

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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2002 FEB -4 A 9:44

In the Matter of:

Greenville Patrol Officers
Association

and

City of Greenville

Case No.: 2001-MED-10-1010

Fact Finder: Tobie Braverman

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Timothy G. Werdmann, Labor
Consultant
Jessica Harmon, Labor
Consultant
Thomas Doyle, Chief of Police
John Schmidt, Safety-Service
Director

For the Union:

Susan D. Jansen, Attorney
Scott Drew, Negotiator
Michael Gerace, Negotiator
Steve W. Strick, Negotiator
Mark E. Snyder, Negotiator

INTRODUCTION

The undersigned was appointed as Fact-Finder in the above-captioned matter pursuant to Ohio Revised code §4117(C)(3) by letter dated November 30, 2001. The parties extended the time for the Fact-Finder's recommendation until January 31, 2002. Hearing was held at the offices of the City of Greenville, Greenville, Ohio on January 14, 2002. The City of Greenville was represented by Timothy Werdmann of Clemans, Nelson & Associates, Inc. and the Greenville Patrol Officers Association was represented by Susan D. Jansen of Logothetis, Pence and Doll.

The City of Greenville is a City with a population of approximately 13,000 located in Darke County, Ohio. The City employs individuals in several bargaining units, including water/sewer, parks/recreation, police and fire. It also employs a number of non bargaining unit employees. The police bargaining unit involved here includes twenty-two employees in the classifications of patrol officer and sergeant.

The current Collective Bargaining Agreement between the parties expired on December 31, 2001. After several bargaining sessions, the parties submitted the matter to fact finding with thirteen outstanding issues. Before commencing hearing, an attempt was made to mediate the parties' differences. As a result, three issues, as will be further detailed below, were resolved. Ten issues remain for recommendation by the Fact-Finder.

RESOLVED ISSUES

1. New Article - Use of Polygraph

As noted above, one outstanding issue between the parties was resolved in mediation. The agreed upon language regarding the Union's proposal on the use of polygraph tests on officers is as follows:

The use of polygraph testing on bargaining unit employees for investigatory purposes shall be referred to a Labor-Management Committee consisting of equal numbers of Union and Management representatives. The Committee will determine procedures for the use of polygraphs. In the event that the Committee is unable to reach agreement ninety (90) days after its first meeting, the matter will be referred to binding interest arbitration through F.M.C.S.

2. Article 17 - Vacations

During the course of the hearing the parties agreed to the Union's proposal regarding Section 17.1 concerning crediting of employee vacation. The first paragraph of that section shall read as follows:

Each January 1, each bargaining unit employee's vacation account shall be credited with the vacation hours accrued during the previous calendar year for use in the current calendar year.

3. Article 23 - Sick Leave

During the course of the hearing the Union agreed to the Employer's proposal to change the language in Section 23.6(B) of the agreement regarding payout of sick leave from "at the end of the" to "as of October 31st of any".

OUTSTANDING ISSUES

1. Article 12 - Wages

Union Position: The Union proposes a 6% wage increase in each year of the three year Agreement. The Union argues that this increase is warranted upon several basis. First the Union points out that both the fact-finder and conciliator who issued reports concerning the Collective Bargaining Agreement which expired on December 31 recommended wage increases of 3.5% in each year of the Agreement, the City unilaterally implemented an increase of only 3% for reasons related to litigation and unfair labor practice charges arising out of the course of the conciliation hearing.

The Union further argues that this increase is warranted by a review of comparable wages for patrol officers and sergeants in surrounding counties with comparable populations as well as by substantial increases in employee contributions for insurance.

Employer Position: The Employer proposes a 2.5% increase in each year of the Agreement. The Employer argues that this increase is less than the current cost of living increase. Further, the third largest employer in the City, Corning, has given notice that it will be shutting down its local operation later this year, raising the specter of decreased tax revenues for the City.

The Employer further argues that a 2.5% increase would bring the bargaining unit to approximately the average for comparable cities. The City finally points out that this increase is in line

with the 3% increase given to other City bargaining units and non-organized employees.

Discussion: Not surprisingly, the comparable city police departments utilized by the Employer and Union here are not the same. The Union has utilized a much larger list of cities, and argues that a 22% increase would be needed to raise Greenville to the average. It must be noted, however, that while Greenville is located in a predominantly rural county, many of the comparables utilized by the Union include suburban communities of larger metropolitan areas and thus, while comparable in population size, may well not be entirely useful as comparable in other respects. The Fact-Finder believes that a lesser wage increase would place the bargaining unit at an average wage for comparable cities.

While the Employer points out that a large local employer will be laying off a large number of workers some time this year, it did not present any concrete evidence demonstrating an inability to pay a wage increase of any particular amount. In fact, as the Union points out, the Corning layoffs have been delayed and other employers in the area have expanded. It is therefore unclear what impact the Corning layoffs will have.

The Employer finally points out that other City employees will receive a 3% increase. While this is a valid consideration here, it is not determinative. As noted above, during negotiations for the recently expired Collective Bargaining Agreement, both the fact-finder and conciliator recommended a 3.5% wage increase for police in each year of the Agreement. The City, however, never

implemented the conciliation award since the award was successfully challenged based upon the timeliness of the filing of the Union's prehearing statement. This ultimately resulted in the employees' losing 1.5% of the wage increase determined to be appropriate by the conciliator over the life of the Agreement.

Recommendation: The Fact-Finder believes that the following would bring the police unit to an average wage for comparable cities as well as bring them in line with other Employer units in the City:

Section 12.1: Effective on January 1, 2002, all full-time bargaining unit employees shall receive a 4.5% wage increase.

Section 12.2: Effective on January 1, 2003, all full-time bargaining unit employees shall receive a 3% wage increase.

Section 12.3: Effective on January 1, 2004, all full-time bargaining unit employees shall receive a 3% wage increase.

2. Article 12, Section 12.7

Union Position: The Union proposes new language which would require that paychecks be available for pickup on the preceding Thursday when a holiday falls on a Friday. The Union contends that this is necessary since one bank in Greenville closes early on Fridays and would not inconvenience the Employer.

Employer Position: The Employer contends that other banking institutions are available to employees and it is therefore unnecessary to alter paycheck availability. Further, this would create a great inconvenience to the payroll department which makes

all checks for all employees available on Friday.

Discussion: This is new contractual language which attempts to remedy a minor inconvenience which occurs only rarely. As the Employer pointed out at hearing, there are no Friday holidays during the entire term of the new Agreement. Additionally, the inconvenience created by the employee's choice of bank can be remedied by the employee by changing banks far more easily than by the Employer which must make checks for one small group of employees available separately from the rest.

Recommendation: Current Language.

3. Article 15 - Plus Rating

Union Position: The Union proposes that the plus rating, which is now provided to employees for work in a higher classification after five consecutive working days in the higher classification, be paid after one hour worked in the higher classification. The Union argues that this situation occurs regularly when patrol officers serve as Officer in Charge in the absence of a Sergeant. This is particularly true on every Sunday when no Sergeant is assigned and no higher ranking officer is at work.

The Union further proposes language which would provide that to be considered as supervising the road patrol watch, an employee must be actively on patrol. This would prevent the situation wherein a commanding officer working in the office is considered to be supervising the road patrol.

Employer Position: While the parties agree on the amount of the plus rating and a minor change in the language from "classification" to "rank", it is not necessary to decrease the amount of time for which employees are paid the plus rating. As a general rule, if a Sergeant is not on patrol, a Lieutenant or the Chief is available to do the necessary work of Officer in Charge by phone or in person if necessary.

Discussion: The evidence presented at hearing clearly demonstrated that on Sundays a patrol officer is consistently performing the work of Officer in Charge for the entire shift without additional compensation. The situation also occurs on a less consistent basis during vacations, illness and on other less predictable occasions. The City acknowledged that at least on Sundays, a patrol officer is in fact performing the extra Officer in Charge functions without additional pay. Since this is a regularly recurring situation it is reasonable for those employees who perform the duties of Officer in Charge for an entire shift to be compensated for those additional duties.

The Union's proposal with regard to defining who is supervising the road patrol is admittedly intended to prevent Lieutenants and the Chief from being considered Officer in Charge so that a patrol officer must be assigned to the duty whenever a Sergeant is not available. This language would unduly limit the Chief's authority in this regard. While it may well be preferable that the Officer in Charge be actively on patrol, there was no evidence presented to demonstrate that any demonstrable problems

had occurred which would warrant this change.

Recommendation:

Section 15.1 Employees assigned to perform work of a higher rank for eight or more consecutive hours shall receive the pay of the higher rank during that assignment. Compensation shall be at that step in the higher rank which provides an increase of pay of at least five percent (5%) for the employees being plus rated.

4. Article 17 - Vacations

Union Position: The Union makes two proposals with regard to vacation. The Union proposes that vacation leave which can now be used in increments of no less than four hours be available for use in one hour increments. The rationale for this proposed change is that one hour leave is currently available only through the use of compensatory time or personal leave. Since some officers choose to take overtime pay rather than compensatory time, they are left with only two personal days as a source of leave of less than four hours. The third personal day may or may not be available since it is tied to perfect attendance. The ability to use vacation in one hour increments would provide more flexibility for tending to personal matters.

The Union secondly proposes that the current language which provides that accrued vacation which remains unused at the remainder of the year be forfeited, be changed to compensate employees for unused vacation. This would allow employees to be paid for an earned but unused benefit. There is some precedent for this since the City paid employees for small increments of unused vacation which existed by virtue of a change in the method by which

vacation is calculated.

Employer Position: The Employer argues that the granting of vacation in one hour increments is simply unnecessary. Employees may utilize either compensatory or personal time in one hour increments. A review of personal time usage for the years 2000 and 2001 indicates that very few employees utilized personal time in increments of less than four hours, demonstrating that the need for one hour vacation availability is simply not there.

With regard to the Union's proposal for the payout of unused vacation leave, the Employer points out that the jobs performed by bargaining unit members are exceedingly stressful. The Employer wants employees to utilize their vacations as a necessary rest to a stressful occupation. It does not desire to include a provision in the Agreement which would encourage employees to not utilize their available vacation.

Discussion: It would appear that those employees who would be affected by the availability of vacation in one hour increments are primarily those who do not have available compensatory time due to their desire to be paid for overtime. The Employer does not argue that the tracking of vacation in increments of one hour would be a great administrative burden, but only that other sources are available for leaves of four hours or less. A reasonable accommodation of the needs of both parties would be to make vacation available in one hour increments only in the event that all personal leave and compensatory time has been exhausted.

With regard to the payout of vacation, the Fact-Finder is persuaded by the Employer's argument that the use of all available vacation should be encouraged. Police work is indeed highly stressful. Employees should not be encouraged to hoard vacation in order to accumulate a year end bonus.

Recommendation:

Section 17.2 Vacation shall be scheduled in four (4) or eight (8) hour increments subject to staffing requirements of the Employer as determined by the Chief of Police or designee. In the event that the employee has no available compensatory time or personal leave, vacation may be scheduled in increments of one (1) to four (4) hours subject to staffing requirements of the Employer as determined by the Chief of Police or Designee. The Chief of Police or designee may authorize a smaller increment if the employee's vacation balance is less than four (4) hours. All vacation scheduling shall be in compliance with the established policies and procedures of the Police Chief.

Section 17.4 Current language.

5. Article 19 - Insurance

Employer Position: The Employer proposes changes in the current language of the insurance provisions of the Agreement so that the amounts to be paid by the Employer an Employee reflect current premium levels. The existing language utilizes out of date amounts. This change would not change the amounts paid from their current levels and would not change the operation of the language, but would only update the language to reflect current premium amounts.

Union Position: The Union contends that the current language need not reflect increased premium amounts. The language is clearly understood and the parties have had no difficulty in applying it.

Discussion: While the amounts included in the insurance language are out of date, both parties have had a clear understanding of the language and its application over time. Further any increase in the amounts could adversely affect employees in the event that there were a reduction in premiums.

Recommendation: Current language.

6. Article 22 - Personal Day Leave

Union Position: The Union proposes an increase in the number of personal days from two to three. Currently a third personal day is available only to employees with perfect attendance which is difficult to accomplish and may well be undesirable since it encourages sick employees to come to work. In looking at the comparables, many other cities provide a third personal leave day.

Employer Position: Employees are able to obtain sufficient time off through all of their available leaves. An increase in personal leave for all employees would be costly and would provide a benefit not available to other City employees

Discussion: The Union did not demonstrate a need for additional time off by employees for personal matters. Available leaves, including sick leave, vacation, existing personal leave and compensatory time give sufficient time off. While tying the third

personal leave day to attendance could result in some sick employees coming to work in order to secure their right to the day, there was no showing that such has been occurring or creating a problem.

Recommendation: Current language.

7. Article 37 - Application of Civil Service

Employer Position: The Employer proposes language which is intended to make it clear that the provisions of the Collective Bargaining Agreement will prevail over statutory language relating to matters covered by the Agreement. This is an attempt to insure that the Agreement will prevail over statutory language in light of the Ohio Supreme Court's opinion in State ex rel. Oapse v. Batavia Local School District Board of Education.

Union Position: The language is unnecessary. The Batavia case is limited to the issue of subcontracting which is not a potential danger here.

Discussion: The Ohio Supreme Court in the Batavia case referenced above, held that where employees are afforded statutory rights, those rights are not superseded by general contractual language. Rather, the language of a Collective Bargaining Agreement must be specific as to the situation referred to in the statute in order to supersede statutory language. That being the case, the Fact-Finder is skeptical that the language proposed by the Employer would be effective to insure that the Agreement would

prevail over all subjects found in Chapter 124 of the Ohio Revised Code.

Recommendation: Current language.

8. Article 39 - Physical Fitness

Union Position: The Union proposes a monetary incentive for employees who achieve certain percentage scores on the twice annual fitness tests. The proposed bonuses range from \$150.00 for a score of 75-79% to \$750.00 for a score of 95-100%. Employees are not required to take the fitness test, but may instead opt to meet simple height and weight requirements. The cash bonuses would serve as incentive to become truly physically fit rather than simply meet height and weight requirements.

Employer Position: Police employees must maintain standards of physical fitness in order to perform their required job duties. There should be no additional incentive to achieve what is a necessary part of police work. Further, the incentives proposed by the Union based upon the scores of bargaining unit employees over the last three years would have cost the employer a total of \$24,6000, clearly a substantial sum.

Discussion: Physical fitness is indeed an integral part of police work. While encouraging physical fitness as the Union's proposal does is indeed a laudable goal, the benefit proposed would be costly. Further, it appears that a majority of the bargaining unit is already opting to take the physical fitness test. Of that majority, all but three would have been entitled to a bonus in

2000. It therefore appears that the incentive would have little effect to promote fitness. That goal is already being achieved by the vast majority of the bargaining unit.

Recommendation: Current language.

9. New Article - Longevity Pay

Union Position: The Union proposes a new Article which would provide employees with an annual percentage based bonus upon their years of continuous service with the Employer. The Union argues that this bonus would serve as incentive to maintain long term well qualified and trained employees.

Employer Position: The Employer contends that this bonus is unnecessary since most of the employees in the bargaining unit are long term employees already. In fact, according to the Employer's calculations, all but two members of the bargaining unit would be entitled to the longevity pay and the cost of the proposal would be somewhere in the neighborhood of \$79,000.00.

Discussion: The Union's proposal would be exceedingly costly in view of the fact that nearly the entire bargaining would be eligible for the bonus. It in effect amounts to an additional percentage wage increase based upon years of service under the circumstances.

Recommendation: Current language.

10. New Article - Specialized Pay

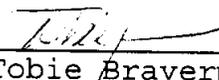
Union Position: The Union proposes a new Article which would provide employees with a \$10.00 per day premium for any on which an employee performs duties which require additional training. The proposal would include, but is not limited to, a list of duties such as firearms instructors, quad training instructors, bike patrol officers and others. The pay would compensate for the additional training and duties which go with these types of duties.

Employer Position: The Employer argues that the provision lacks sufficient definition since the list of duties for which specialized pay would be provided is not exhaustive, but only exemplary.

Discussion: The Fact-Finder must agree that the Union's proposal is not refined sufficiently to be workable. The list of positions for which specialized pay would be provided is not exhaustive, leaving great room for dispute. Further, the provision does not define the time period for which an employee must perform the duties in order to receive the compensation.

Recommendation: Current Language.

Dated: January 31, 2002


Tobie Braverman, Fact-Finder