

CONCILIATION PROCEEDINGS  
STATE EMPLOYMENT RELATIONS BOARD  
CASE NO. 96-MED-12-1142 & 1143

AUSTINTOWN TOWNSHIP	:	
	:	
The Employer	:	
	:	
-and-	:	<u>CONCILIATION AWARD</u>
	:	
AUSTINTOWN FRATERNAL ORDER OF	:	
POLICE, LODGE NO. 126	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Michael B. Dockry, Administrator  
Michael J. Kurish, Township Clerk  
John Cannon, Police Chief

For the Union:

Dennis Haines, Attorney  
Bob Schaeffer, Detective Sergeant  
Melanie Viano, Patrolman  
Nick Pacura, Patrolman  
David Allen, Lieutenant  
Tom Collins, Patrolman  
Robert G. Bindas, CPA

MARVIN J. FELDMAN  
Attorney-Arbitrator  
1104 The Superior Building  
815 Superior Avenue, N.E.  
Cleveland, Ohio 44114  
216/781-6100

STATE EMPLOYMENT RELATIONS BOARD  
CIVIL RIGHTS DIVISION  
U.S. DEPARTMENT OF LABOR  
WASHINGTON, D.C. 20540

I. SUBMISSION

This matter came before this Conciliator pursuant to the terms of the State Employment Relations Act, the parties having failed to accept a Fact-Finder's Award which was rendered on March 21, 1997. The hearing in this matter was scheduled and conducted on the 27th of May, 1997, at the conference facility of the employer in Austintown, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the Conciliator; that the sequestration of witnesses was not necessary; that witnesses would be sworn and that the filing of briefs was waived. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

The parties prior contract of collective bargaining was terminated as of December 31, 1996. The parties thereafter entered into an impasse concerning several issues each of which was covered by the Fact-Finder's Award, which Award is attached hereto made part hereof as if fully rewritten herein and marked Exhibit A. It consists of nine pages.

Under the concluded agreement the base wage rate of the employees was indicated as follows:

"The base rate from January 1, 1996 through December 31, 1996 shall be:

<u>CLASSIFICATION</u>	<u>HOURLY</u>
1. Patrolman	\$16.02
2. Sergeant	\$17.48
3. Lieutenant	\$19.03

Newly hired Officers shall be paid as per the

following progression schedule for the first three (3) years of completed service with the Township:

<u>COMPLETED YEARS OF SERVICE</u>	<u>RATE</u>
0 to 1 Year Completed	10% below Patrolman's Hourly Rate.
1 to 2 Years Completed	5% below Patrolman's Hourly Rate.
2 to 3 Years Completed	5% below Patrolman's Hourly Rate.

A Patrolman with fifteen (15) completed years of service with Austintown Township shall be known as a Senior Patrolman. At any time, there only shall be five (5) Senior Patrolmen, so that the five (5) most senior shall qualify in the event there are more than five at any one time. A Senior Patrolman shall be compensated as follows:

<u>DATE</u>	<u>HOURLY</u>
May 1, 1994 through December 31, 1994	\$15.49
January 1, 1995 through December 31, 1995	\$16.11
January 1, 1996 through December 31, 1996	\$16.75"

It was the recommendation of the Fact-Finder that the following wages including rank differential be made part of the new contract. The Fact-Finder's wage recommendation included the following:

"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"

The employer took issue with the Fact-Finder's Award and offered the following compensation plan at the conciliation hearing;

"Article 7 - Compensation.

Section 1 - Pay Ranges and Rates

Township proposes to change the hourly based pay rate as follows:

	1997	1998	1999
Rank			
Ptl. 0-1 yr.	14.85	15.30	15.91
Ptl. 1-3 yrs.	15.68	16.15	16.80
Ptl. 3-15	16.50	17.00	17.68
Sr. Ptl.	17.25	17.77	18.48
Sgt.	18.00	18.55	19.29
Lt.	19.60	20.19	21.00

The above rates represent 3% increase for 1997 and 1998 and 4% for 1999."

The union was satisfied with the Fact-Finder's Award, as indicated above and agreed to accept the Fact-Finder's Award in that regard. As a matter of fact, the union found no fault with any of the findings of the Fact-Finder and agreed as its final statement, to accept the Award of the Fact-Finder.

The employer argued that there is insufficient funds to pay the Award of the Fact-Finder since it demanded over \$600,000.00 of new money over the three year period. The balances however revealed that there was sufficient funds if rentals from a property that was donated to the employer were used for payment. The employer on the other hand indicated and stated that when the property was donated to the Township, it was the owner's desire that the net income of the property be devoted to the acquisition, maintenance and operation of parks and recreation facility for the benefits of the residents of the township. However, the deed does not indicate such imposition and both parties conceded (the employer and the union) that it does not appear that there was any

binding legal direction given to the recipient of that parcel. At any rate there certainly was sufficient funds from the rentals and the carryover balances to pay for the Fact-Finder's Award. Both parties agreed to that.

The employer further took issue with the signing bonus that the Fact-Finder recommended. The employer indicated and stated that since the matter had found its way to conciliation even though it had been the party causing such conciliation, a signing bonus was unnecessary under the circumstances. It might be noted that the cost factor of the signing bonus would be approximately \$10,000.00 for the one time benefit the bargaining unit would receive had there been no conciliation. As indicated the union accepted such signing bonus as was indicated by the Fact-Finder and does not find fault with it.

It might be noted that the Fact-Finder's Award also revealed a longevity incentive; an attendance incentive; a clothing allowance; certain language that after an officer is off for three consecutive days, the township may require certain medical certification for duty and certain emergency leave language as found upon page six of Exhibit A. The union had absolutely no argument with the Fact-Finder's Award in any of those items and its last statement as to each of them was to accept the Fact-Finder's Award. The employer on the other hand sought to diminish the overall Award of the Fact-Finder from a \$600,000.00 (approximately) cost to a minimal cost that the employer thought the township could pay.

It was upon all of these items that this matter found its way into

the record for opinion and Award by the Conciliator.

### III. OPINION AND DISCUSSION

The Award of the Fact-Finder seems to be acceptable with some minute changes. The signing bonus of the Fact-Finder should be deleted in its entirety. The matter could not be concluded by way of compromise and a signing bonus is usually a reward to the bargaining unit when a compromise is accepted so as to conclude the matter by mediation and conciliation. Such was not the case herein and actually the signing bonus would be a reward for lack of a mediated settlement. Such is not the case generally and it cannot be accepted by the arbitrator in this case as such. Therefore the signing bonus as indicated and stated by the Fact-Finder should be held for naught.

The rejection by the employer of the longevity allowance and the clothing allowance is hereby held for naught. Those two items were in the contract prior and shall remain as indicated by the Fact-Finder's Award. There is no reason shown to void those two particular clauses and they shall be continued.

The same is true of the attendance incentive and that shall remain. The thought by the employer that that should be held for naught is not well founded. There simply is no reason in the record to show that there should be a voiding of such benefit to the bargaining unit.

The medical insurance as agreed to by the parties is really not an issue. The three consecutive days off language is acceptable to this Conciliator and that language should read as follows:

"After officer is off for 3 consecutive days the township may require medical certification of the officer's fitness for duty."

The emergency leave language as requested by the employer is acceptable and that shall read as follows:

"An officer shall . . . year for the following reasons:

1. To conduct personal, legal, or business matters which cannot be conducted at any time other than during the employee's work hours without creating an undue hardship;

2. Legal proceedings involving employee or immediate family, other than jury duty or as a witness subject to a subpoena, during the employee's work hours;

3. Home or family emergencies not covered by sick leave that require the employee's presence at home during employee's work hours;"

The only remaining issue is wages and rank differential. The Fact-Finder should have split the two to let the parties understand that they have created a number which takes into account two different items. However, neither side proposed a change of the Fact-Finder's Award with that in mind so that Conciliator must find one or the other and thereby chooses the Fact-Finder's Award as a final award of wages (and rank differential) in this particular matter. There are ample funds to pay for the request of the bargaining unit. Those sums are made up of the carryovers and the rental from the property. It might be noted that the donor of that parcel made the following statement to the township, in a letter to the township acknowledging, granting the parcel. That statement stated as follows:

"Although Austintown shall be free to use the Property and the rents, issues and profits to be derived therefrom as they, in their sole discretion, may determine, it is Owner's desire that the net income derived from the property be devoted to the acquisition maintenance and operation of parks and recreation facilities for the benefit of the residents of Austintown Township."

Thus, with the carryovers and with the income from the parcel, the funds are sufficient to pay the increase as awarded by the Fact-Finder. The purpose of the political subdivision is not to save money but to offer services for its residents. Services amount to a great deal of activity. One of those activities is to provide a good safety force that is efficient and well paid. None of the activities of the township will in anyway be lessened by the wage recommended by the Fact-Finder.

The above is the following order of the Conciliator which Award is fair, just and equitable under the circumstances and evidence of this case. The Fact-Finder as well as the Conciliator, paid heed to comparables, to the ability to pay and to other items necessary to determine such issues.

IV. AWARD

The Award of the Fact-Finder is clear in the Opinion and Discussion in this particular matter---all as stated herein.

  
MARVIN J. FELDMAN, Conciliator

Made and entered  
this 30th day  
of May, 1997.



STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO  
FACT-FINDING REPORT

MAR 24 11 05 AM '97

MARCH 21, 1997

**IN THE MATTER OF:**

AUSTINTOWN FRATERNAL ORDER )  
OF POLICE, LODGE NO. 126 )

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

AND )

AUSTINTOWN TOWNSHIP TRUSTEES )  
)

**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.  
Canfield, OH 44406  
(330) 533-1118  
(330) 533-1025(fax)

## **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 an 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

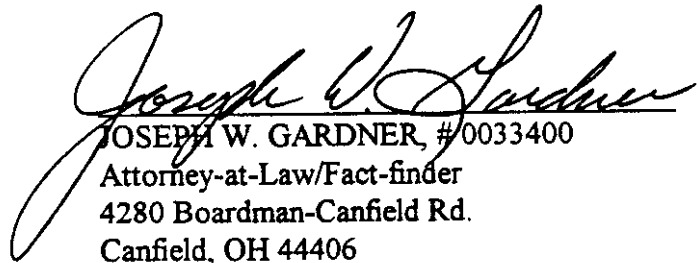
### DISCUSSION

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

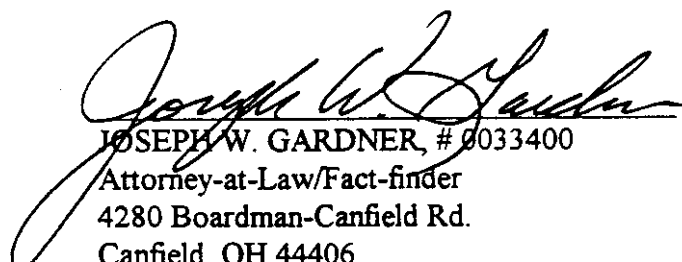
It is the recommendation that the signing bonus set forth in the contract remain the same.

  
JOSEPH W. GARDNER, #0033400  
Attorney-at-Law/Fact-finder  
4280 Boardman-Canfield Rd.  
Canfield, OH 44406  
(330) 533-1118

## 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 21<sup>st</sup> 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 21<sup>st</sup> day of March, 1997.

  
JOSEPH W. GARDNER, #0033400  
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