains. A mediation/conciliation hearing was held on November 11, 2008 over one issue, Article 24, Overtime/Call-In/Court Pay and Overtime Equalization.

The parties specifically waived in writing the statutory requirement imposed on the conciliator concerning the making of a verbatim transcript in the instant proceeding. (See attached handwritten and signed waiver).

Prior to a formal submission of evidence the conciliator made an offer to mediate the dispute; however, no resolution could be reached. Both Advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. In order to expedite the issuance of this report, the Conciliator shall not restate the actual text of the parties' proposals on each issue, but will instead reference the Position Statement (EPS-Employer's Position Statement and UPS-Union's Statement) of each party along with a summary discussion.

## **CRITERIA**

### OHIO REVISED CODE 4117

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests 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;
4. The lawful authority of the public employer;
5. The stipulations of the parties;
6. Such 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, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following recommendations are made: These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

## **Issue 1     Article 24 Overtime/Call In/Court Pay**

### **Employer's Position**

The Employer's adopts the fact finder's recommendation issued by fact finder Virginia Wallace-Curry on September 23, 2008, see fact finder's report for actual language. The Employer, making the same arguments it made to the fact finder, asserts that the current language has caused excessive overtime to be worked by Captains at a time when the City is in fiscal emergency. In addition, the City argues that the language erodes its managerial right to determine scheduling and the need for overtime, which it asserts are traditional management rights.

### **Union Position**

The Union, having rejected the fact finder's report, asserts that the current language should be maintained. It points out that departmental staffing has been decimated. The Union asserts, as it did in the before the fact finder, that it is essential that a Captain be assigned to all shifts due to inadequate staffing. Because of an increasing crime level in the City, having an experienced leader on shift who can make decisions and give direction to patrol officers is needed, argues the Union. The Union also points out that the language has been in the Agreement for over ten years, and that the City will have to answer to the public if improper decisions are made due to a lack of an experienced officer on duty.

### **Discussion**

The Union and its bargaining team made a strong argument for the importance of having experienced people on shifts to supervise patrol officers. The bargaining team appears to be a sincere and motivated group of law

enforcement professionals who have a genuine interest in providing the best possible service to the City. The City is fortunate to have Captains who display this level of dedication to their positions. Moreover, public employers are wise to value experience and judgment, particularly where matters of life and death are involved. However, it is also clear that the overall law enforcement function is a responsibility that falls within the jurisdiction of the Employer. After a careful review of the fact finder's report, I find no compelling reason to arrive at a different determination over this matter. Recognizing that cost savings must always be tempered by considerations of public and employee safety, I concur with fact finder Wallace-Curry that it is up to the Employer to determine if and when overtime is needed. Upon consideration of all the facts and in applying the statutory criteria the position of the Employer is justified.


**Determination**

**The position of the Employer is awarded**

## TENTATIVE AGREEMENT

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

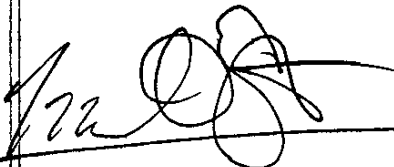
The Conciliator respectfully submits the above recommendations to the parties this 16<sup>th</sup> day of December 2008 in Portage County, Ohio.




Robert G. Stein, Conciliator

WAFER

The City of Girard and the Ohio Patrolmen's Benevolent Association specifically waive the statutory requirement imposed of a conciliator concerning the making of a verbatim transcript to the conciliator proceeding conducted November 11, 2008.

  
\_\_\_\_\_  
Employed

  
\_\_\_\_\_  
Union

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STATE EMPLOYMENT RELATIONS BOARD  
STATE EMPLOYMENT  
RELATIONS BOARD

September 23, 2008

2008 SEP 25 P 12: 32

In the Matter of the Fact Finding Hearing Between:

CITY OF GIRARD, OHIO	)	
	)	
And	)	SERB Case No. 06-MED-10-1300
	)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	Captains
	)	

APPEARANCES

For the City:

Michael Esposito, Esq.  
Jerry Lambert

Employer Advocate, Clemans Nelson  
Safety Director

For the Union:

Jeffery Perry  
John Valica  
Jeffery Palmer

OPBA Representative  
Captain  
Captain

Fact-Finder:

Virginia Wallace-Curry



## INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Girard (the “City”) and the Ohio Patrolmen’s Benevolent Association (the “Union” or “OPBA”). The bargaining unit consists of police officers at the rank of Captain. There are *approximately five (5) employees in the bargaining unit. The terms of the parties’ successor collective bargaining agreement expired on December 31, 2006.*

The parties held several bargaining sessions and were able to reach agreement on all but four issues. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed Fact-finder in this matter by SERB. A hearing was held on September 10, 2008. The parties waived the submission of pre-hearing statements. At the fact-finding hearing, the parties accepted the Fact-finder’s offer to mediate the unresolved issues. The parties reached tentative agreements on all but one issue. The tentative agreements on all the issues are incorporated in this report and recommended by the fact-finder.

A hearing on the remaining unresolved issue was held, and the parties were given full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
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, 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;
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 in private employment.
7. 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 in private employment.

#### UNRESOLVED ISSUE

#### **Article 24 – Overtime/Call In/Court Pay**

##### **City's Proposal**

The City proposes changes to Section 2 of this Article. Currently, the contract language requires overtime to be offered to a Captain when there is no Captain on the turn, regardless of how many patrol officers are on the turn. Only when no Captain wants to work overtime may a member of the Patrolmen classification fill the Captain's position. The City argues that the language has caused excessive overtime to be worked by the Captains at a time when the City is in fiscal emergency.

More importantly, the language takes away a Management right and places it in control of the Captains. Currently, Captains may unilaterally decide to work overtime when no Captain is on the turn. However, scheduling of overtime and staffing considerations are management functions. Management should determine if overtime is

necessary, because Management is charged with being fiscally responsible to the taxpayers of the City. In addition, Management should determine if a Patrolman who is scheduled to work may assume the Captain's position when the Captain is not available on a turn.

The City proposes changing the current contract language to state that the Employer will determine when an overtime opportunity is available, and if the Employer so determines, the overtime will be offered to a full-time member of the classification (Captain). If no Captain will work the overtime, it may be filled by a member of another classification (Patrolman). The City also proposes a side letter agreement between the parties as a guide in certain minimum manning situations. The City agrees to offer minimum manning overtime to bargaining unit members prior to calling in a patrolman to meet the minimum manning for the shift. The City reserves the right to place a patrolman in the Captain's position and pay out class pay when there are sufficient patrolmen on duty to cover the desk and send two officers out on patrol.

Finally, the City proposes changing the title of the section from Overtime Scheduling to Overtime Equalization.

#### Union's Proposal

The Union proposes to keep the current contract language, with the exception of the last sentence regarding Road Captains, which is no longer applicable. The Union asserts that current language recognizes that it is necessary to have a Captain on all turns. When patrolmen are permitted to work as Captains, they hesitate in making difficult decisions and are uncomfortable issuing discipline to patrolmen.

The money spent in overtime for Captains was the result of vacancies that were not filled in this bargaining unit. The bargaining unit has added more members and there are currently five Captains. That has significantly reduced the need for overtime for this bargaining unit. The Union argues that the right to work overtime when no Captain is available is a right/benefit under the contract that should be maintained.

#### Discussion and Recommendation

For the reasons stated by the City, the City's proposal is recommended. The City must be fiscally responsible to the taxpayers and cannot allow bargaining unit members to unilaterally decide when an overtime situation exists that requires a Captain. Because the City is having financial difficulty, this responsibility is more pronounced. The responsibility for determining when overtime exists must be returned to Management.

The concern of the Captains that Patrolmen who temporary assume the role of Captain are not always able to perform the job as effectively as a Captain is compelling. However, who is or is not appropriate to place in that position should be determined by the City, not by a bargaining unit member. That is a management function. That said, however, the City must accept the responsibility to ensure that a Patrolman who temporarily assumes the position of Captain is willing and able to fulfill all the responsibilities required by the job, which includes making difficult decisions and disciplining patrolmen when appropriate. The City must answer to the public for any missteps or failure to act by a non-Captain assuming the Captain's position that places the employees or staff in danger.

**Recommended Contract Language**

**ARTICLE 24  
OVERTIME/CALL IN/COURT PAY**

**Section 2. Overtime Equalization.** When the Employer determines that an overtime opportunity is available, it shall be offered, on a rotating basis, first to the full-time members of the classification in which the opportunity occurs. In the event that no full-time members of the classification will work overtime, then it may be filled by a member of another classification in accordance with Side Letter #2, Call-Out Procedure.

**SIDE LETTER #2  
CALL-OUT PROCEDURE**


**Section 1.** The parties acknowledge and agree that the Employer has and retains the right to determine the necessity for overtime under the parties' agreement. The parties have agreed, however, that in certain minimum manning situations, the Employer shall offer minimum manning overtime to bargaining unit members prior to calling in a patrolman to meet minimum manning for the shift.

**Section 2.** A Captain will be offered the overtime opportunity, prior to calling in a patrolman, in the following minimum manning situations:

1. When two (2) patrolmen are on shift, and a dispatcher is not available, thereby leaving the desk to be covered by a patrolman; or
2. When one (1) patrolman and one (1) dispatcher are on shift, and a patrolman would have to be called in to cover the shift to meet minimum staffing, necessitating captain's rate out of class pay.

**Section 3.** For all other situations not listed above, including but not limited to the following situations: (1) where the Employer is able to meet minimum staffing requirements by covering the desk with a dispatcher, (2) where there are already sufficient patrol personnel on duty to both cover the desk through assignment and put two (2) officers on patrol, (3) where a captain is already working the turn and the turn is shorted by absences of a patrolman or dispatcher, the Employer shall determine when overtime is necessary and fill it appropriately.

Submitted by:

  
Virginia Wallace-Curry, Fact-finder

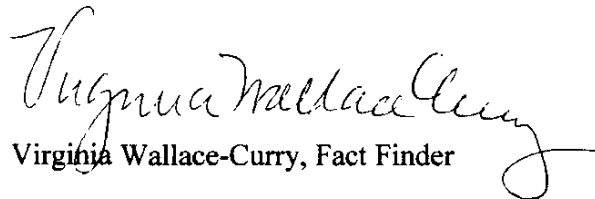
**CERTIFICATE OF SERVICE**

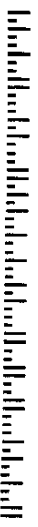
This is to certify that a true copy of the Fact-Finding Report for the City of Girard and the Ohio Patrolmen's Benevolent Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, September 23, 2008. The Fact-Finding Report was served upon:

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Akron, OH 44319-4949

Mr. Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213

  
Virginia Wallace-Curry, Fact Finder



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