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 In the Matter of Interest *
 Arbitration * SERB Case Nos.
 *
 Between * 96-MED-09-0818
 * 96-MED-09-0819
 Ohio Patrolmen's Benevolent * 96-MED-09-0820
 Association *
 * Before: Harry Graham
 and *
 *
 The City of Norton, OH. *
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Appearances: For Ohio Patrolmen's Benevolent Association:

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 Staff Representative
 Ohio Patrolmen's Benevolent Association
 10 Beech St.
 Berea, OH. 44017

For City of Norton:

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 220 Market Ave. South
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Introduction: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Norton on May 30, 1997

Issues: The following issues are in dispute between the parties:

1. Duty Hours

2. Overtime
3. Vacation
4. Wages
5. Longevity
6. Miscellaneous

This dispute has proceeded to interest arbitration following the recommendations of a Factfinder. As is often the case both parties found parts of the Factfinder's recommendations palatable and unpalatable. Depending upon the issue, both the Union and the Employer urged the Arbitrator give deference to the award of the Factfinder. Both parties correctly observe that the recommendations of a Factfinder should not lightly be disturbed. This Arbitrator subscribes to that notion. The interest arbitrator should pay close attention and give great weight to the recommendations of a Factfinder.

Issue 1, Duty Hours

Position of the Union: The Union proposes that a new section be added to Article 16 of the Agreement. The proposed Section 2 would prohibit changing of an employee's schedule to avoid incidence of daily or weekly overtime.

In the Union's view, the Police Department is understaffed. Hence, to deal with chronic manpower shortages officers have their schedule changed. An element in the City's consideration is its desire to avoid overtime. This has meant that people's schedules are changed on short notice. Domestic life is disrupted. This situation should not

be permitted to continue in the Union's view. It will be rectified if its proposal is adopted. Hence, it is urged upon the Arbitrator.

Position of the Employer: On this issue, the City embraces the report of the Factfinder. The identical proposal from the Union was before her. She did not recommend it. As noted above, the City urges her recommendations be given great weight. It acknowledges that schedules have been changed on short notice. That situation will be rectified when the City employs two additional officers. The Factfinder found no reason for change. None now exists. Consequently, the City urges no change on the present language.

Discussion: Initially, the City is correct when it points to the award of the Factfinder as providing great support for its position on this issue. Awards of Factfinders should not lightly be modified by interest arbitrators. Further, the problem alluded to by the Union is being addressed by the hire of additional personnel. If the situation raised by the Union is not rectified by that development the issue can be revisited by the parties in the future. Given the recommendation of the Factfinder and the recognition of the situation by the City, the proposal of the Union is not justified. The position of the City on this issue is awarded.

Issue 2, Overtime

Position of the Union: The Union desires that full-time and part-time Dispatchers have equal opportunity for overtime. It also seeks to retain the Records Dispatcher among those itemized in Appendix A of the Agreement. The Records Dispatcher would be eligible for overtime. The Union acknowledges that the City would provide Dispatchers a one-time payment of \$500.00. However, it strongly objects to exclusion of the Records Dispatcher from eligibility for that payment. This is unacceptable to the Union.

Position of the Employer: The City is proposing changing the schedule of the Records Dispatcher from Sunday-Thursday to Monday-Friday. It also proposes to eliminate the right of first refusal for overtime for full-time dispatchers. In exchange, as noted above, it is willing to make a one-time payment to Dispatchers of \$500.00. This would go to all but the Records Dispatcher.

The Factfinder awarded the proposal of the City. So too should the Arbitrator it asserts.

Discussion: The proposal of the City to alter the schedule of the Records Dispatcher from Sunday-Thursday to Monday-Friday has much to commend it. As noted at the hearing the Dispatcher provides service to the public. That is best provided during normal business hours. That aspect of the City proposal is awarded.

In her report the Factfinder recommended the other aspects of the City's proposal as well. In her view the \$500.00 payment was sufficient to secure the change sought by the City. She noted that "The elimination of the first right of refusal will not eliminate all overtime for the dispatchers, but will give the City more flexibility in resolving staffing (sic) issue." (P. 16). In essence, the Factfinder recommended more flexibility be granted the City in utilizing the staff but provided no compensation to the Records Dispatcher whom she explicitly excepted from receipt of the \$500.00 payment. If the City desires change, as it does, it must pay to secure it. The work life of the Records Dispatcher will be altered as a result of the change in work week. That cannot come about without pay. The Records Dispatcher should be included with those who are to receive the \$500.00 payment.

The other aspects of the City proposal are awarded.

Issue 3, Vacation

Position of the Union: There is presently a two-tier vacation schedule in the Norton Police Department. The Union proposes no change for employees hired before 1992. For Employees hired after January 1, 1992 it urges the same schedule for employees as those hired prior to that date with the exception of no sixth week of vacation after twenty years of

service. The Union points out that the less advantageous vacation accrual schedule of those hired January 1, 1992 and after has created morale problems. Further, it is substandard. Union Exhibit 2 is a Table presenting vacation accrual in Police Departments in Summit County, OH. It shows that Norton Police hired in 1992 and after lag behind those in other communities in the County. As that is the case, the Union urges an award in its favor on this issue.

Position of the City: The City points out that two contracts ago the Union agreed to the two-tier vacation schedule. Now it wants change. In essence, it seeks to repudiate its bargain. That should not be permitted to occur in the City's view. The Union offers no inducement to the City to improve the vacation schedule for short-service officers. The Factfinder recommended no change. No change should be awarded by the Arbitrator the City insists.

Discussion: Two-tier compensation systems are notoriously destructive of morale. They penalize those who came later to employment. Two people, working side-by-side, have different benefits solely by virtue of their date of hire. On the other hand, the Union came to reach agreement with the City on this issue some years ago. It now seeks to repudiate its agreement. It offers no quid-pro-quo. The Factfinder rejected this position. So too does the Arbitrator. The position of

the City is awarded.

Issue 4. Wages

Position of the Union: On this issue, the Union embraces the recommendation of the Factfinder. She recommended a 3.5% increase for Officers and Sergeants. She also recommended a 5.0% increase for Dispatchers. These increases would be effective in 1997, 1998 and 1999.

In support of its proposal the Union points out that from 1991 through 1996 police in Norton received lower than the Ohio average wage increases. Norton Dispatchers are the lowest paid in Summit County.

The Union points out that in recent years the standing of Norton Police Officers and Dispatchers has declined vis-a-vis their counterparts in the area. This is acknowledged by the City. (Factfinder report, p. 10). The proposal of the Union represents what it characterizes as a mainstream or average proposal. To the contrary, the proposal of the City is low. It is out of the mainstream. It should be rejected the Union insists.

Position of the City: The City points out that other City employees have agreed to a 3.0% weighted average increase. Nothing more should be done for these employees in the City's view.

In addition to external comparisons utilized by the

Union, interest disputes traditionally include internal comparisons as well. In this situation, the 3.0% increase agreed upon by other City employees should control the outcome of this dispute.

Using a somewhat different group of comparison police departments than does the Union, the City claims its police compare well with others in the area. Among nearby departments is Franklin Township. Norton police fare especially well in comparison to those in the Township. As that is the case, the 3.0% offered to Police and Dispatchers should be awarded in the opinion of the City.

Discussion: As is apparent to the reader, the City has steadfastly relied upon the report of the Factfinder in support of its position, until now. On this issue, the Factfinder's recommendation is embraced by the Union and rejected by the City on the wage issue, a startling and inconsistent reversal of form.

The Factfinder recommended a 3.5% increase for patrol officers and sergeants. She found the City had slipped relative to other communities in the area with respect to police pay. She is correct. Further, reliance by the City on comparisons with a Township is explicitly rejected by the Arbitrator. It is well-known and beyond dispute that townships pay police less than cities. Comparison of Norton

police with their counterparts in the nearby township is inappropriate.

In this decade the Norton police have consistently received wage increases lower than the Ohio average. Notwithstanding the agreement of other City employees to the 3.0% increase proposed by the City for police, in this situation the comparable data introduced by the Union, the history of bargaining and the recommendation of the Factfinder provide superior evidence for the position of the Union. It is awarded.

Similarly, the pay of Dispatchers is poor when compared to others in the area. The differential between them and patrol officers has widened in recent years. The Factfinder recommended a 5.0% wage increase. There is ample justification for the position of the Union on this issue. It is awarded.

Issue 5, Longevity

Position of the Union: The Union points out that police in Norton have not had an increase in longevity since 1984. During that time the Consumer Price Index (CPI-U) has increased approximately fifty percent (50%). As that is the case and no increase in longevity payments has occurred in the same period an increase of that magnitude is warranted now urges the Union.

Position of the City: In the opinion of the City longevity pay is a relic. It was a method of rewarding officers for remaining in City employ when wage increases were not occurring. The Union has proposed increases in longevity in the past. The issue went before a Factfinder and an interest arbitrator some years ago. The position of the Union was rejected. It was rejected again this year by the Factfinder. In the face of that history, no consideration should be given to the proposal of the Union claims the City.

Discussion: In her recommendations the Factfinder viewed longevity pay as a "tool from the past...." She recommended against the Union proposal. This neutral does not share the antipathy towards longevity pay expressed by the Factfinder. It is widespread in public service. Police commonly have longevity pay as part of their compensation. It is normal that longevity pay increase over time. Union Exhibit 4 contains footnotes indicating the source of the information contained. Those footnotes show that longevity payments in area communities have increased in recent years. Thus, Tallmandge increased longevity pay in 1995 as did Stow. Cuyahoga Falls increased longevity pay in 1996. Longevity was included in the Fairlawn Agreement for the first time in 1995. The amounts are well above those found in Norton. It cannot be concluded that longevity has disappeared from the

compensation package made to police. Only Munroe Falls among communities in the area fails to make longevity payments. All other nearby cities but one exceed the longevity pay of Norton by considerable amounts. The City has benefited from from no change in longevity pay for 13 years. The amount of increase proposed by the Union is considerable. In this situation the neutral is confronted with two undesirable positions. The proposal of the Union is less unpalatable than that of the City and is awarded.

Issue 6, Miscellaneous

Position of the Union: This issue is concerned with the distribution of work between part-time and full-time police officers. As the Union views history, the City has used part-time officers to circumvent the Agreement. It is using part-timers to work more hours than the parties contemplated when they negotiated the Agreement. The City is exploiting the word "regularly" in Article 33, Section 7. In order to deal with that situation the change urged by the Union is necessary it asserts.

Position of the City: The City is opposed to the proposal of the Union. It claims that part-timers work as fill-in officers when full-time officers are on vacation or holiday. The issue came before the Factfinder who did not recommend adoption of the Union proposal. No other result should occur

in this proceeding either in the opinion of the City.

Discussion: The proposal of the Union is conceptually well-taken. The City has employed police officers who are full-time employees and members of the bargaining unit. The protections of the Agreement extend to them. Part-time officers do not have the same sort of commitment to the City and to law enforcement as do the full-time officers. Those observations must be tempered with the observation that while the Union has alluded to a problem, it has not demonstrated one to exist. There is no showing that there has been a systematic use of part-time employees to deprive full-time employees of overtime or, if that is the case, that the amounts of overtime are substantial. At the hearing the City pointed out that it is adding two officers to its complement. When that is done recourse to part-timers will decline. As that is the case, the position of the City is awarded.

Summary of Award

Issue 1, Duty Hours: The position of the City is awarded.

Issue 2, Overtime: Work week of Records Dispatcher changed to Monday-Friday. Five hundred dollar (\$500.00) payment to be made to Records Dispatcher.


Issue 3, Vacation: The position of the City is awarded.

Issue 4, Wages: The position of the Union is awarded.

Issue 5, Longevity: The position of the Union is awarded.

Issue 6, Miscellaneous: The position of the City is awarded.

Signed and dated this 17th day of June, 1997 at Solon, OH.



Harry Graham
Conciliator