

STATE EMPLOYMENT
RELATIONS BOARD

2002 FEB 25 A 9:42

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In the Matter of Factfinding *
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Between *
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Ohio Patrolmen's Benevolent *
Association *
*
and *
*
Ashtabula County Sheriff *
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SERB Case Numbers:
01-MED-09-0804
01-MED-09-0805
01-MED-09-0806
Before: Harry Graham

APPEARANCES: For OPBA:

Colleen M. Bonk
Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co.
The Halle Building, Suite 900
1228 Euclid Ave.
Cleveland, OH. 44115

For Ashtabula County Sheriff:

Gary C. Johnson
Johnson & Angelo
1700 North Point Tower
1001 Lakeside Ave.
Cleveland, OH. 44114

INTRODUCTION: Pursuant to the procedures of the Ohio State
Employment Relations Board a hearing was held in these
matters before Harry Graham. At that hearing the parties were
provided complete opportunity to present testimony and
evidence. The record in this dispute was closed at the
conclusion of oral argument in Ashtabula, OH. on February 11,
2002.

ISSUES: As is discernable from the three case numbers cited
above, this proceeding involves three bargaining units in the

employ of the Ashtabula County Sheriff. These are:
Corporals (Case No. 01-MED-09-0804), Dispatchers (Case No. 01-MED-09-0805) and Corrections Officers (01-MED-09-0806). The issues in all three disputes are identical with some exceptions. These will be identified in the body of the report. At the hearing the parties resolved a number of the issues in dispute between them. The Factfinder determines the issues to be:

1. Hours of Work/Overtime
2. Sick Leave
3. Wages
4. Shift Selection
5. Miscellaneous.

ISSUE 1, HOURS OF WORK/OVERTIME

POSITION OF THE UNION: The Union makes the identical proposal for each bargaining unit involved in this proceeding. It proposes that when the Employer authorizes overtime, the affected employee may elect to accrue compensatory time. The second aspect of the Union proposal is that when employees terminate employment that they be able to cash out accrued compensatory time. These proposals are neither novel nor startling. In fact, the ability to accrue comp. time when working overtime is commonplace in law enforcement. For instance, the Agreement between this Union and the Lake County Sheriff at Article 25, Section 5, permits such accrual as do the Agreements between the OPBA and the Geauga County

Sheriff and the OPBA and the Trumbull County Sheriff. The Agreement between the Union and the Lake County Sheriff permits cash-out of accrued compensatory time upon separation of service for any reason. Comparability, a significant factor in disputes of this nature, supports its position in the opinion of the Union. Thus, its proposal should be recommended it contends.

POSITION OF THE EMPLOYER: The Employer is opposed to the proposal of the Union. It indicates no other bargaining units in the Sheriff's Department have this benefit.

DISCUSSION: As will be noted more fully in consideration of the wage issue pattern bargaining places a very heavy burden on a group that desire to depart from the pattern. That is particularly the situation when other bargaining units have completed negotiations for successor agreements covering the same period as those in dispute in this case. The internal comparability unquestionably favors the position of the Employer on this issue. No change is recommended.

ISSUE 2, SICK LEAVE/PERSONAL LEAVE

POSITION OF THE UNION: The Union proposes that accrued but unused sick leave be available for cash-out upon "voluntary separation of employment." Currently, accrued but unused sick leave may be cashed out only upon "retirement." Employees of both the Trumbull and Geauga County Sheriffs have this option

available to them. No good reason can be proffered by the County as to why employees of the Ashtabula County Sheriff should be denied this commonplace benefit the Union asserts.

Coupled with its cash-out upon separation proposal the Union proposes an increase in the amount of maximum payment to 480 hours.

The Union proposes the existing final sentence of Article 25, Section 9 be changed to read:

If upon investigation, the Employer has probable cause to find abuse of sick leave, he may require the employee to provide proof of illness in the form of a physician statement of disability or other satisfactory proof to grant sick leave benefits for the time of the leave. If the employee fails to provide such proof, sick leave for the period in question shall be denied, and corrective action may be implemented.

There is sound rationale behind its proposal according to the Union. The parties have been to arbitration over this issue (Union Ex. 11). The decision of Arbitrator Joseph W. Gardner did not resolve the dispute. His decision was rendered in March, 2001. There followed litigation to vacate or confirm Arbitrator Gardner's decision, as appropriate. This is a contentious issue in the Department. In the opinion of the Union the Department is levying discipline for appropriate and justifiable use of sick leave. (Examples found in Union Ex. 11). In order to put this issue to rest, adoption of its proposal on this issue is essential in the opinion of the Union.

POSITION OF THE EMPLOYER: The Sheriff notes that he is signatory to Agreements covering bargaining units in addition to those involved in this proceeding. The Deputies are represented by the Fraternal Order of Police/Ohio Labor Council. They, and a bargaining unit of Clerks, Cooks and Maintenance employees represented by the OPBA, have reached tentative agreements on the terms of successor agreements. An internal pattern has been established. Under that pattern, the Employer has agreed to an increase in sick leave cash out. It proposes extension of the "pattern" on this issue to these bargaining units. The tentative agreements with the FOP/OLC and the other OPBA-represented bargaining unit provide for:

960 hours saved equal 240 hours pay
1,250 hours saved equal 360 hours pay
1,550 hours saved equal 480 hours pay

The Sheriff indicates this pattern represents its proposal to the Union for an increase in sick leave buyout availability.

The Employer also has a proposal regarding what it regards as constituting a problem with excessive use of sick leave. It proposes there be new language in the Agreement in Article 25 providing that "Any abuse or patterned use of sick leave may result in disciplinary action." The record (Employer Ex. 2 and 3) indicates wide variation in the use of sick leave among various bargaining units in the Sheriff's

Department. In particular, the Exhibits show what the Employer regards as excessive use of sick leave by Corrections Officers. In order to cope with that situation adoption of its proposal is essential the Employer asserts. **DISCUSSION:** The a ability to cash-out unused sick leave upon voluntary termination is not unusual. To the contrary, it is commonplace in public employment in Ohio. The difficulty with the Union position is the fact that nothing on the record indicates other bargaining units which have previously reached agreement with the Sheriff have the benefit being sought by the Union. As indicated in my discussion of the Hours of Work/Overtime issue above, the internal pattern is the controlling factor on this particular issue. Lacking the benefit in the recently negotiated FOP/OLC and OPBA Agreements, the Union cannot secure it in these contracts. The position of the Employer is recommended.

The proposal of the Sheriff concerning the amount of sick leave buyout available tracks the agreements reached with the FOP/OLC and another bargaining unit represented by the OPBA. It is recommended to the parties.

It is not instantly apparent why new language concerning the authority of the Sheriff to discipline employees for alleged abuse of sick leave is required. If an employer believes an employee is abusing sick leave, the employer may

impose discipline. That discipline may be challenged in the grievance procedure of the parties. If the dispute were to reach arbitration the employer would be held to the standard of just cause. That is, if it were shown by the employee that sick leave use was bona fide and not an attempt to take time off work improperly, the employee and Union would prevail. To the contrary, if the employer could demonstrate that the sick leave were improper discipline would be upheld. At the factfinding hearing Employer Exhibits 2 and 3 purportedly indicate that some employees are abusing sick leave. The Union successfully rebutted those exhibits through testimony of alleged abusers who were shown to have real illnesses, eg. pneumonia, necessary surgery and recovery. At the hearing the Employer indicated that the "any abuse or patterned use of sick leave may result in disciplinary action" language had been included in other Agreements. I noted above, and indicate further below, the force of patterns in multi-unit negotiations is very strong. Based upon the pattern existing in the Sheriff's Office the proposal of the Employer on this matter is recommended. It should be noted that if discipline is imposed and subsequently challenged, the Employer would be held to the standard of just cause to support it. It is further recommended that the sentence "Any such discipline shall be for just cause" follow the sentence immediately

above.

At the hearing discussion occurred concerning a change in the definition of immediate family. This was in connection with Article 25, Section 5 B and related to inclusion of "Aunts and Uncles." This inclusion is recommended to the parties.

ISSUE 3, WAGES

POSITION OF THE UNION: The Union has a wage proposal that is similar for all bargaining units involved in this proceeding. It calls for a "catch-up" wage increase in order to bring employees, Corrections Officers, Corporals and Dispatchers to a bench-mark standard. That standard is the average pay in surrounding counties for the Corrections Officers and Dispatchers. For Corrections Officers, the Union urges they be paid the same rate as Deputies employed by the Ashtabula County Sheriff. Adoption of this proposal would result in varying wage increases in the initial year of the Agreement, eg. 5.9% for Corrections Officers. The Union is well-aware that the County has reached agreement with other represented groups on three, 3.0% wage increases. It is willing to accept the second and third 3.0% wage increases in the second and third years of the Agreement.

The Union points out that pay in the Ashtabula County Sheriff's Department lags pay made in other, nearby

departments. For instance, pay rates in Lake and Geauga County Sheriff's Departments are above that of the Ashtabula Department. As the tasks performed by employees in Ashtabula are similar to those performed in Geauga and Lake Counties, such a difference cannot be supported the Union contends.

As the Union urges the financial condition of the County be judged, it is robust. Debt has been paid down. The Unencumbered Balance account is healthy. It cannot be concluded that the County is in financial difficulty. Hence, its proposal on wage increases should be recommended the Union contends.

The Union also desires that there be added a full-time Medical Officer (in the Corrections Officer bargaining unit). Such a person is employed in the Lake County Sheriff's Department and is desirable in corrections work. The Union proposes that payment to certified medical officers be changed from a one-time, \$200.00 payment to an annual stipend. Specific for the TAC Officers and Training Officers, the Union proposes an additional \$1.00 per hour payment for each hour such a person is on duty.

POSITION OF THE EMPLOYER: The County points out that it has reached agreement on wage increases with other represented groups. These include Deputies represented by the FOP/OLC and the Clerks, Cooks and Maintenance employees represented by

the OPBA. Both groups agreed upon three, three percent (3.0%) wage increases. Included in the settlement was an increase in the longevity payments made to employees of the Sheriff's Office. There is a pattern settlement in the Ashtabula County Sheriff's Office. No reason exists to disturb the pattern in the opinion of the Employer.

Contrary to the assertion of the Union that the finances of the County are sound, the Employer contends they are dismal. It points to the pending budget for the Sheriff. He has been directed to reduce expenditures. In fact, headcount of employees in the Department has declined over the years in order to cope with financial difficulties. At December 31, 2001 the proposed 2002 County budget anticipated a reduction in expenditures from \$20,370,171 to \$19,847,432. As part of that reduction, the Sheriff was to experience a \$46,609 reduction in funds available to him. At the same time, the County has experienced an unanticipated \$1,000,000 increase in health insurance premiums. The Sheriff is making an extraordinary fiscal effort to make the three percent (3.0%) increases to which he committed himself. In addition, there is an increase in the longevity schedule that must be funded. No requirement to make a greater wage increase should be imposed in view of the pattern of settlements in the Department and the fiscal difficulties being experienced by

the County the Sheriff contends.

It should be stressed that the wage proposal of the Sheriff is coupled with an increase in longevity benefits available to employees. When viewed together no additional increase is justified the Employer contends.

DISCUSSION: In the normal course of events the existence of a pattern settlement is a powerful factor in favor of either party invoking it. Patterns are not lightly disturbed. The situation in the Ashtabula County Sheriff's Office is unusual. There are several bargaining units. Different unions, the FOP/OLC and the OPBA are on the scene, representing different groups of employees. It requires no imagination to envision a scenario where the Employer can be subject to whipsawing. That is, were each Union in successive negotiations able to secure more favorable terms than the terms granted to preceding bargaining units, the Employer would be subject to unending demands for "me too." Similarly, on the Union side, interunion rivalry is exacerbated by different agreements. This is not a desirable situation which explains the prevalence of patterns in multi-unit negotiations.

The County is not in excellent financial health. Particular attention is given to Employer Exhibit 10, the projected budget for 2002. It indicates the County is

planning to spend less in 2002 than in 2001. Funds available to the Sheriff will decrease slightly. The fiscal condition of the County, coupled with the existence of agreements reached with other bargaining units compel a recommendation in support of the Employer's position on the wage increase issue. The increase should be made retroactive to January 1, 2002. It must be understood that this recommendation contemplates as well the changes in the longevity schedule be extended to members of the bargaining units involved in these proceedings.

ISSUE 4, SHIFT SELECTION

POSITION OF THE UNION: This issue is specific to the Corrections Officers and the Corporals. With respect to the Corrections Officers, the Union proposes there be a one-time per year shift selection. Certain typographical errors in the current Agreement should be corrected as well. For the Corporals, the Union proposes continuation of the current shift selection scheme unaltered. No reason for change is apparent to the Union.

POSITION OF THE EMPLOYER: The County proposes that there be a shift rotation system such that in the course of a year, all employees work all shifts. The Deputies have a shift rotation system that calls for rotation every 60 days. Employees bid the initial shift once per year. The bid is by seniority. As

the Employer views the situation it is desirable that employees know what is occurring on all shifts. Rotation will facilitate acquisition of that knowledge.

Further, Deputies represented by the FOP/OLC have agreed upon the system proposed by the Employer. Based upon the precedent they established as well as desirability for shift rotation in law enforcement operations, the Employer urges its position be recommended.

DISCUSSION: At the hearing it was represented by the Employer that its proposed shift selection procedure would facilitate scheduling of time off on vacation. That was not rebutted by the Union. The norm in law enforcement is for employees to rotate shifts. Systems without number exist to facilitate such rotation. The Employer indicated that the current shift selection system has resulted in a situation where employees are ignorant of various tasks being performed by co-workers on other shifts and developments on shifts other than their own. This is not a desirable situation in a law enforcement operation. It was not shown that the proposal of the Employer was onerous.

As has been repeatedly pointed out in this opinion, pattern settlements carry great weight. The Road Deputies accepted the proposal of the Employer. It is recommended for Corrections personnel as well.

ISSUE 5, MISCELLANEOUS

POSITION OF THE UNION: For the Corporals Bargaining Unit the Union proposes that the pension be specific to the LE-PERS pension system. Employees are presently in that system and funds are being properly remitted by the Employer. The Agreement should codify the longstanding arrangement on this issue the Union contends.

The Union also seeks a change in the uniform for Corporals in the Corrections division of the Sheriff's Department. Some time ago the shoulder patch was altered to indicate that officers were in the "Corrections" division of the Sheriff's operation. This is in contrast to the shoulder patch worn by Deputies which indicates they are "Deputies." The Union desires that the shoulder patch for Corporals read "Deputy" rather than "Corrections." This is related to the issue involving the LE-PERS pension noted above. The Union is concerned that if the shoulder patch does not indicate "deputy" that employees will be removed from the LE-PERS pension plan.

POSITION OF THE EMPLOYER: The Sheriff desires that the Agreement remain silent on the question of the LE-PERS pension. There may exist some issues concerning the propriety of placing certain employees of the Sheriff's Department in the LE-PERS pension. The employees in question are currently

in the LE-PERS pension plan. The Sheriff has indicated to the employees and the Union he will make no change in this arrangement unless and until proper authority directs him to do so. This is not anticipated. Thus, no language in the Agreement is warranted the Sheriff asserts.

The Employer contends that the patch worn by Corporals in the Corrections Division correctly indicates their status. No change should occur in his opinion.

DISCUSSION: In this situation it is the case that the best result for all concerned is to let sleeping dogs lie with respect to the LE-PERS pension. At the hearing the Sheriff pledged that no change would occur with respect to LE-PERS contributions. No change in the contract language is recommended. Nor is any change recommended with respect to the shoulder patch for Corrections Corporals. It reflects their assignment in the Sheriff's Department accurately. No compelling reason was advanced by the Union to alter the current arrangement.

SUMMARY OF RECOMMENDATIONS

ISSUE 1, HOURS OF WORK/OVERTIME: The proposal of the Union concerning cash-out of sick leave is not recommended.

ISSUE 2, SICK LEAVE/PERSONAL LEAVE: Adopt proposal of the Employer concerning increase in the sick leave buyout schedule.

ISSUE 3, WAGES: Adopt proposal of the Employer. Make wage increase retroactive to January 1, 2002. Extend longevity increase to members of these bargaining units.

ISSUE 4, SHIFT SELECTION: Adopt proposal of the Employer

ISSUE 5, MISCELLANEOUS: No contract language recommended on LE-PERS pension system. No change recommended in Corporal's shoulder patch.

Signed and dated this 21st day of February, 2002 at Solon, OH.

Harry Graham
Harry Graham
Factfinder