

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING 2001 JUL 12 A 11: 01

BETWEEN

THE CITY OF YOUNGSTOWN

AND

THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

BEFORE: Robert G. Stein

SERB CASE NO. 00 MED 10-1092

PRINCIPAL ADVOCATE FOR THE UNION:

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and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

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Youngstown OH 44503

INTRODUCTION

The Employer is the City of Youngstown (hereinafter referred to as “Employer” or “City”). The bargaining unit consists of 15 full-time employees who are classified as Public Service Emergency Dispatch Technicians.

The parties held several bargaining sessions in 2000 and 2001 prior to declaring impasse, and they were able to reach agreement on several proposals. The fact-finding hearing was held on May 25, 2001 and June 6, 2001 in Youngstown, Ohio. There were 16 unresolved issues and each party was provided an opportunity to present evidence and testimony in support of their positions on each one. At the request of the parties the Fact Finder served as a mediator and was able to assist the parties in resolving 8 of the issues. The remaining 8 issues are the subject of this fact-finding report. During the hearing the parties agreed to address personal days and holidays under the single heading of Issue 3.

By mutual request of the parties the fact-finding report is to be issued on July 9, 2001. In this report the term “EPS” refers to Employer’s Position Statement and the term “UPS” refers to Union’s Position Statement. The position of each party on all impasse issues shall not be restated but will be referenced by these terms.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for Fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature

These criteria are somewhat 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 Section 29.1 WAGES

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

Internal comparable data that establish a pattern for wage settlements are influential factors in determining appropriate wage levels. During the past 6 months three experienced fact-finders determined that wages for the Service Department unit, the Patrol Officers' unit, and the Detective/Sergeant unit should contain two components: an across the board wage equity increase and a 4% general increase in pay (UX 3,5,6). However, the City made a forceful argument regarding the uncertainty of its finances (MX 4,5). The fact that three other major bargaining units of the City recently received wage increases that incorporate an inequity component and a wage increase carries considerable weight in this matter (UX 4, 5, 6).

The Union made a compelling case for the relative position of the bargaining unit of Dispatchers with respect to surrounding communities. Union Exhibit 9 demonstrates that since the last round of bargaining, which also went to fact-finding, the bargaining unit has improved its competitive position from approximately 75% of the average to approximately 80% of the average (MX 1, Van Pelt Report). The bargaining unit also

receives the benefit of PERS pickup by the City, a benefit also provided to the following City departments: Water, Management, Streets, City Hall. This is a significant benefit that has a tendency to be unrecognized for its value. The City is correct in emphasizing it as a component in an employee's wage.

However, when the PERS pickup is factored into the wage rate the bargaining unit is still some 15% below the average wage levels of the comparable cities listed in Union Exhibit 9. The City has a dilemma. It must maintain a competitive wage structure, retain and recruit good people and find a way to maintain a positive cash flow. I find the .60 wage equity increase, proposed by the Union, to be beyond the financial reach of the City's budget and to be out of line with the pattern of settlements in the City. The bargaining unit has made steady progress toward closing the gap between its wages relative to other comparable cities. The same prudent course of incremental improvement appears most appropriate in a City that is seeking creative ways to rebuild its financial base.

Recommendation

1 st year (retroactive to January 1, 2001)	.30 cents per hour, plus 4%
2 nd year	.30 cents per hour, plus 4%
3 rd year	.30 cents per hour, plus 4%

ISSUE 2 Section 7.2 SENIORITY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties are clear on the language they have agreed upon. The City believes that Fact-finder Van Pelt (MX 1) previously addressed the seniority of Millie Maldonado. I find Mr. Van Pelt spoke to this issue, but did not specifically rule against granting past service credit. Furthermore, the somewhat complex history of the formation of the Dispatcher unit should be considered. It is unclear whether promises were made to employees or misunderstandings took place. It is not unusual for a degree of confusion to exist when a municipality undertakes a new service. However, as a practical matter, it is important to address unresolved conflict in a fair and sensible fashion. The parties have agreed upon the language, but what is at stake is 9 months of service credit, which the Union argues should be granted to Ms. Maldonado. I find that the weight of the evidence supports the Union's position in this particular case.

Recommendation

Ms. Maldonado should be provided with back service credit of approximately 9 months, and her seniority should be adjusted accordingly.

ISSUE 3

**Section 19.1 HOLIDAYS
New Section PERSONAL DAYS**

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

In the last round of bargaining the birthday holiday was added to the list of holidays provided to the bargaining unit. The City argues that it has a fundamental right to schedule work (or days off), including the right to have employees take their birthday holiday off even when it appears as a workday in their schedule. The City pointed out it has had a long-standing practice of requiring employees to work all holidays that appear in an employee's regular schedule, except for the birthday holiday. The fact that the Patrol bargaining unit and the Detective/Sergeant bargaining unit is treated in the same fashion as the Dispatcher unit in this regard is significant.

The Union argues that a birthday holiday should be treated as any other holiday. It argues that if an employee is scheduled to work on her birthday, she should be allowed to work it. The Union cites a memorandum issued by the Chief of Police in support of its position (UX 10). The City counters by arguing that Union Exhibit 10 was a memorandum that dealt only with payroll.

According to Article VI the parties have agreed that the City has the specific right to "...to determine shifts and reasonable overtime requirements." The language of Article VI also recognizes the City's right to maintain "...efficiency and to generally

operate the City.” I find that by exercising its rights under Article VI and requiring employees to take off a day that they have bargained as a holiday is consistent with the intent of Article 19. It is expected that the City would give employees advance notice of any schedule changes as a matter of courtesy.

It is also noted that other bargaining units in the City have a personal holiday instead of a birthday holiday. A personal holiday can be used at anytime and is often considered by employees and employers alike to be advantageous. However, that is a subject better left to the parties to bargain.

The Union is seeking to establish a new benefit that provides for personal days off. The Union refers to Union Exhibit 9 in support of its position. In Union Exhibit 9, just over half (8 out of 14) of the OPBA jurisdictions have between 1 and 3 personal days off. The other 6 jurisdictions have no personal days. The AFSCME unit in the City has a personal leave benefit, but it is without pay. There was no evidence presented that the other bargaining units in the City have a paid personal leave benefit. The only geographically near jurisdiction that has a personal leave benefit is Warren. Bargaining units in Mahoning and Trumbull counties have no personal leave days. In light of the absence of such a benefit within the City, the external comparable data presented by the Union, at this point in time, are not sufficiently persuasive to support the establishment of a new benefit.

Recommendation

Article 19 Holidays

Maintain current language

New Personal Days

No new language

ISSUE 4 Section 20.4 VACATION SCHEDULING

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

At the hearing the Union modified its position and agreed that the 2nd to last sentence in the current section 20.4 was acceptable. It wants to modify the last sentence in 20.4 to allow for employees to choose vacation days. The Employer is fearful that vacation selection would be disruptive to schedules and to maintaining adequate coverage. The last sentence in 20.4 provides employees the right to exercise their seniority rights to secure desired vacation times. This right is commonplace among bargaining units in the public and the private sector. The City's concerns over scheduling and coverage are clear. This is still a new service for the City, and it is still attempting to determine appropriate staffing levels. However, it appears reasonable that

employees should be able to schedule at least one week a year and couple it with days off in a similar fashion exercised by employees of the City who regularly have Saturdays and Sundays off.

Recommendation

Add to the current language of Article 20.4 the following sentence:

A bargaining unit employee shall be permitted to schedule one consecutive week of vacation (5 consecutive days) per year to begin on a day other than a Monday in accordance with the above selection procedures.

ISSUE 5 New Section SHIFT SWITCHING

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

At one time the bargaining unit had the ability to switch shifts. The City terminated the practice some 18 months ago. The Union argues it should be part of the Agreement and employees who have a need to take time off shall be permitted to switch shifts. As highlighted by a cover story in Time Magazine in recent weeks, one adult, usually a woman, often heads the American family. This places a great deal of pressure on families and requires an employee to respond to the needs of children at unexpected times. Employers and employees have to adjust to this reality in the social makeup of

our society, particularly in situations where bargaining units have a predominance of women with dependent children. Without knowing the complexities and the nuances of scheduling, it is difficult for this Fact-finder to recommend a specific language at this time. Nevertheless, this is an important issue that the parties should address.

Recommendation

NEW SECTION

SHIFT SWITCHING

Within 60 calendars days following ratification of this Agreement, the parties shall meet and confer over new language to be included in the Agreement that permits an employee in the bargaining unit to be able to switch shifts. Such switching shall not create overtime or shall not conflict with any other provision of the Agreement. In the event the parties are unable to reach agreement on new language within a 60-calendar day period following the initial meeting the dispute may, at the option of either party, be referred back to the Fact-finder for a recommendation.

ISSUE 6 New Section MINIMUM STAFFING

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The City strongly opposes any contract language that addresses minimum staffing. It argues that staffing must be maintained as a management right in accordance with ORC 4117. The City also argues that much of its staffing problems are caused by a variety of circumstances such as sick leave, vacation, and the varying pattern of calls made by the public. It appears the City is just beginning to measure the workload placed upon the bargaining unit (MX 8). Only recently did the City convert the staff from a part-time unit to a unit made of full-time employees.

The Union argues that Union Exhibit 11 demonstrates recognition on the part of the City that more staff is needed in the dispatching area. I find that Ordinance 98-455 creates staffing authorization levels, but does not dictate a particular level of staffing. Traditionally this is a function of the administration.

The concerns expressed by the Union regarding excessive overtime and the inability of employees to take vacation time off are significant problems and need to be addressed. However, in Article VI the parties have already agreed that the Employer has the right to “...*determine...size and duties of the workforce...*” The concept of staffing is not completely foreign to labor agreements, particularly in the area of safety forces. However, the newness of the service and the uncertainty of the peak hours of demand must be considered regarding the City’s efforts. The City needs to be given a good faith opportunity to establish a reasonable work environment that meets the needs of the public and is efficient and affordable. However, the City is strongly urged to seek the Union’s input as part of its decision making process.

Recommendation

No language is recommended.

ISSUE 7 Section 30 LUNCH AND BREAK TIME

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The City proposes to delete the lunch break for employees. The Union proposes to maintain current language. As stated above, the dispatching service is still developing and it is unknown what the appropriate level of staffing should be and how the service should be organized based upon demand. A vital aspect of this service is the ability of employees to rationally deal with people who are often in highly emotional states. As a result this type of work can be stressful. The Union pointed that on occasions employees are required to skip or delay their breaks during particularly busy periods. The ability to take an extended break away from the pressure of this work should help employee to be

more effective. I do not find that there exists sufficient reason to undo what the parties have previously negotiated.

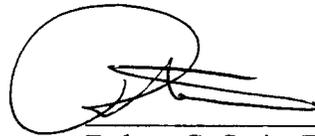
Recommendation

Current language

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 9th day of July, 2001 in Portage County, Ohio.



Robert G. Stein, Fact-finder

Carolyn M. Smith ~~7-9-01~~ CMS
7-9-01

CAROLYN M. SMITH, Notary Public
Residence Summit County
Statewide Jurisdiction, Ohio
My Commission Expires Nov. 30, 2003