STATE EMPLOYMENT RELATIONS BOARD
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FACT-FINDING REPORT
September 28, 2000

CITY OF NORTH CANTON, OHIO	)	CASE NO. 00-MED-05-0667 10668 D
	)	
EMPLOYER	)	
	)	
AND	)	
	)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	
	)	
UNION	)	

APPEARANCES

FOR THE CITY:

Robert J. Tscholl	Representative
John Boyajian	City Administrator
Michael Grimes	Chief of Police
John Blaser	Assistant Chief of Police

FOR THE UNION:

S. Randall Weltman	Representative
Shawn Bates	O.P.B.A. Director
Randy Manse	Committee Member
Charles Maley	Committee Member
Scott Coleman	Committee Member

FACT-FINDER:

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INTRODUCTION

The parties met on Friday, September 1, 2000, for the fact-finding conference. Both parties had already submitted their pre-hearing position statements. Before the fact-finding conference was opened, the undersigned offered mediation. Both parties declined to mediate their differences.

The representatives gave the opening statements. Prior to evidence being taken, the parties agreed that four (4) issues were settled and that no evidence was to be taken on those issues. Furthermore, the parties agreed that on those issues no recommendations by the fact-finder were to be made. The following issues are the issues that were settled before the fact-finding conference began:

Article 7 -- Section 1
Article 9 -- Section 3
Article 17 -- Section 7
Article 20 -- Section 1

The parties further agreed that "uniform allowance" was not to be considered an issue in this fact-finding conference.

Issue No. 1
Article 7 -- Section 9

In the collective bargaining contract, oral and written reprimands more than one- year old are not used for discipline. The union requests that those reprimands more than one-year old be stored elsewhere. As a rationale, the union states that because these reprimands are of no force and effect, that there is no need to store these reprimands in personnel files.

The city maintains that this request would violate the public records act as set forth in Section 149.43 of the Ohio Revised Code. The city maintains that the public is entitled to see everything. The city claims that the union is attempting to hide facts from the public.

The public is not entitled to see everything. Although there is a Public Records Act, some information regarding public employees must be kept confidential. Although reprimands may not be used as a basis for future discipline, keeping a record of these reprimands may be important for other matters. Requiring these records to be placed in another location would cause undue hardship upon any citizen who desires to view the past record of an officer for legitimate purposes. The city is correct in making sure that personnel information should be kept inside the personnel file.

Recommendation

It is recommended that Article 17, Section 9 of the contract remain the same, and that the request of the union be denied.

Issue No. 2

Article 15 -- Section 3

The union requests the posting of a blank schedule for proposed shift positions so that the officers are able to bid, according to seniority, for the days that they desire to work. The union further requests that each employee be given one four-day weekend off per month. The union further requests that departments scheduling not interfere with the ability to work extra jobs, trade-off days, or affect overtime.

The city rejected this proposal as one that would converge straight time to overtime. In other words, the city rejected this proposal on the basis of financial concerns. The city argues that it has a duty to operate the department in an efficient and economical manner. The city further cites the age-old maxim that the employer has the right to direct the workforce. Interference with this right infringes upon an important management function.

Testimony by the chief of police seems to indicate that a modification of this type of scheduling restriction would work if there were two "swing men". Language was even worked out for a tentative agreement, but the agreement was taken off the table when the parties reached an impasse.

The undersigned believes that no outside jobs or other outside concerns should interfere with the position of police officers serving the city. However, if scheduling could be done in such a way as to maximize employee satisfaction and effectively provide optimum police coverage for the city, without any substantial financial burdens to the city, then the proposal must be seriously taken. Employee satisfaction is extremely important so long as it can be done in a way that is fiscally beneficial to the city.

Recommendation

After reviewing the evidence, it is recommended that Article 15 of the contract be amended as follows:

Section 2.

The work schedule agreed to by the parties during the summer of 2000, which is attached hereto and incorporated by reference herein, shall be posted subject to the employer's

right to change the schedule with notice that is reasonable and fair to the employer and to the employee. Employees shall have the right to trade shifts or work days as long as the trade does not create overtime or a double shift.

Section 3.

. . .

d. Management reserves the right to assign up to two (2) patrolmen to steady swing shift for the primary purpose of covering the absence of other patrolmen and to provide additional manpower as needed on any shift. This swing shift position shall also be assigned by seniority bidding.

. . .

g. Management determines how many employees will be assigned to any shift. Management shall post a line schedule showing the proposed shift positions and days off prior to bidding.

It is further recommended that all other current language set forth in Article 15 remain the same.

Issue No. 3

Article 16 -- Section 2

The union requests that the call-out time be changed from two hours to three hours. The city rejects this proposal stating that the proposal would increase the costs in the department.

The union further states that, according to comparable jurisdictions, the average call-out time is 3.25 hours. The city's call-out time is currently 2.0 hours. The union requests only 3.0 hours. The city contends that the comparables presented by the union do not show the entire picture. The city states that its employees receive other benefits that are not received by those employees in those other comparable jurisdictions. The city rejects the proposal of the union.

The undersigned has reviewed the comparables and believes that a 2.0 hour call-out time is fair in light of all of the evidence produced.

Recommendation

It is the recommendation of the undersigned that the requests of the union be denied and the language of the contract under this issue remain the same.

Issue No. 4

Article 16 -- Section 3

The union seeks to have the option of splitting its receipt of overtime compensation between overtime pay and compensatory time. Currently, if one works overtime, the employee can take any extra pay earned as compensatory time or receive payment as overtime. The employee has a choice either to take the extra time as compensatory time or as overtime pay. Currently, the employee cannot divide the extra time between overtime and compensatory time.

Lieutenants are able to split equally the amount of extra time earned between overtime pay and compensatory time accumulated. The union claims that, since the lieutenants are able to split the extra time between overtime pay and compensatory time, the members of this unit should be given the same right.

The city has rejected this proposal stating that it is the desire of management simply to pay overtime. The bookkeeping required in this situation, plus expense to replace officers with overtime officers, adds financial burdens to the city. The city further reasons that such a change would be fertile ground for grievances and other personnel problems.

Because of the history of compensatory time, the undersigned has serious reservations as to whether compensatory time should ever be used when the employer is financially able to pay the employee pursuant to the agreed-upon wage rate. However, it would be unfair to give the right to one employee group and deny the same right to another employee group when there is no rational basis for differentiating between the two groups. Since no evidence was presented showing a rational basis for differentiating between the two groups, this bargaining unit should be able to have the option of splitting its receipt of overtime compensation between overtime pay and compensatory time.

Recommendation

It is recommended that the members of this bargaining unit have the option to equally split its receipt of overtime compensation between overtime pay and compensatory time. The following language shall be added to Section 3 of the contract:

> "The members of the bargaining unit have the option of splitting their receipt of overtime compensation between overtime pay and compensatory time. The procedures for exercising this contractual right shall be the same procedures as set forth in the contract between the city and the bargaining unit which represents the lieutenants. The language regarding the procedures for exercising this right shall be incorporated herein by reference."

Issue No. 5

Article 17 -- Section 1

The union proposes to add Martin Luther King Day as one of the designated paid holidays. The union has introduced both internal and external comparables supporting making Martin Luther King Day an official holiday. The city argues that if you increase the number of holidays it will increase the amount of overtime required to be paid. The city argues that this will simply increase financial burden of the city.

Martin Luther King Day is a nationally recognized holiday. It is currently a holiday recognized by the bargaining unit that represents the lieutenants. The city has not presented any evidence that they are unable to pay for this holiday.

Recommendation

It is recommended that Martin Luther King Day be recognized as an additional holiday as set forth in Article 17, Section 1 of this contract.

Issue No. 6

Article 18 -- Section 1

The union seeks to change the language of the applicable hiring dates in regard to the granting of vacation benefits. The union argues that because of the dates of their hiring, employees are penalized in the granting of vacation benefits. These employees request that those who were hired after January 1st, and who were still hired in the first half of said year, should receive a service date of January 1st. Those hired after July 1st, and were hired in the second half of the year, should receive a service date of July 1st. In this way, a new employee would not be penalized for being hired "a few days to late."

The city counters stating that if someone is hired on December 31st, that employee's hiring date would be retroactive to July 1st. This would allow the employee to gain six (6) months in vacation benefits. The city reasons that this would be an unjust financial burden for the city.

The undersigned believes that an employee's hiring date should be the date of hiring for all purposes. If extra vacation time is desired, then the union should bargain directly for extra vacation time instead of manipulating the hiring date.

Recommendation

It is the recommendation of the undersigned that the language of Article 18, Section 1, remain the same and that the request to manipulate the hiring date of the employees should be denied.

Issue No. 7

Article 18 -- Section 8

The Union seeks to add language which would prevent the denial of taking legitimate vacation time. Under previous administrations, vacation time was denied in an arbitrary fashion. These previous administrations would deny a legitimate request for taking vacation time.

The evidence refers to a situation where an employee would request a day off and the request would be denied. The employee would take a vacation day giving the employer very little notice. This situation caused a disruption in manpower and caused overtime to be used. The previous administrations made it a blanket policy that vacation time was prohibited if it created the use of overtime. Under the new administration and under the new police chief, this does not seem to be a problem.

Reasonable notice by the employee would seem to solve the problems of the union and of the city.

Recommendation

The undersigned recommends that the following language be added to Article 18, Section 8 of the contract:

> "So long as a request is made 48 hours or more in advance, an employee in the bargaining unit is able to use up to three (3) vacation days. However, this clause shall not be interpreted to permit any more vacation days than are set forth in the contract."

Issue No. 8

Article 18 -- Section 11

The union seeks the right to allow its members to buy back up to two (2) weeks of vacation time every year after their twentieth year of service. Two (2) weeks of carryover is now permitted in the contract. Furthermore, this procedure would "up" the pension benefit of each member, with no cost to the city.

The city states that vacation benefits are to provide for vacation. Vacation benefits should not be used to enhance the pensions of the members.

The undersigned agrees that pension benefits are for pensions and vacation benefits are for vacation. If the union believes that higher pension benefits are needed for its members, it should bargain for those higher benefits. As a fact- finder, the undersigned has a responsibility to protect not only the taxpayers of the city of North Canton, Ohio, but also the taxpayers of the state of Ohio.

Recommendation

It is the recommendation of the undersigned that this request of the union be denied and that the contract remain the same.

Issue No. 9

Article 26 -- Wages

The issue of wages between the parties is a contentious issue. The claims of the union are that the city has battled with the union on every single issue and forced the union into conciliation during the last contract talks. After the conciliator made his decision, the city granted all its other employees the same benefits that it forced this union to win.

The city claims that the police officers in this bargaining unit are the best paid officers in all of Stark County. The city claims that the proposal of the union is unrealistic and excessive by any standard. The city further states that the officers in this unit have a Sunday premium which results an additional $1400 per year. The city further states that the offer made to this bargaining unit is the same offer that was made to its other non-strike units. The city desires to maintain parity. The city further states that, although this unit is a well paid unit in Stark County--the best paid, in fact--this unit does not experience the level of police activity that other units in Stark County experience.

The city has not raised a defense of inability to pay.

The city compares this case to a case several years ago between the dispatchers' union and the city of Alliance. In that case, the undersigned recommended that pay increases offered by the city of Alliance be the amount offered by that city and not the raise demanded by the union. The undersigned recommended that an increase in wages for all unit unions affected could result in serious financial problems for the city. In that case, other unions had "me too" clauses in their contracts, and an increase in pay for the dispatchers' unit would automatically mean the same increase with the other "me too" bargaining units. The Alliance city manager/auditor testified as to the poor financial condition of that city and the general economic decline of that region. The undersigned found that the evidence showed a city in decline and a

sharp or drastic increase in wages across the board may have resulted in an increased rate of decline for the city of Alliance.

The city of North Canton is in sharp contrast to that of the city of Alliance. The city of North Canton introduced no evidence of inability to pay, nor was there any evidence that the city of North Canton is suffering from any financial problems. The undersigned finds that the opposite is true. The financial condition of the city of North Canton appears excellent along with the apparent financial condition of the region surrounding the city of North Canton.

In the city of Alliance case, the city was bound to other unions with " me too" clauses and a drastic increase in costs would have had a dramatic effect city wide. What was quite apparent in the city of Alliance case was that the city could not afford these cost increases.

In this case, the city of North Canton is able to afford the increases. If the "me too" clauses do not exist--but the city will award like increases to the other units to achieve parity--on the basis of policy, parity is relevant but not a dispositive of the wage issue. Many other factors must be considered before the employer would automatically give across the board pay increases to other bargaining units and supervisory employees within the city. If the city is not mandated by contract language to give the same raises, parity is relevant, but not a dispositive. However, in the event that the city of North Canton is forced by contract language to award the same percentage raise as it gives to this unit, the city of North Canton has not provided evidence to show any financial problems that will arise by any across- the-board increases.

Reviewing the comparables presented by both parties, the undersigned finds that the officers in this unit are among the best paid in Stark County, Ohio. However, the undersigned further finds that, over the past nine (9) years, wage settlements for police officers in bargaining units throughout the state of Ohio never fell below 3.52 percent. In making this recommendation, the undersigned has reviewed the all factors in the Ohio Revised Code and in the Ohio Administrative Code. The undersigned recommends that a 12.5 percent wage increase over the life of this contract would be fair. The undersigned further finds that the proposals for the shift differentials are fair.

Recommendation

The undersigned recommends that Article 26 of the contract regarding wages be amended as follows:

Effective August 2, 2000 -- 4 % increase
Effective August 2, 2001 -- 4.5 % increase
Effective August 2, 2002 -- 4 % increase

Effective August 2, 2000 -- increase afternoon differential by 20 cents to equal 50 cents; and increase midnight differential by 55 cents to equal one dollar.

Issue No. 9

Article 27 -- Longevity Pay

The union requests an increase in longevity pay. The undersigned has reviewed comparables and all of the statutory and regulatory factors for payment of wages and other benefits. The undersigned does not see the justification for an increase in longevity pay. Longevity pay is usually given for extended periods of service. The longer the employee works with the employer, the more money the employee earns. In return, the employer retains experienced employees. There exist no evidence that the city has any problems retaining experienced police officers.

Recommendation

It is recommended that the request for an increase in longevity pay be denied and the contract language remain the same for longevity pay.

Issue No. 10

Article 10 -- Officer in Charge

The union seeks contract language that would require the police chief to designate the senior uniformed officer as the officer in charge, unless refused by that officer in writing.

As pointed out by the city, the police chief should have discretion in appointing the most qualified patrol officer in the absence of the ranking officer. The undersigned believes that the police chief should have this discretion.

Recommendation

The undersigned recommends that the request of the union be denied and the contract language remain the same.

Issue No. 11

Article 31 -- Hospitalization

The city has offered the union the same increases that it offered to all other units, including the non-strike units. Unless there are articulated reasons as to why one bargaining unit receives benefits different from other bargaining units, uniformity in health care coverage should be sought by both labor and management. Uniformity allows the employer--as well as representatives of labor and management working in such committees--the opportunity to shop around for the best coverage at the least possible price. As a general rule, when a large group

purchases insurance, the cost is spread out among more persons resulting in lower prices. If bargaining units are fragmented, premium prices are usually higher. Therefore, this bargaining unit should have the same benefits for hospitalization as those given to the bargaining unit representing the lieutenants.

Recommendation

It is the recommendation of the undersigned that the contract language for this bargaining unit be same language as the language that has been offered and accepted by the police lieutenants bargaining unit. Said language should be incorporated herein by reference.

Issue No. 12

Article 38 -- Residency and Probationary Period

Residency of police officers is extremely important. Since police officers protect the community, it is important that they reside within the community or very near to the community. There are also serious political considerations regarding the spending of tax dollars for those who reside outside the municipality that employs them. Residency lawsuits are a serious concern for all municipalities. Uniformity in the residency rule should be of paramount importance. The residency rule of this unit should be the same as the residency rule that has been established with the lieutenants bargaining unit.

The undersigned has reviewed the proposal regarding the probationary period. The undersigned finds no compelling reason to change the probationary period.

Recommendation

It is the recommendation of the undersigned that the contract language regarding the residency rule for this bargaining unit be the same language as the language that has been offered and accepted by the police lieutenants' bargaining

unit. Said language should be incorporated herein by reference. The undersigned recommends that all other language under Article 38 remain the same.

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