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STATE EMPLOYMENT
RELATIONS BOARD

2001 SEP -7 A 10: 28

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-Finding Between *

FINDINGS AND RECOMMENDATIONS

OHIO PATROLMEN'S BENEVOLENT *
ASSOCIATION *

CASE NO. 01-MED-01-0073

and *

September 5, 2001

CITY OF WILLOUGHBY *

Charles Z. Adamson, Fact-Finder *

For the Ohio Patrolmen's Benevolent Association:

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For the City of Willoughby:

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The undersigned was appointed Fact-Finder in this dispute by the State Employment Relations Board (SERB) on March 2, 2001 pursuant to Section 4117.14(C)(3) of the Ohio Revised Code in respect to a unit of dispatchers employed in the Police Department of the Employer, Willoughby, Ohio. The applicable collective bargaining agreement expired March 31, 2001.

I. HEARING

After mediation the case proceeded to hearing on July 9 and August 7, 2001 as to the issues where the parties had reached an impasse. The issues remaining at an impasse are the following:

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|---------------------------|---------------------------|
| 1. Wages | 7. Leave of Absence |
| 2. Insurance | 8. Injury Leave |
| 3. Holidays and Vacations | 9. Funeral Leave |
| 4. Uniform Allowance | 10. Tuition Reimbursement |
| 5. Overtime | 11. Duration |
| 6. Sick Leave | |

II. CRITERIA

In compliance with Ohio Revised Code, Section 4117.14(C)C4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this report:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public Employer to finance

and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

ISSUES AND RECOMMENDATIONS

Wages

The Union's Position

The contract unit involved herein consists of thirteen employees. There are nine dispatchers, one lead clerk and three clerks. The collective bargaining agreement between the parties was effective April 1, 2000 and expired March 31, 2001.

The Union takes the position that the dispatchers are entitled to a wage increase in view of the terms of the tentative agreement that the Employer has entered into with the Union in respect to the Employer's ranking police officers. The Union points out that the new ranking officer's agreement includes a set of economic enhancements and economic concessions by the Employer which should be used as a guide in determining a fair and just contract settlement for the dispatchers. The Union notes that the incentive for the ranking officers acceptance of the tentative agreement was a new additional increase in a percentage spread between the wages of the ranking officers and the wages of the Employer's patrol officers. However, according to the

Union, in the instant matter the Employer did not propose the same type of economic enhancements as it proposed to the Union for the unit of ranking officers.

The Union argues that the Employer is one of the older, larger and more urbanized cities in Lake County, being contiguous to Cuyahoga County and located close to many of Cuyahoga County's wealthier outer-ring cities such as Highland Heights, Mayfield Heights, Lyndhurst and Beachwood. Further, the Union points out, that Willoughby's crime rate and demographic data more closely resemble a Cuyahoga County city rather than a Lake County municipality.

Accordingly, the Union believes that Willoughby should be considered in the same category as one of the several Cleveland eastern suburbs.

The Union argues that in 2001 the average wage increase granted to Cuyahoga County eastern suburban police officers was four percent (4%). Also, according to the Union, the average of known wages increases for the year 2002 approaches 4% and the average wage increase for dispatchers in the eastern suburban area is even higher.

The Union uses nearby Willowick as the basis for comparison of a contiguous city in Lake County. The Union asserts that the City of Willowick and its police union recently negotiated a package that exceeds the Employer's wage offer in the instant matter. It maintains that the Willowick package has better wage increase percentages and adds longevity to the base rate resulting in even a higher wage increase. The Union also argues that during the last several years the bargaining unit members have borne an inequitable burden in respect to health care deductibles.

In respect to the Employer's ability to pay for a reasonable increase to the unit involved herein, the Union argues that the Employer is financially sound. The Union alleges that during the

last several years the Employer's revenues have risen with carryover balances at the end of each year increasing. The Union argues that the Employer has a diverse economy involving many industries and has been successful in attracting additional business to contribute to steady growth and prosperity. As a result, the Union concludes that there is no reason why the Employer cannot offer the bargaining unit involved herein an economic package that is equal to the economic package that the Employer recently granted to the police supervisors.

Data introduced by the Union in respect to a comparison of wages and benefits for dispatcher employees in Cuyahoga County indicates a wide range for the top pay for a ten year dispatcher employee. It is noted that a ten year dispatcher employee for the Employer receives \$37,169.60 in wages, a \$450.00 uniform allowance, no annual shift differential and no longevity or other benefits. This results in a total wage package of \$37,619.60 which is one of the highest compensation packages for this wage classification in thirty one jurisdictions in Cuyahoga County. It is also noted that for the year 2001 wages increases for a dispatcher with ten years service ranging from three percent (3%) to fifteen percent (15%). The record reflects that of the dispatchers receiving general wage increases in 2001, most received wage increases of four percent (4%).

The Employer's Position

The Employer's economic proposal in the instant matter is contingent upon the Union accepting the Employer's position in respect to all outstanding issues. The Employer asserts that, if the Union accepts the Employer's overall package of contract changes, it proposes a four percent (4%) retroactive wage increase for all employees employed upon the execution the contract involved herein, a three and a half percent (3 1/2%) increase effective March 31, 2002

and a three and a half percent (3 1/2%) increase effective March 30, 2003. The Employer relies upon the State Employment Relations Board (SERB) Clearinghouse Benchmark Report issued June 19, 2001 for all cities reporting with populations between 15,000 and 30,000 throughout the State of Ohio. Willoughby, which has a current population of 21,494 residents, ranks third among the 41 municipalities reporting police dispatcher compensation throughout Ohio, resulting in the Employer being 22.01% above the Ohio average.

Findings and Recommendations

Applying the six O.R.C. 4117 criteria referred to above, the undersigned reaches the following findings and recommendations. Relevant basis for comparison in making this determination are comparable communities in both eastern Cuyahoga County and in Lake County. A SERB report covering 41 communities located throughout the State which are affected by their own particular economic and geographic circumstances is not relevant to the resolution of the instant matter.

Accordingly, in view of the above and the record as a whole, the undersigned recommends that a four percent (4%) wage increase be granted to the unit involved herein effective April 1, 2001. It is further recommended that a four percent (4%) wage increase be granted to the unit involved herein April 1, 2002 and April 1, 2003.

INSURANCE

The parties reached agreement in respect to the outstanding insurance issue. They agreed that the same insurance provision appearing in the contract between the Employer and the Union for the sergeant's and lieutenant's unit shall be the insurance provision in the collective bargaining

contract for the unit involved herein. The parties further agreed to the following in respect to “benefit levels to be substantially equal” in the May 16, 2001 temporary agreement signed by representatives of the Employer and the Union. The parties indicated that this language appears in the temporary agreement because there are, and there always will be, nuances of differences in the level of insurance coverage provided by different insurers.

HOLIDAYS AND VACATIONS

The Union’s Position

In respect to Article 24 - Holidays, the Union proposes to add Martin Luther King Day as one of the enumerated holidays. Further, the Union proposes that the clerk/dispatchers should be paid time and one half if they work on six enumerated holidays. The Employer’s attempt to limit the holiday benefit to those employees on active pay status is opposed by the Union. It maintains that the current contract language in respect to holidays has worked well for years and that it should not be changed in the contract involved herein.

In respect to Article 25 - Vacation, the Union opposes the Employer’s attempt to limit vacation benefits to only those employees on active pay status, arguing that the rationale set forth by the Employer in respect to both holidays and vacations is without merit.

In addition, the Union proposes a change to Article 25.9 E, which appears in the expired collective bargaining agreement as follows:

“The remaining floating days may only be scheduled when the second full-time Operator is working.”

The Union proposes to change Article 25.9 E to reflect that the remaining floating days

can be scheduled when one full-time operator is working. According to the Union, its proposal is warranted as a result of the increase in manpower and the ability to use part-time dispatchers to fill in for full-time dispatchers.

The Employer's Position

The Employer agrees with the Union's position that one additional holiday should be granted to the employees in the unit involved herein. In respect to the recently expired contract, Holidays, Article 24.2, reads as follows:

"24.2 Holidays shall not be accumulative and must be taken annually. Upon employment, new employees shall be credited holidays on a pro-rata basis based on the number of holidays remaining in a year, plus one (1) personal day."

The Employer proposes to substitute the following language for Section 24.2:

"24.2 To receive holiday pay, an otherwise eligible employee must be at work or on an authorized absence, in the active pay status, on the work days immediately preceding and immediately following the day on which the holiday is observed. Active pay status is defined as time an employee is authorized to be off in a paid status including vacation, holidays, funeral, compensatory time, sick leave, or an injury leave being paid by the City."

In addition in respect to Article 24 - Holidays, the Employer proposes the following new section 24.5:

"24.5 An employee who works on Independence Day, Thanksgiving Day, or Christmas Day shall be entitled to be compensated at time and one-half to eight (8) hours. The shift assigned to work on such designated holidays shall be determined by the majority of scheduled hours worked on the day of the holiday. There will be no additional pyramiding of time or rates for additional time worked on the designated holidays."

The Employer also proposes to make changes in Article 25 - Vacations in respect to Article 25.2, Article 25.3 and Article 25.5.

The Employer also proposes to change Article 25.8 which currently reflects that

employees shall submit their vacation requests to their supervisors prior to March 1 of each year. The current contract also indicates that employees submitting vacation requests after March 15 shall be granted vacation on a first come first serve basis, subject to operational needs and previously scheduled vacations. The Employer proposes that Article 25.8 be changed so that the date of January 1 be substituted for March 15 wherever March 15 appears in said Article.

In support of its argument in respect to vacation and holidays, the Employer submitted data in respect to time off comparables where the Employer was compared to Mentor, Wickliffe, Eastlake, Willowick and Willoughby Hills. The Employer further provided data in respect to the cost of granting one additional holiday at the proposed 2001 rate factoring in a four percent (4%) wage increase.

The Employer referred to the collective bargaining agreement between the City of Mentor and the OPBA in respect to communications technicians and corrections officers running from April 12, 1999 to April 7, 2002. Said contract indicates that in order to be eligible to receive holiday pay an employee must work his scheduled shift before and after the holiday. The Mentor contract also indicates that if an employee is on authorized sick leave the day before or after a holiday or the day prior to or following compensatory time taken off in lieu of a holiday, the employee is required to furnish to the Employer proof of illness.

The Employer also referred to the current contract between the City of Willowick and the OPBA which states "the amount of vacation an employee is entitled to at the beginning of each year shall be reduced by one - twelve (1/12) for every 174 hours in the previous year in an unpaid status". In respect to holidays, the Willowick contract states as follows: "employees with more than six (6) months of service who terminate employment for any reason shall have been entitled

to one (1) holiday for each full month in the active pay status in the calendar year of termination”.

In further support of its argument in respect to holidays, the Employer referred to a contract between the City of Eastlake and the Fraternal Order of Police covering a unit of dispatchers which expired December, 2000. It set forth the paid holidays the employees were entitled to receive compensation for “Providing that the employee reports to work and actually works the last scheduled work day before and immediately after the holiday, unless the absence is excused by the Department Head at his sole discretion”.

Additional support for the Employer’s proposal in respect to changing Article 24.2 was provided by the collective bargaining agreement between the Lake County Sheriff’s Department and the OPBA in respect to non-deputized dispatchers and sergeants effective April 1, 1999 and ending March 31, 2002, it requires the employee to work on a regularly scheduled work day immediately before and immediately after a holiday in order to receive holiday pay.

The contract between the City of Wickliffe and the Fraternal Order of Police in respect to patrolmen effective January 1, 2001, expiring December 31m 2003, was also referred to in support of the Employer’s argument as to employees qualifying for holiday pay. The Employer maintains that the Union’s proposed change to Article 25.9 E is not warranted. It states that two full-time dispatchers are necessary and does not believe it should rely on part-time dispatchers as proposed by the Union.

Findings and Recommendations

The undersigned recommends that the employees in the unit involved herein be granted one additional holiday.

It is recommended that the Employer’s proposal in respect to Holidays, Article 24.2, be

adopted. This is reasonable provision which exists in a number of collective bargaining agreements including the contracts referred to by the Employer covering units in Lake County. It is further noted that in the contract between the Employer and the OPBA covering police officers below the rank of sergeant, effective April 1, 1998 and expiring March 31, 2001, Holidays, Section 21.2. provides that an employee must be at work or on an authorized absence on work days immediately preceding and immediately following the day on which the holiday is observed.

Holiday, Article 24.5, a new provision, is not recommended for adoption since the Employer's arguments for its adoption are not persuasive to the undersigned.

In respect to the various changes proposed by the Employer as to Article 25, Vacations, the Employer has not substantiated its position in respect to the proposed changes and it is recommended that said changes not be included in the contract with one exception. In respect to Vacation, Article 25.8, the Employer made a reasonable and persuasive argument that January 1 be substituted for March 1 and January 15 be substituted for March 15. Accordingly, it is recommended that the Employer's proposal in respect to changes in Article 25.8 be adopted.

OVERTIME

The Employer's Position

The Employer agrees to grant the Union's request to increase the compensatory time to eighty (80) hours and grant a "cash-out" option twice a year with payments made to an employee no later than April 15 and October 15 after the employees have made a "cash-out" request on the last business day in March and September respectively. In addition, the Employer proposes the following provision in respect to compensatory time - compensatory time may be utilized when no

overtime is needed according to the manning levels of the Division of Police, or creates pyramiding of time off, and a request form is properly completed, submitted, and approved by the Chief or his designee.

The Union's Position

The Union agrees that the increase of compensatory time to 80 hours with the cash-out provisions is warranted. However, it opposes the Employer's pyramiding proposal in Article 26.5.

Findings and Recommendations

In accordance with the agreement of the parties it is recommended that the Employer's proposals in respect to Article 26.5 as to increase of compensatory time to 80 hours with the limited cash-out option referred to above be granted. It is also recommended that the Employer's additional language in respect to the requisite times for "cash-out" should also be approved. The Employer has not substantiated its case in respect to pyramiding and it is recommended that the provision in this respect not be adopted.

SICK LEAVE

The Employer's Position

The Employer proposes a new Section 29.7 as follows:

"29.7 An employee found unfit for duty or unable to return to service after an extended medical leave as authorized by the Employer, shall be removed from employment in a non-disciplinary manner."

"Initiation of the process of removal may begin when the Employer reasonably believes that an ongoing condition renders an employee unfit for duty."

"Such initial determination may be based on the employee's physician's medical

statement or, at the Employer's expense, an employee may be required to submit to a medical examination to determine fitness for duty."

In addition, the Employer proposes that Section 29.11 in the Sick Leave provision be amended to grant an additional ten percent (10%) of remaining sick leave over the 960 maximum and 25 years or more service.

With the new 29.7 Fitness of Duty provision, according to the Employer, it is attempting to resolve through contract negotiations a problem that has arisen in respect to an employee who is currently unable to work because of an injury incurred during the line of duty. The Employer made reference to both the Ohio Revised Code and the Ohio Administrative Code in support of its arguments.

The Union's Position

The Union accepts the revision to Section 29.11 in regard to the grant of an additional ten percent (10%) sick leave over the 960 maximum, but opposes the Employer's proposal in respect to fitness for duty.

Findings and Recommendations

In accordance with the agreement of the parties, the undersigned recommends the Employer's new proposal in Section 29.11 as to the additional ten percent (10%) of remaining sick leave. However, the undersigned concludes that the Employer has not proved its case in respect to Section 29.7 - Fitness for Duty and recommends that this provision not be adopted. The record reflects that the situation giving rise to the Employer's proposal as to fitness for duty appears to be somewhat unique. It is the undersigned's opinion that this particular situation can be more appropriately resolved through the grievance - arbitration procedure rather than through

the proceeding involved herein.

LEAVE OF ABSENCE

The Employer's Position

The Employer proposes the following changes in Article 30. Currently Article 30.3 reads as follows:

“30.3 Length of Leave - A leave of absence may be granted for a maximum duration of six (6) months, (includes paid and unpaid time combined), or for such time an employee has accumulated unused sick leave still to their credit.”

In respect to 30.3, the Employer proposes to strike the word “has” and substitute the words “is utilized” in this provision.

In Section 30.8, Pregnancy, Childbirth, and Related Medical Conditions, the Employer proposes to change paragraph A - Length of Leave, by substituting the following last sentence containing additions which are underlined.

“If an employee is unable to return to active work status within six (6) months; or at such time an employee has exhausted all accrued unused sick leave still to their credit the employee is entitled to utilize, the employee may be terminated.”

The Employer also proposes to add new language to Section 30.10, Medical Leave, by adding the following underlined language.

“The employee must demonstrate that the probable length of disability will not exceed six (6) months or for such time as employee has accrued unused sick leave still to their credit that the employee is entitled to utilize for this absence.”

The Employer made an extensive argument in support of the new language referred to above including references to collective bargaining agreements in the cities of Mentor and Willowick.

The Union's Position

The Union takes the position that this new language is not necessary and should not be adopted.

Findings and Recommendations

In view of the above and the record as a whole, it is concluded that the Employer has not proved its case in respect to its proposals as to Leave of Absence. Accordingly, it is recommended that these proposals not be adopted.

INJURY LEAVE

The Employer's Position

The Employer proposes new language in Section 31.1 and 31.5 of the Injury Leave Article. In Article 31.1 it proposes that this provision be changed by the following underlined language:

“31.1 In cases uncontested by the Employer, when an employee is injured in the line of duty, while actually working for the Employer, necessitating his absence from work for more than seven (7) calendar days, he shall be eligible for a paid leave not to exceed ninety (90) calendar days. The employee may be required to file for Worker's Compensation and sign a waiver assigning to the Employer those sums of money he would ordinarily receive as his weekly compensation as determined by law for those number of weeks he receives benefits under this Article.”

In Section 31.5 the Employer proposes the following language underlined:

“31.5 If, during the three (3) calendar years following the original date of injury, the disability reoccurs, and is so certified by a licensed physician which is not contested by the Employer, the injured employee shall be compensated, pursuant to Sections 31.1 and 31.2 hereinabove, for such period or periods of time that remain unused from previous disability pay periods associated with the same injury, for absences greater than seven (7) days.”

The Employer maintains that the addition of the new language would follow the general worker's compensation theory. It would allow the Employer certain flexibility in the event it chose not to file with the Worker's Compensation Bureau in minor cases where it would continue to affect the Employer's incident rate.

The Union's Position

The Union takes the position that this provision is not necessary. It indicates it would not be proper to have employees go through a period without receiving payment in contested worker's compensation situations.

Findings and Recommendations

It is concluded that the Employer has not proved its case in respect to this new language and it is recommended that it not be included in the contract.

FUNERAL LEAVE

The Employer's Position

The Employer proposes to amend Article 32.1 by adding new language to the second sentence in the provision. The new language is underlined:

“The employee shall be entitled up to a maximum of three (3) work days for the death in his immediate family, up to and including the day of interment.”

The Employer maintains that the new language it proposes provides a reasonable amount of time for a funeral leave for its employees and that this provision should be recommended for adoption.

The Union's Position

The Union maintains that this provision is not appropriate considering the fact that current society is much more mobile than ever before. As a result, deaths in an employee's family can occur thousands of miles away from the employee's residence. The Union also points out that the provision proposed by the Employer would cause problems if there were multiple deaths in an employee's family.

Findings and Recommendations

The Employer has not proved its case in respect to its new funeral leave proposals and it is recommended that said proposals not be adopted.

UNIFORMS

The Union's Position

The Union proposes to increase the current uniform allowance by \$50.00 per year for each year of the contract. It argues that cost of uniforms and the cost of maintenance have increased over the years. It also notes that the clothing allowance is one of the lower clothing allowances in the area.

The Employer's Position

The Employer proposes that an additional \$50.00 be given to employees for uniform allowance only for the first year of the contract with no other changes.

Findings and Recommendations

It is recommended that each employee receive an additional \$50.00 per year for the life of

the agreement. This is necessitated because of the rising cost of purchasing and maintaining clothing and uniforms.

TUITION REIMBURSEMENT/TRAINING

The Employer's Position

The Employer proposes no changes in Article 35 with the following exception. It proposes a new 35.4 as follows:

“35.4 The Employer reserves the right to require employees remain at work if the employee's shift ends within two (2) hours of the start of a meeting, teaching, or class and shall compensate employees for the hours actually worked or in attendance at such meetings. Employees shall be give one (1) week notice of scheduled training sessions.”

The Employer takes the position that this provision allows flexibility to hold over an employee for an additional training after the regular work day. The Employer doesn't want to pay call-back pay for training.

The Union's Position

The Union objects to the Employer's proposal. It believes that employees scheduled for training after putting in a full shift should be allowed to return home to refresh themselves and better prepare for training and that actual training should be based on call back pay.

Findings and Recommendations

The Employer has not proved its case in respect to this provision. It is recommended that this provision not be adopted.

DURATION

The Union's Position

The Union proposes that Article 43, Duration, contain language similar to language contained in the police and sergeant's contract that allows a conciliator the right to grant retroactive wage increases at any time. The Union does not want to mandate retroactivity, but wants to allow a conciliator to decide the issue on a case-by-case basis. The Union argues that this would eliminate the problem of going without a wage increase during negotiations.

The police and sergeant's contract between the Employer and the Union effective April 1, 1998 and expiring March 31, 2001 contains the following provision:

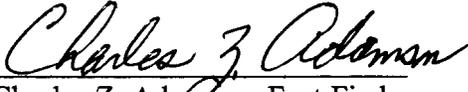
"46.3 The parties agree that the March 31, 2001 expiration date shall not prohibit the OPBA and the bargaining unit from receiving any retroactive wage or economic increase to April 1, 2001 from a conciliator pursuant to Section 4.4117.4(G)(11), Ohio Revised Code."

The Employer's Position

The Employer is opposed to this provision. It points out that this is a permissible subject for bargaining. It also notes that purpose of this provision is to prevent an employer from being under pressure to make adjustments to wages at the end of the year.

Findings and Recommendations

Based on the Union's proposal and the record as a whole, and in light of the fact that the contract between the Employer and the OPBA for police and sergeants contains this provision, it is hereby recommended that the Union's proposal in this respect be adopted.


Charles Z. Adamson, Fact Finder

September 5, 2001