

IN THE MATTER OF CONCILIATION BETWEEN
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (PATROLMEN)
AND
THE TOWNSHIP OF LIBERTY OHIO

SERB CASE: 10-MED-09-1221

BEFORE WILLIAM C. BINNING PH.D.
SERB CONCILIATOR

For the OPBA
Michael Hostler
10147 Royalton Rd. Suite J P.O. Box 338003
North Royalton, OH 43133

For the Township
Mark S. Finamore
258 Seneca Avenue NE
Warren Ohio 44481

In accordance with SERB procedures, this Conciliator was appointed on January 26, 2011 to hear the case between the Ohio Patrolman's Benevolent Association and Liberty Township because the Fact-finder's report on the outstanding issues was rejected.

The parties agreed to hold a conciliation hearing on March 3, 2011. In a timely fashion and in accord with SERB guidelines, the parties delivered to the Conciliator their positions on the outstanding issues five (5) days before the hearing date.

The Conciliator is instructed by SERB to "resolve the dispute between the parties by selecting on an issue-by-issue basis, from between each of the party's final settlement offers". The Conciliator is advised to take into account the following for consideration when making his award. :

- (1) Past collective agreements, if any. Between the parties;
- (2) Comparison of the 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 adjustment on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties; and
- (6) 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, conciliation or other impasse resolution procedures in the public service or in private employment.

ISSUES

THE OUTSTANDING ISSUES ADDRESSED ARE:

1. Wages
2. Insurance
3. Overtime
4. Part-Time Employees
5. Minimum Staffing
6. Grievance Language
7. Firearms Qualification
8. Uniform Allowance
9. Article 33 Shift Assignment/Job Assignment
10. Article 33 Section 8 (new)
11. Disciplinary Record Limit
12. Court Time/ Call-Out Pay
13. Sick Leave
14. Holidays Article 12
15. Holidays Article 12 Section 4
16. Duration

Mediation

Prior to opening of the hearing the parties engaged in mediation on a number of the outstanding issues. The parties clarified their positions on the recommendations of the fact-finder.

Hearing

The hearing was formally opened late morning on March 3 2011. Both parties were present and well represented.

Wages

The first issue was the issue of wages for the life of the contract.

Union Position

The Union offered the Fact-finder's recommendation as their final position on the wage issue.

Township Position

The Township said they could not afford any pay raise.

Discussion and Recommendation

The Township and the Union offered up all sorts of financial data on the fiscal condition of the Township. The Township did not claim an inability to pay. There is no doubt the Township has suffered from the weak economy of recent years in northeast Ohio. A once thriving suburb in an industrial area, Liberty is now facing serious fiscal challenges in the years ahead. The most significant point made by the Township Attorney on this issue is that that both the political subdivisions and the public unions need to be concerned about the loss of the local government fund in the next budget of the state of Ohio.

Award: The Union's position. This includes first year 1.25%, second year 1.5%, and 2% in the third year. This is retroactive to January 1, 2010.

	1/1/11	1/1/12	1/1/13
Probationary	\$14.44	\$14.66	\$14.98
After 1 year	\$16.85	\$17.10	\$17.44
Step 3	\$19.26	\$19.54	\$19.94
Step 4	\$24.07	\$24.43	\$24.92

All employees on the payroll as of the effective date of this Agreement are considered to be at Step 4. Employees may be hired at such step of the wage progression as the Employer may determine is appropriate based on their qualifications and experience and shall progress from step to step on their anniversary date of employment.

Section 3. A Probationary Patrolman is a first year Patrolman. The probationary period for all Probationary shall conform to Section 124.27 of the Ohio Revised Code.

Section 4. A shift differential shall be applied to an employee's regular hourly rate of pay, for the following:

Employees working the "Afternoon Shift" \$.20 per hour
 Employees working the "Midnight Shift" \$.30 per hour

Section 5

- (1) The Township shall continue payments in the Pension System (PERS) at the applicable as set by the administrators of the system and as required under state law.
- (2) The Employer agrees to pay the employee's share of the Public Employees' Retirement System contribution for employees having (3) or more years of service.

Article 9

Insurance Coverage

The parties are not very far apart on this issue. The Union offered more extensive language in their proposal. The Township position was very brief and offered the Fact-finder's position. The parties agreed to modify the language on the use of "family".

Award: The Township's final offer. Which is the Fact-finder's recommendation.

Pay Ten percent (10%) contribution for each of the years of the agreement. With a \$125.00 cap for "coverage during the first year of the collective bargaining agreement ." (See Factfinder Report p. 14) The word "family" is recommended to be deleted..."

OVERTIME

The Union "At Factfinding, the OPBA introduced language changes to Article 10 Section 5, in an effort to clarify the current language." The Union offers the Fact-finder's position as its final position on the issue. The Township also offered the Fact-finder's position as its final position.

Award: The Union's position which is the Fact-finder's language offered below:

Section 5. When a patrol officer absence creates an overtime slot, the overtime opportunity shall be offered in the following manner:

1. **Call by seniority the patrol officer(s) scheduled off for that day.**
2. **Call by seniority the patrol officer(s).**
3. **Call other personnel.**

PART TIME EMPLOYEES (new)

Township

The Township wants to be able to create a part time force. In this case they are asking for five (5) officers. There are part time Fire Fighters in Liberty Township.

Union

The Union is concerned about the erosion of their unit with the development of this proposed part time force. The Fact-finder did not find for the Township on this proposed language.

Award

Award: The Union's position. Which is also the Fact-finder's position.

MINIMUM STAFFING

UNION

The Union offered new language for minimum manning. They recommend a force size of twelve (12). They also offer a schedule for the use of that manpower. They point to the new low pay scale for new hires and the increased premium share of the health insurance makes for a good deal for the township to make additional hires.

TOWNSHIP

The Township rejects this as too expensive given their current financial challenges. The Fact-finder recommended the Township's position.

DISCUSSION AND AWARD

There is no doubt Liberty Township should increase the size of its Police Force. However, this proposal is too costly for Liberty at this time.

AWARD: The Township Position. Which is the Fact-finder's recommendation. Minimum staffing language is rejected.

GRIEVANCES

Union

"The OPBA introduced new language at the Fact-finding hearing in regards to the Grievance procedure." The Union maintains the new language addresses the possibility of delay in the process.

Township

The Township offers the Fact-finders recommendation in its final offer.

Award: The Union's position is awarded. This is also the Factfinder's recommendation:

Add as new section:

Section 7

In the case of grievances involving loss of pay, such as discharge disciplinary suspension without pay, administrative or investigatory suspension without pay or layoff/removal from the schedule, a grievance may be filed, in writing, to the Township Administrator within seven (7) workdays after the event giving rise to the grievance. The parties shall meet at a mutually convenient time, within five (5) workdays after the employer has filed the grievance. The Trustees shall give the answer, in writing, to the OPBA and the aggrieved employee within five (5) workdays after the grievance meeting has been held. At the option of the Union, arbitration shall proceed under the expedited arbitration rules of the Federal Mediation and Conciliation Service. Otherwise, demands for arbitration of such grievance shall be processed under Step 3 of this Grievance Procedure.

FIREARMS QUALIFICATION

UNION

The Union proposes retention of this language as it has been modified by the Fact-finder.

TOWNSHIP

The Township maintains there is no financial justification for retention of this language.

AWARD

AWARD: The Union position is awarded. It is also the Fact-finder's recommendation.

Section 15

Each patrol officer who has attained Step 4 of the Wage Scale and who passes the OPOTA firearm qualification course required for all Liberty Township Patrol officers shall receive an annual Firearm Proficiency Pay of \$750.00 Annual payment shall be made on or about July 1st of each year.

UNIFORM ALLOWANCE

UNION

The Union proposed language regarding the Uniform allowance.

TOWNSHIP

The Township also offered the Fact-finder's recommendation but proposed a number of qualifications.

AWARD

THE AWARD: The Union language is recommended. It was language recommended by the Fact-finder See below.

Article 17:

Section 1 All employees granted a annual uniform allowance are responsible for replacement of all damaged and/or work clothing or uniform articles with the exception of the ballistic vest damaged in the line of duty and duty belt and attachments. (i.e., handcuff case, pepper spray case.).

Section 2. The Township will provide all sworn officers who have completed not less than one (1) year service, a uniform allowance of \$775.00 for uniform purchase and/ or maintenance.

The allowance check will be provided to each eligible officer after the passage of the Township's permanent budget, and should be available on or about the April 1st of each year.

Section 3. In the event an item of any designated uniform/equipment changes, the Employer shall provide the initial issue of that item (s).

Section 4. The Township shall provide all full-time police officers with semi-automatic pistols with the appropriate holster and ammo leather that will hold at least two (2) clips.

Section 5. The Township shall continue to provide the equipment that was provided as of January 1, 2002. Any new issue or replacement shall be the complete set and needed for the officer to carry and utilize in the manner it is now being used. Said equipment shall be replaced by the Township as needed through regular wear and tear or damaged in the line of duty..

ARTICLE 33 SHIFT ASSIGNMENT /JOB ASSIGNMENT

UNION

Union proposes deletion of some language in Article 33 Section 3.

TOWNSHIP

The Township did not object to the language deletion but also offered an additional section on promotion that was not addressed by the Fact-finder in his recommendation on that language.

AWARD

Award: The Union language is awarded. This is also the Fact-finder's recommendation. See below:

Section 3 Any changes in shift/job assignments shall be made only in the best interest of the Township and operational needs of the Department."

ARTICLE 33 SECTION 8 (new)

UNION

The Union proposes new language on the filling of vacancies for members in its bargaining unit.

TOWNSHIP

The Township did not have strong opposition to this language and appeared to accept it.

AWARD

AWARD: The Union language is awarded. See language below:

Section 8: No position shall remain vacant, unless abolished, or be filled on a temporary basis in excess of six (6) months.

ARTICLE 33 SECTION 7

UNION

The OPBA proposed language under Article 33 that addresses Promotions. The Fact-finder recommended the language.

TOWNSHIP

The township accepted the language in their Position Statement.

AWARD

AWARD: The Union language is awarded. See below:

Section 7 All promotions shall be made pursuant to applicable provisions of the Ohio Revised Code Chapter 124 et seq., and only in the best interest of the Township and operational needs of the Department.

DISCIPLINARY RECORDS LIMIT

UNION

The Fact-Finder states that “ The OPBA at hearing, amended its proposal to seek to prevent Liberty Township from relying on conduct which occurred more than eighteen (18) months prior to the current charge in imposing discipline where the prior discipline had not resulted in a suspension and to prevent Liberty Township from relying on conduct which occurred more than twenty four (24) months prior to the current charge in imposing discipline where the prior discipline had been a suspension.

TOWNSHIP

The Township asks for twenty four (24) months in its final offer. However the Fact-finder reports that at the hearing “Liberty Township expressed no specific objections to the OPBA proposal “ at the Fact-finding (see Fact-finder Report p. 22).

AWARD The Union Position is awarded. Same as Fact-finder. See below amended language

Article 11:

Section 8. In imposing discipline, the Employer shall not take into account any previous disciplinary action rendered against the Employee or any conduct which occurred more than two (2) years preceding the current infraction where such prior conduct resulted in suspension and shall not take into account any previous disciplinary action rendered against the Employee or any conduct which

occurred more than eighteen (18) months preceding the current infraction where such prior conduct in discipline less than a suspension.

COURT TIME CALL OUT PAY

UNION

The Union requests to expand stipulated time for Court Time and call out pay.

TOWNSHIP

The Township argues the Court does not need officers present to the degree stipulated by the Union in their proposed language. The township amended its request to have minimum compensation for court time to be a minimum of four (4) hours.

AWARD

AWARD The language of the Township is awarded. See below

Official duties as law enforcement officers shall receive a minimum compensation in the amount of four (4) hours in either cash or accumulated time. Any time expended beyond four (4) hours shall be compensated on the basis of actual time expended, Compensation shall be paid in cash or accumulated time at the employee's option.

Section 2 Court time shall be granted to all officers when their presence is required in the following situations:

- 1. Preliminary hearings**
- 2. Criminal trials**
- 3. Any other hearing where the officer's presence has been requested by the prosecutor**

ARTICLE 14 SICK LEAVE

UNION

The Union proposes changes to current language on sick leave payout upon retirement. The Union proposes to increase the payout from thirty three and one third (33 1/3%) to fifty (50%) .

TOWNSHIP

The Township dropped its sick leave incentive proposal at the hearing . It also withdrew its request for language requiring written certification, verifying that call off for sick days of less than three consecutive days be verified with written certification. The Township offered the recommended language of the Fact-finder which is to retain current language on the sick leave payout at retirement.

AWARD

AWARD The Township position is awarded. Which is the Fact-finder's recommendation to keep current language of payout at Thirty-Three and one third 33 1/3%.

HOLIDAYS ARTICLE 12

UNION

The Union support current language on Holidays and offers the Fact Finder's recommendation not to accept the proposed Township language for this Article.

TOWNSHIP

The Township offered two proposals regarding holidays. The first is a loss of holiday pay if the officer takes a sick day before a scheduled holiday.

AWARD Union language is awarded for Section 2, which is current language and the recommendation of the Fact-finder.

HOLIDAYS ARTICLE 12 SECTION 4

UNION

The Union in its Pre-Hearing Statement does not show acceptance of newly proposed Township language. However, the Fact-finder states that the "The concept advanced by Liberty Township appeared to be acceptable to the OPBA... (Fact-finder Report p 23)

TOWNSHIP

The Township proposed language that would create an opportunity for an officer not to have to work a holiday.

AWARD

AWARD The language of the Township is awarded. Same as Fact-finder See below: (Please note the Conciliator shares some of the concerns about 'minimum staffing" expressed by the Fact-finder in the recommended language (See Fact-finder Report p. 23). Language offered below:

Subject to minimum staffing requirements, scheduled employee, in order of seniority on the given shift on the holiday in excess of minimum staffing requirements will be offered the opportunity to have the holiday off. The employer shall make the offer as soon as practicable before the holiday.

DURATION

UNION

The Union proposes rather interesting language to extend the contract beyond December 31, 2013. They offer "The Agreement shall extend automatically for an additional year unless either party, on or before sixty (60) days prior to the Agreement expiration date, gives notice to the other party in writing of a desire to renegotiate all or any part of the Agreement. In such cases, negotiations shall ensue within a reasonable period of time and the contract shall remain in full force and effect until a successor agreement is reached or upon final and binding conciliation. The parties if they so desire may agree to contract extensions. " (Pre-Hearing Statement OPBA p 16.)

The Union says it is offering this because the Township had at first refused to sign an extension agreement. The interesting implication is that the contract could have indefinite life.

TOWNSHIP

The Township offers simply updating current language on Duration. It is also the position of the Fact-finder who raises the question of the legality of such language crafted by OPBA. Certainly of OPBA's proposed language would face a court test. That language will not come from this Conciliator.

AWARD

AWARD The language of the Township is awarded, which is the recommendation of the Fact-finder.

See below:

This Agreement shall retroactive to January 1, 2011 and shall continue in full force and effect until December 31, 2013. The Agreement shall extend automatically for an additional year unless either party, on or before sixty (60) days prior to the Agreement expiration date, gives notice to the other party in writing of a desire to renegotiate all or any part of the Agreement. In such cases, negotiations shall ensue within a reasonable period of time. The parties, if they so desire may agree to contract extensions.

Summary of Award:

- Issue 1 Wages: The proposal of the Union is awarded.
- Issue 2 Insurance: The proposal of the Township is awarded.
- Issue 3 Overtime: The proposal of the Union is awarded.
- Issue 4. Part-Time Employees: The proposal of the Township is awarded.
- Issue 5. Minimum Staffing: The proposal of the Township is awarded.
- Issue 6: Grievance Language: The proposal of the Union is awarded.
- Issue 7: Firearms Qualifications: The proposal of the Union is awarded
- Issue 8: Uniform Allowance: The proposal of the Union is awarded.
- Issue 9. Article 33 Shift Assignment/Job Assignment: The proposal of the Union Is awarded.
- Issue 10. Article 33 Section 8 (new): The proposal of the Union is awarded.
- Issue 11. Disciplinary Record Limit: The proposal of the Union is awarded.
- Issue 12: Court Time/Call Out Pay: The proposal of the Township is awarded.
- Issue 13: Sick Leave Pay Out: The proposal of the Township is awarded.
- Issue 14: Holiday Article 12: The proposal of the Union is awarded
- Issue 15: Holiday Article 12 Section 4 (new): The proposal of the Township is awarded.
- Issue 16: Duration: The proposal of the Township is awarded.

Signed and dated this 10th day of March 2011 in Poland Ohio

William C. Binning Ph.D.
SERB Conciliator