

STATE EMPLOYMENT
RELATIONS BOARD

2001 JUL 17 A 10:36

IN THE MATTER OF FACT-FINDING

BETWEEN

CARDINAL JOINT FIRE DISTRICT

AND

AFSCME AFL-CIO
OHIO COUNCIL 8, LOCAL 765

BEFORE: Robert G. Stein

SERB CASE NO. 01 MED 02-0115

PRINCIPAL ADVOCATE FOR THE UNION:

James M. Adams, Staff Representative
AFSCME Ohio Council 8
150 S. Four Mile Run Road
Youngstown, OH 44515-3137

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

James P. Wilkins, Esq.
KASTNER, WESTMAN & WILKINS
3480 West Market Street, Suite 300
Akron OH 44333

INTRODUCTION

On June 18, 2001, a fact-finding hearing was held in Canfield, Ohio. The parties presented to the Fact-finder nine (9) unresolved issues. Issue 4, Holiday Pay, was one of the unresolved issues presented. During the hearing it was tentatively agreed upon. For the purpose of numerical consistency all nine issues will be addressed in the same order they were presented at the hearing, including Issue 4. Both Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute.

In order to expedite the issuance of this report, the Fact-finder shall not restate the complete text of each parties' proposal on each issue but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

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 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 Article 7 SENIORITY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

Section 7.3 The Union is proposing that this section be modified to require the Employer to provide the Union with a seniority list every 3 months. The Employer argues that it is willing to consider a change but is concerned about the administrative burden placed upon it by having to produce lists on a frequent basis. It is common for public employers to provide such lists; however, it is unclear whether the information needs of the Union could be met by having a new seniority list less often than every 3 months. Given the relatively small size of the bargaining unit it appears reasonable to take an incremental approach in making such a change because of the Employer's limited administrative capability.

Section 7.4 There appears to be little disagreement between the parties to modify this section by deleting the word "request" in the second sentence and by adding the words "one or more" to the first sentence.

Recommendation

Article 7 SENIORITY

- 7.3 The Employer shall **semi-annually** provide the Union with one (1) copy of a seniority list which shall contain the name of the bargaining unit member and date of hire (with ties to be broken by the toss of a coin) indicating by asterisk those members who hold a current medical certification.
- 7.4 In the event the Employer elects to create **one or more** full-time bargaining unit positions for the first time, it agrees to provide the Union with ninety- (90) days written notice. The Union may within ten (10) days of the date of such notice reopen the Agreement for the limited purpose of negotiating the terms and conditions of full-time positions, including the manner of selection of employees for full-time positions. The reopener negotiations shall be conducted in accordance with ORC Chapter 4117.

ISSUES 2 Article 9.3 CORRECTIVE ACTION

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

This is a proposal that the Union submitted late in the negotiation process. The Union is proposing to include in the Agreement a procedure for discipline. The Employer argues that earlier in negotiations the parties tentatively agreed (TA) to maintain the current language of Article 9 in a successor agreement. The evidence clearly establishes the fact that on 3/24/01 the parties tentatively agreed to maintain current language under Article 9. It is important to note that the tentative agreement was not subject to a ratification vote and was never formally rejected by the Union. The bargaining unit at a local union meeting deliberated an appropriate salary schedule, but there was no evidence presented that the other tentatively agreed upon issues were rejected. As a matter of good faith bargaining the Employer relied on the Union's assurances that Article 9 was resolved when it proceeded to negotiate the remainder of the issues.

The acceptable and common practice in collective bargaining in Ohio and elsewhere is to honor tentative agreements that bargaining teams have agreed upon as resolved issues unless the governing bodies who must ratify such agreements formally reject them. However, there is another dimension to this dispute. The Union, after agreeing in writing that Article 9 is satisfactory in its current form, wants to add substantial new language. This proposal comes too late in the process and was presented in a manner that is inconsistent with the way the parties have bargained in the past.

Recommendation

Current language

ISSUE 3

Article NEW

EXERCISE EQUIPMENT

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

This was another proposal brought to the bargaining table late in the process. The part-time nature of the bargaining unit does not support the presence of full time exercise equipment. The Union proposes a limit of \$1500 per station. The Union did not offer any other specific information on its proposed equipment or how it was to be used. There was a reference to treadmills made during the hearing by the Union; however, the cost of a good commercial grade treadmill is normally far in excess of \$1500. While there is no question that fitness (both strength and cardiovascular) is an important aspect

of performing well as a fire fighter, the limited resources of the Employer and the priority of the Union for substantial salary improvements makes the addition of exercise equipment a low priority.

Recommendation

No new language

ISSUE 4 NEW SECTION HOLIDAY PAY

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties reached tentative agreement at the hearing on this issue.

Recommendation

See tentative agreement

ISSUE 5 NEW ARTICLE HOSPITALIZATION

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

Out of 28 employees in the bargaining unit the Union argues that there are 4 employees who do not have hospitalization coverage from another source (e.g. spouse, or other job). The lack of hospitalization is a serious matter for anyone, and particularly for people who engage in the profession of fire fighting. It has a high incidence of injury. Earlier in the bargaining process the Employer agreed to explore the option of providing healthcare coverage to the bargaining unit. From the experience of this Neutral, finding affordable healthcare coverage for a small unit of employees will be at best a difficult undertaking. However, there may be viable options such as gaining coverage as part of an existing group.

Recommendation

Healthcare Exploratory Committee

During the life of the Agreement the parties shall explore the practicality and affordability of securing healthcare coverage for the bargaining unit. The Employer shall discuss the results of its research with the Union.

ISSUE 6 NEW SECTION SICK LEAVE

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

Bargaining units that are solely comprised of part-time employees are rare in the public sector. The scarcity of such units makes finding comparative data difficult. It is common for employees who are part-time in mixed units (part-time and full-time) to only qualify for certain benefits. Benefits are usually tied to the number of hours an employee works (usually on a per week basis). There was no comparable data presented by the Union to support its proposal. This proposal was introduced late in the bargaining process which make it a difficult one to assess.

Recommendation

No new language

ISSUE 7

PERSONAL LEAVE DAYS

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The same concerns that were expressed regarding sick leave are applicable to the late introduction of the issue of personal leave. The economic impact is unknown at the same time the major issue of wages is being deliberated. Some part-time employees in

the public sector are eligible for prorated personal leave, but again this fact-finder is more familiar with these benefits being applied in mixed units containing full-time and part-time employees.

Recommendation

No new language

ISSUE 8 ARTICLE 20.3 EDUCATION AND TRAINING

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties tentatively agreed upon a change in language regarding EMS training during negotiations. The Employer argues that the tentative agreement reached by the parties resolved all training issues. The Employer also contends that some bargaining unit employees spend more time in training than they do in responding to emergencies during a year. The Employer claims there are 4 or 5 examples (out of some 28 employees) of employees who received 30 plus hours of training, but worked only 20 plus hours on emergency calls. This Fact-Finder was not presented with any comparable data on the ratio of training to emergency time in full-time fire fighting units. Therefore, it is hard to assess the significance of the Employer's assertion.

The Union's arguments regarding the importance of training is difficult to dispute. However, the question is who should pay for such training in a unit that is completely part-time and may be used by many employees as a stepping stone to full-time employment elsewhere? The parties have agreed in the past to training under Article 18. How this level of training stacks up with other like units is unclear. Therefore the need for additional training is difficult to substantiate at this point and suffers from its late introduction in the bargaining process.

Recommendation

No new language

ISSUE 9 ARTICLE 20 WAGES

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties had extensive dialogue over wages. The Employer made a major proposal during the bargaining process that addressed pay on the basis of advancements in certification. The pay proposal also contained a longevity component based upon years of service (CJFD 2). The Employer submitted a comparison of this proposal with what the Union had presented (CJFD 4). The Employer contends the Union's wage

proposal represents a 30% increase in cost. The Employer's initial performance based proposal represented an approximate 26% increase over the current wage structure. The main difference between the Employer's and the Union's proposals is the requirement by the Employer that employees must gain additional certification to receive more income. At fact-finding the Employer presented a second wage proposal that provided a significantly lower wage increase and did not contain a longevity increase. In contrast to the Employer's initial proposal it represented an increase of approximately 5.6%.

The same standard, which has been applied to several of the previously listed Union proposals, causing them to received diminished consideration, shall be applied to the Employer's position in this matter. As a matter of good faith bargaining, the Employer's second proposal represents retrenchment and comes too late in the process. The Union made its negotiation decisions based upon the consideration of a wage proposal that was initially offered by the Employer. The Employer's first proposal shall be considered in this analysis.

I find that the Union's proposal is somewhat excessive and does not address a legitimate issue raised by the Employer. The issue is in part to reward employees for having a higher level of training. This concept is well accepted in many disciplines in the public sector. Fire-fighter bargaining units often contain additional pay provisions for additional certification. In addition, other segments of the public sector, such as education, have institutionalized the concept in their pay schedules. I find the Employer's approach to wages that are based upon increased skill to be sound.

However, the Employer's proposal falls short in the area of rewarding employees for several years of service. Experience should be recognized as an important

component, particularly in a dangerous profession such as fire fighting. Training is important, but extensive experience takes the measure of one's abilities under a variety of real life conditions. It has no substitute.

In order to keep the cost of the Employer's proposal close to its original level; it is necessary to shift some money in the early years of the proposed longevity schedule. It is common in the public sector for longevity schedules to begin at the 5th year of employment, rather than at year one. It is also common for newer employees to already be certified or to be in a stage of their lives where family obligations are less, making it easier for them to gain certification.

Recommendation

COMPENSATION

<u>Level of FF Certification</u>	<u>Rate</u>
36hr FF	\$8.00
FF 1	\$9.00
FF 2	\$10.00

Add to basic hourly rate for each certifications held and in full compliance of Ohio law and local protocols:

First Responder	\$.25*
EMT- Basic	\$.50*
EMT-Advanced	\$.75*
EMT- Paramedic	\$1.50*
Certified Fire Safety Inspector	\$.25

Rank Pay

Captain	\$1.50
EMS Director	\$1.00
Fire Investigator	\$1.00

Longevity Pay

1 year through 2 full years	\$. 25
3 years through 5 full years	\$.40
6 years through 10 full years	\$.65
11 years through 14 full years	\$ 1.00
15 years through 20 full years	\$ 1.35
21 years through 25 full years	\$ 1.60
26 years +	\$ 1.85

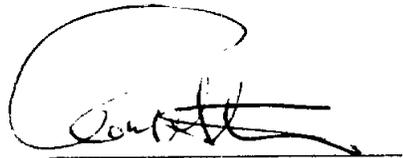
Rates are for all hours worked

*** Only one rate paid per firefighter for highest level of certification**

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 16th day of July 2001 in Portage County, Ohio.



Robert G. Stein, Fact-finder

Carolyn M. Smith 7-16-01

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