

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2001 APR -4 A 10: 31

March 30, 2001

In the Matter of Fact-Finding Between

THE CITY OF LYNDHURST)
)
and)
)
OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)
)

Case No.: 00-MED-10-1190

APPEARANCES

For the City:

Jon Dileo)
Anthony Adinolfi)
Anthony L. Ianiro)
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)
)
)

Attorney
Chief of Police
Finance Director

For the Union:

S. Randall Weltman)
Greg Traci)
Jeff Traci)
Milo J. Tilocco)
)
)
)

Attorney
Director, Lyndhurst Police
Negotiating Committee, Patrolman
Negotiating Committee, Patrolman

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION and BACKGROUND

This matter concerns the fact-finding proceeding between the City of Lyndhurst (the "City") and the Ohio Patrolmen's Benevolent Association (the "Union" or "OPBA"). The bargaining unit consists of approximately 20 full-time Lyndhurst Police Department Patrol Officers. The terms of the parties' collective bargaining agreement expired on December 31, 2000.

The parties commenced negotiations for a new agreement in December 2000. Approximately five negotiation meetings were conducted. During those negotiations, all of the non-economic issues were resolved. The tentative agreements on those issues are enclosed in this fact-finding report. However, the parties were unable to resolve any of the proposed economic issues.

Virginia Wallace-Curry was appointed fact-finder in this matter by the State Employment Relations Board. The parties declined the fact-finder's offer to mediate the issues, and a hearing was held on March 5, 2001, at which time the parties were given full opportunity to present their respective positions on the issues. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended. In making the recommendations in this report, consideration was given to criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board.

The remaining unresolved issues are:

1. Salary and Other Compensation - Article VIII
2. Hospitalization - Article IX
3. Holiday Credits - Article X
4. Sick Leave - Article XII

ISSUES

1. Salary and Other Compensation - Article VIII

Union's Position

The Union proposes that it receive the "going rate" for external and internal comparables on all economic issues in order to maintain or to obtain the current standards. The terms of the previous, now expired, contract contained an economic package that brought the patrol officers up to parity with neighboring communities. The economic package was recommended by Fact-Finder Dana Castle and ordered by Conciliator I. Bernard Trombetta. The expired contract corrected the past collective bargaining history which had placed the Lyndhurst patrol officers well below average vis-a-vis both external and internal comparables. Anything less than the going rate will cause the bargaining unit to slide down below average again. The City has not contended that it does not have the ability to pay or the resources to meet the Union's economic proposals.

The Union proposes an increase in the annual base pay as follows:

- Section 1(a): Effective January 1, 2001 - 4%: Effective January 1, 2002 - 4%: Effective January 1, 2003 - 4%
- (b): Shift differential - Maintain current language
- (c): Cash adjustment - Eliminate

City's Position:

The City contends that a moderate annual increase of 3% would keep Lyndhurst patrol officers among the best paid of the surrounding communities. Over the past three years the Lyndhurst patrol officers have received an astounding pay increase of 6% per year compared to the statewide averages of 3.4%, 3.66% and 3.63%. Lyndhurst patrol officers now rank 3rd out of

26 suburbs in Cuyahoga County and second in the comparable surrounding communities. By virtue of the now-expired contract, the patrol officers earn over 1.5% more than the city's fire fighters - inclusive of paramedic pay and not considering the shift premium paid to the patrol officers. Providing already-known increases in neighboring suburbs and assuming a 3.5% increase where increases have not yet been determined in those suburbs, Lyndhurst's patrol officers would still rank third in the area and would still remain comfortably within the top five suburbs in Cuyahoga County.

The City also proposes that the shift premium be eliminated. Police work is by its very nature an around-the-clock job. Because working "off" hours is an inherent part of the job, it is not common to find shift premiums which apply to police work. They exist in Lyndhurst only. No other surrounding suburb has a shift premium for patrol officers. The City asserts that this drives up the compensation package unnecessarily.

The City Proposes:

- Section 1(a): Effective January 1, 2001 - 3%: Effective January 1, 2002 - 3%: Effective January 1, 2003 - 3%
- (b): Shift differential - Eliminate

Discussion

It is clear from the evidence presented by the Union that the recently expired contract was designed to adjust an economic disadvantage that the patrol officers had in the past vis-a-vis its neighboring communities. The City's current position is an attempt to erode the gains made in the last contract without any justification other than a desire for prudent spending. Ability to pay is not an issue. But while prudent spending is a laudable goal, it should not be achieved at the expense of employees who have recently corrected economic disparity. The average wage

increase in recently negotiated contracts for the communities surrounding Lyndhurst, such as South Euclid, Highland Heights, and Mayfield Heights, is 4% each year for the life of the contract. This is only slightly above the average wage increase for police officers statewide for the year 2000, which was 3.90%. In order to preserve the Lyndhurst patrol officers' position, an increase of 4% for each year is recommended.

The Union recommends that the City eliminate the \$250 signing bonus. The contract language refers to the \$250 payment as a remedial cash adjustment. This payment seems unnecessary at this time because economic adjustments were made in the expired contract and the 4% per year increase recommended for the current contract will suffice to maintain the parity that the patrol officers have achieved.

The City recommends that the shift differential be eliminated. It presented evidence that none of the other surrounding communities has shift differential pay. However, the surrounding communities have provisions for additional pay for other categories that Lyndhurst patrol officers do not have that boost the economic packages of their patrol officers, such as corporal pay (Beachwood and Mayfield Heights); special unit pay for SWAT team members, detectives, bicycle patrol and other specialized units (Beachwood); educational pay for college degrees in Law Enforcement and firearms certification (Highland Heights); and officer in charge pay (Highland Heights). The elimination of the shift differential, along with the elimination of the \$250 cash payment, would pose a significant cut in the financial package of the Union which would only serve to erode the Lyndhurst patrol officers' current position with respect to surrounding communities. Therefore, the elimination of the shift differential is not recommended.

Recommendation

Section 1(a): Effective January 1, 2001 - 4%: Effective January 1, 2002 - 4%: Effective January 1, 2003 - 4%.

(b): Shift differential - Maintain current language.

(c): Cash adjustment - Eliminate current language on remedial cash adjustment.

2. **Hospitalization - Article IX**

Union's Position

The Union proposes that the City maintain a health care plan with the current level of benefits enjoyed by the bargaining unit with no employee contribution to the cost of the plan and no caps on the amount of the premium for which the City will be responsible if the cost of coverage should rise above current levels. The Union asserts that non-union City employees bear no cost of their medical insurance coverage and neither do City firefighters.

City's Position

The City proposes to maintain the caps on the maximum amount the City will pay for health care insurance (United Health Care or any subsequent plan) through January 31, 2002. Effective February 1, 2003, the City proposes to increase the caps by 5%. The City argues that the current premium costs are \$171.00 per month for single coverage and \$470.00 per month for family coverage. The existing caps require employee contribution for one half of any increases above \$201 per month for single coverage and \$537.50 per month for family coverage. This provides a 15% increase cushion before employee contributions would be triggered. At the time

of the second renewal on February 1, 2003, the City agrees to increase the caps by another 5% to 211.15 per month for single coverage and \$564.38 per month for family coverage. Employees would not be required to pay for hospitalization unless the City experiences very large increase of over 20% over two years. The City contends that 70% of public employees in Ohio contribute to the cost of their health care coverage and that it is a trend beginning in the surrounding communities, such as Highland Heights, Mayfield Heights and South Euclid. Therefore, the City's proposal is reasonable.

Discussion

The Union's proposal that employees bear no responsibility for their health care coverage is unrealistic. Even the contract between the City and the Firefighters which expired in December 2000 acknowledges the possibility that premium caps and employee contributions may be necessary in future agreements. Certainly, a cap on an employer's maximum liability for the cost of coverage is common. The City's proposal, which currently gives employees a 15% cushion against increases in the cost of coverage up until February 2003 at which time the cap increases by 5%, is reasonable. However, it is also reasonable that employees have a maximum for which they are liable so that their real wages are not significantly and unexpectedly eroded by large increases in health care premiums. Other communities which have caps on the city's liability, such as Highland Heights and Mayfield Heights, also have a maximum liability for employees, which is \$50 per month. It is recommended that Lyndhurst employees be responsible for one half of the increase in cost of monthly coverage in excess of the current caps, with a maximum liability of \$50 per month.

The City also proposes that the language of the agreement state that should the City decide to change carriers, mutual agreement of the parties will be required only where a substantial change in benefit levels occurs. The language of the expired agreement requires mutual agreement where any reduction in benefit level occurs. The City's proposal eliminates the need for full agreement on a carrier if only minor changes are necessary, yet provides the Union some power and input should a proposed new carrier substantially reduce the benefits currently enjoyed. However, what is a "substantial reduction" will be subject to interpretation and may be grist for the grievance procedure.

Recommendation

1. Super Med Plus plan, Super Med Select plan and HMO Health Ohio plan be replaced with United Health Care plan in the language of Article IX.
2. The language of Section 3 (a) to remain the same with the exception of the last sentence which should read: However, if there is a substantial reduction in benefit level, there must be a mutual agreement between the OPBA and the City before implementation.
3. Section 3(c): If the monthly premiums for the United Health Care plan (or its equivalent if a different carrier is selected) exceed \$201.10 for single coverage or \$537.50 for family coverage on or after January 1, 2001 through January 31, 2003 or \$211.15 for single coverage and \$564.38 for family coverage on or after February 1, 2003, employees will contribute one-half of the excess premiums over those amounts toward the cost of such coverage, up to a maximum employee contribution of \$50 per month.

3. **Holiday Credits - Article X**

Union's Position

The Union proposes two changes in regards to holiday time. First, the Union proposes adding one more holiday, bringing the total holidays to 12, consistent with other surrounding communities. Secondly, the Union proposes giving employees more control in picking when they can take their holidays. Currently, the City determines when an employee make take holiday time based on staffing levels. The City maintains a minimum staffing of 4 patrol officers per shift. During the summer months when employees take vacation time, holiday time cannot be taken because staffing levels would dip below 4 patrol officers per shift. The Union proposes that employees be permitted to take six days of holiday time without regard to staffing levels. Only if the Chief cannot find a replacement, through the assignment of overtime, should an officer be denied a holiday request. The Union proposes language similar to that in the Mayfield Heights agreement.

City's Position

The City argues that with vacations, sick leave and paid holidays, afford employees vast amounts of time off with pay. Demands to increase paid time off should be reject unless supported by compelling circumstances. The Union can offer no justification for an already rich resource of paid time off. The current number of paid holidays, eleven (11) is well within the average allocated in the surrounding communities.

With regard to the Union's second proposal involving taking holiday time, the City is not completely unsympathetic, but asserts that staffing levels must be respected. The City proposes

that patrol officers be permitted to take one of their holidays irrespective of staffing levels. As such, if a special event in their lives arises, they will be able to take the day off. All remaining holidays would be utilized consistent with current practice.

Discussion

The Union has offered no compelling reason to increase the number of paid holidays to 12. Some of the surrounding communities allow for 12 holidays and others have only 10. Eleven is not out of line with the comparables used by the Union. Therefore, no additional holidays are recommended.

However, even the City acknowledges that employees should have some control over taking time off for special occasions. The City proposes that employees be allowed to take one holiday credit without regard to staffing, and the Union proposes six. The Union stated that employees are denied discretion to take time off peak vacation times. Because the most popular vacation months appear to be June through September, allowing employees to take four (4) holidays without regard to staffing levels would be sufficient to meet the needs of employees who must have time off for special occasions that arise. The Union proposes language similar to that in the Mayfield Heights contract. That language acknowledges that requests for holiday time must be made seven days in advance and if no one can be found to fill the employee's position, even on overtime, the requested day off will be denied. This language ensures that the City's staffing levels are maintained, which is the City's main concern.

Recommendation

Section 1. Each member of the bargaining unit is entitled to eleven (11) Holiday Credits throughout the year, except as follows. New employees shall be entitled to one (1) holiday for each month that they work during their first year of employment, except those employees who were hired in the months of January or February who shall be entitled to all eleven holidays. [This language incorporates the tentative agreement reached by the parties.]

Employees shall be entitled to receive time off with pay for four (4) Holiday Credits, to be taken at the employee's option, without regard for whether the absent employee's position must be filled with an employee earning overtime. Requests for such time off must be submitted at least seven (7) days prior to the requested day. This time requirement may be waived by the Chief of Police or designee. If no employee can be found to fill the absent employee's shift, the requested day off may be denied. The remaining seven (7) Holiday Credits, or time off in lieu thereof, shall be fixed and determined by the City, who shall make provisions for such Holiday Credits consistent with the proper administration of the Department.

4. Sick Leave - Article XII

Union's Position

The Union asserts that the sick leave cash-out benefit on retirement is far below both internal and external comparables. Internally, the patrol officers' sick leave cash-out benefits are the lowest of any City employee. Externally, all of the other surrounding communities have sick leave cash-out benefits that exceed the Lyndhurst patrol officers except for South Euclid. The Union proposes that the patrol officers receive the same sick leave cash-out benefits as the Service Employees' Union. This would increase the maximum number of hours for the base calculations from 960 hours to 1200 hours and increase the payment rate for hours over the

maximum number from 25% to 50%.

City's Position

The City admits that other City employees have garnered different sick leave cash-out benefits that exceed that of the patrol officers. The City's service employees enjoy the richest benefit, followed by the City's non-union employees and the firefighters who enjoy comparable sick leave cash-out benefits. The City proposed that the sick leave cash-out benefit for patrol officers be enhanced, and that they receive the same benefits as the non-union/firefighter cash-out benefit. The Union rejected the offer and demands the richest plan. The City's offer is reasonable and should be recommended.

Discussion

The patrol officers' cash-out benefits are below those afforded to any other City employee and most benefits afforded to patrol officers in the surrounding communities. The City has offered to bring these benefits in line with other non-union employees and the firefighters. The Union has not demonstrated why the plan negotiated by the service employees should be used instead. The Union has used the firefighters' benefits as a basis for recommending other positions and they should be used in this instance as well. Therefore, the firefighters sick leave cash-out benefits is recommended.

Recommendation

Section 6. Any member of the bargaining unit with ten (10) or more

years of cumulative public service with the State of Ohio or its political subdivisions shall receive payment, at the time of retirement, for not more than a maximum of 318 hours unused sick leave time based on a formula of one-fourth (1/4) of the employee's accrued but unused sick leave at the time of retirement, but not to exceed a maximum accrual of 1272 hours. A member of the bargaining unit who has been employed with the City of Lyndhurst for the period of time required shall be paid for accrued but unused sick leave at the time of retirement an amount which shall be the greater of the 25% or the other percentages of unused sick leave set forth in this Section 5 as follows: 15 years – 30%; 20 years – 35%; 25 years – 40%; 30 years – 45%. The accrual of unused sick leave used for this formula shall not exceed a maximum accrual of 1272 hours. In addition to that amount, the City will pay 25% of the accumulated sick leave which exceeds 1272 hours up to a cap of 1590 hours. (The City will pay 25% of the accumulated sick leave between 1272 and 1590 hours). The City will also pay 1/6 of all unused sick time that is in excess of 2,930 hours but less than 4,123 total hours. The payment shall be based on the employee's rate of pay at retirement and eliminates all sick leave credit accrued but unused by the employee at the time the payment is made. An eligible employee or the employee's personal representative must apply for payment of accumulated sick leave from his appointing authority within one hundred twenty (120) days after eligibility.

In case of death of an employee while on the City payroll, if the employee had ten (10) or more years of cumulative public service with the State of Ohio or its political subdivisions, accumulated sick leave shall be paid to his or her personal representative, designated by the employee, under the terms and in the same manner as provided upon retirement.

TENTATIVE AGREEMENTS

1. ARTICLE VII - HOURS OF WORK AND OVERTIME

Section 3 - Add the following language:

Employees shall be allowed to accumulate compensatory time up to 160 hours. Employees are required to cash-out all hours in excess of 100 at the end of the calendar year, but can cash-out more at that time upon request. The compensatory time cash-out

shall be paid in a separate check payable in December. In addition, accumulated compensatory time can be cashed out throughout the year.

2. **ARTICLE X - HOLIDAYS**

Section 1 - Add the following language:

New employees shall be entitled to one (1) holiday for each month that they work during their first year of employment except those employees who were hired in the months of January or February who shall be entitled to all eleven.

3. **ARTICLE XII- EMERGENCY PAID LEAVE**

Section 1

Change reference to “(2)” to “(3).”

4. **ARTICLE XX - PERSONNEL FILES AND POLICY**

Add New Section 5 as follows:

Discipline that is more than two (2) years old (more than two (2) years beyond the date of issuance) other than that which relates to incidents involving work-related physical injury or violence, or sexual harassment, shall not be considered for purposes of progressive discipline.

Submitted by: _____

Virginia Wallace-Curry

Fact-Finder

March 30, 2001
Shaker Heights, Ohio

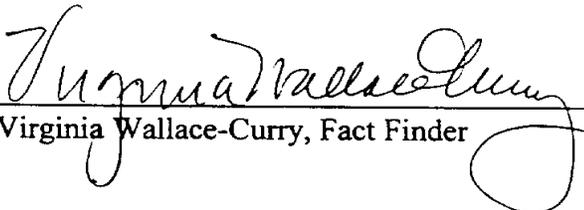
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Report for the City of Lyndhurst and the Ohio Patrolmen's Benevolent Association was sent to the parties by regular mail and to the State Employment Relations Board by regular U.S. mail on this day, March 30, 2001. The Fact-Finding Report was served upon:

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