

2002 DEC 16 A 10: 34

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
FACT-FINDING BETWEEN: CITY OF CLEVELAND
and
THE OHIO PATROLMAN'S
BENEVOLENT ASSOCIATION
CASE NO: 00-MED-12-1371

RECOMMENDATION OF FACT-FINDER THOMAS R. SKULINA

HEARING

This hearing was conducted in Cleveland, Ohio on December 2, 2002. The City's advocate was Jon M. Dileno, Esquire of Duvin, Cahn & Hutton. The union's attorney was Kevin Powers, Esquire. Five issues were discussed. The bargaining unit has one hundred seventy-five members. They are Institutional Guards for security at city jails. Correction Officer's provide security at the House of Corrections and security officers provide security at city owned facilities.

All recommendations have considered the following:

- (1) Past collectively bargained agreements.
- (2) Comparable work.
- (3) Interest and welfare of the public and the ability of the employer to finance and administer the issues proposed and the effects on the normal service to the public.
- (4) The lawful authority of the public employer.
- (5) Any stipulations.
- (6) Other factors normally considered in dispute settlement procedures in the public sector.

FINANCIAL STATUS OF THE CITY

Evidence adduced demonstrated that the City of Cleveland has had financial difficulties and shall continue in the future. The unencumbered Fund Balance for 2001 was a negative \$895,153.00.

Funds designated for other purposes were down. Revenue was down thirteen million dollars.

In 2001, there is an eleven year occurrence that equates to an extra payroll period.

The city income tax was lower as well as admission and parking fees.

The city had to impose a hiring freeze for new and replacements for retirees.

The current rainy day fund is thirty-two million dollars less than the acceptable standard.

There are a number of capital needs that are unfunded.

Existing services are in jeopardy for their continuance.

COMPARABLE

The comparable statistics indicate that the Cleveland Correction Officer's, though not last among Cuyahoga County cities, are behind nine cities for total pay in 2002. Cleveland is close to Westlake and Solon and pays more than Parma, East Cleveland and Broadview Heights.

With respect to funeral leave, Cleveland ties East Cleveland and Westlake for requiring use of sick time. Ten other entities, including CCSO, allow anywhere from three to five days funeral leave.

Injury leave extends from forty-five days to open ended with review by eleven of the thirteen cities listed. Cleveland and Bedford Heights allow no days.

PATTERN BARGAINING

Cleveland has in the past relied heavily on pattern bargaining.

This works both ways since often the pattern begins with the safety forces.

The wage package was a pattern. The wage increase is 3% retroactive to April 1, 2001. 3.5% retroactive to April 1, 2002 and 4% to April 1, 2003.

In one instance, the police obtained a \$1,000.00 lump sum salary increase to one-year salary levels effective April 1, 2003 after application of the 4% increase. This was explained as compensation for dismissal of pending litigation. EMS workers also got their benefit and it is unclear why the pattern was not followed. The allowance to EMS does not create a new pattern, but does indicate a variance from the overall pattern.

1. WAGES

The union has sought a \$1,000.00 lump sum salary increase to one year salary levels effective April 1, 2003 after the 4% increase.

Cleveland Correction Officer's are not on the bottom of the comparable pay scales. The current raises are pattern raises that are in keeping or slightly better than most raises in cities around the State.

Cleveland has serious financial difficulties and this increase of \$175,000.00 to its 2003 payroll is substantial enough that the plight of the City in this present poor economic environment weighs against a recommendation of this benefit.

Both parties agree to the proposed general wage increase.

FINDING:

Wage increases shall be at the following rates:

- a. Retroactive to April 1, 2001 - 3.0%
- b. Retroactive to April 1, 2002 - 3.5%
- c. Retroactive to April 1, 2003 - 4.0%

2. HAZARDOUS DUTY INJURY

The union has demonstrated that with the exception of Bedford Heights, all correction facilities in Cuyahoga County allow for injury leave. This provision is limited to injuries from interaction with an inmate or arrestee "while on duty".

This fortunately is not common place but happens occasionally. Last year, three persons were injured this way, two in one occurrence and the other in a second occurrence.

This benefit is affordable.

FINDING:

Because of the hazardous nature of inmate supervision, days lost by an employee due to a hazardous duty injury, shall not affect normal weekly salary, accumulated sick time, and vacation days. Nor shall an employee be deprived of any other benefit because of hazardous duty injury so determined by the employer and confirmed by the Medical Director and/or the employee's private physician and any time lost due to such an injury shall not affect the formula for sick leave conversion at the time of retirement.

"Hazardous duty injury" is defined as injury resulting from physical interaction with an inmate or arrestee while on duty. Employees injured while performing work in the service of another employer are not eligible for hazardous duty pay and benefits.

It is mutually agreed that an employee is prohibited from engaging in or accepting secondary employment during the period of time in which the provisions of the above paragraph are in effect.

Injuries which are incurred on duty while employees are engaged in non-hazardous duty are compensable through the Ohio Bureau of Worker's Compensation.

Any dispute arising out of the interpretation or application of this policy is subject to the Grievance Procedure.

The city may require periodic examinations to determine the continued extent of incapacity. After an employee has been on hazardous duty injury status for three (3) months, a complete medical diagnosis report shall be made by the Police Surgeon as to when the employee can return to normal duty. In making such diagnosis, the Police Surgeon shall review all medical records of the employee, and any reports of the employee's own physician(s) regarding his medical condition. If the employee will never be able to return to normal duty, then application will then be made for a disability retirement pension.

While both the city and the union acknowledge that there are no permanent restricted duty assignments available, the Safety Department may, at its option, designate certain assignments as temporary restricted duty assignments from time to time to which an eligible employee may be assigned. The assignment of said employees is the sole responsibility of the City based upon the Medical Bureau's examination results.

After an employee has been on Hazardous Duty Injury status for (2) years, the employee shall apply for a permanent disability retirement pension or return to normal duty with the department.

The employee shall remain on hazardous duty injury status until the disability pension is effective.

3. FUNERAL LEAVE

The union seeks a funeral leave the same as the patrol officers, i.e., five days. Amongst correction facilities in Cuyahoga County, only Westlake, East Cleveland and Cleveland of the thirteen facilities requires use of sick time. Six of the thirteen use a three day leave. I shall recommend a three day funeral leave accordingly.

FINDING:

An employee will be granted a leave of absence with pay of up to three (3) days in the event of the death of a member of his or her immediate family.

To be eligible for funeral leave, an employee must provide the city with a funeral form (to be supplied by the city) and must attend the funeral and/or other obligations related to death and/or estate, etc.

4. PAYROLL ERRORS

State statute is available for redress if payroll errors are not corrected. Attorney fees are even obtainable if a court case must be initiated. (Rev. Code Ohio Section 4111.10).

The problem with this unit appears to be limited to only those individuals that work at the House of Correction. The city supervisors have indicated that this problem shall be addressed.

FINDING:

No change.

5. FIREARMS/LEADS CERTIFICATION PAY

The union seeks fifty cents per hour extra for those firearm certified and for those LEADS certified.

These certifications are obtained while on city time and the extra pay amounts to a raise over the 10.5% which has been offered. It shall not be recommended. But what has been considered is the status of firearm carriers.

Approximately six members of the unit wear firearms as part of their duties.

Wearing a firearm raises the responsibility and risks for those persons.

Thus, an increase of fifty cents per hour while performing duties as an armed employee is a modest recognition of the additional stress for a weapon's carrier. Only six or so persons perform this duty.

A precedent for hourly enhancements may be found in a contract where a driver has to operate a more difficult vehicle. They receive hourly increases for such work.

FINDING:

When an employee is required to carry a firearm as part of the established duty for that job, then for each hour on such duty the employee shall receive fifty cents per hour additional pay.

Respectfully submitted,



THOMAS R. SKULINA
Fact-Finder

DATE ISSUED: December 13, 2002