

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2003 MAR 21 A 10:41

In the matter of	*	Case Nos. 02-MED-07-0646
	*	02-MED-07-0647
Fact-finding between:	*	02-MED-07-0648
	*	
	*	Fact-finder:
City of Norwalk	*	
	*	Martin R. Fitts
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	March 19, 2003
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Norwalk (the Employer):

- Sandy Conley, Employer Advocate
- Michael Esposito, Employer Advocate
- Kevin Cashen, Chief, Norwalk Police Department
- James Koch, Safety/Service Director

For O.P.B.A. (the Union):

- Marilyn Widman, Legal Counsel
- Michelle Rolanalt
- Todd Careless
- Scott Brittain

PRELIMINARY COMMENTS

This is a multi-unit labor agreement with three bargaining units. The Command Unit consists of all full-time Captains and Sergeants, and contains approximately 8 employees. The Non-Command Unit consists of all full-time non-command patrol officers, and consists of approximately 16 employees. The Dispatchers Unit consists of all full-time dispatchers, and contains approximately 6 employees. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on January 7, 2003. Negotiations between the parties began in August 2002. The parties reached impasse on seven issues. A fact-finding hearing was conducted by the undersigned on February 28, 2003 at the Employer's offices in Norwalk, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were seven major issues at impasse: Article 9, Hours of Work/Overtime; Article 14, Sick Leave; Article 16, Holidays; Article 20, Wages; Article 21, Health Insurance; Article 27, Duration; and a proposed new article, Application of Civil Service Law. The parties declined mediation at the hearing.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related 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, and 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; and
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 private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the February 28, 2003 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 9, Hours of Work/Overtime

Positions of the Parties

The Employer proposed a change in the current language to make overtime eligibility based upon actual hours worked. Currently the contract calls for holidays, vacation, sick leave and funeral leave to be included in the computation of overtime eligibility. It argued that the City needs to be proactive in managing overtime costs, and that the overtime costs in 2002 were over budget.

The Union proposed the retention of current language in the agreement.

Findings and Recommendation

Understandably, the City is concerned with minimizing overtime costs. However, the testimony and evidence showed that 2002 overtime costs were driven by the fact that they were short officers during the year. The Union presented evidence that the overtime costs in 2000 and 2001 were under budget. The Employer's own comparables showed that half of the departments included determined overtime in the proposed manner, and half do not.

The Fact-finder does not see a connection between the increased overtime costs and the method used to determine overtime, and finds no compelling argument by the City to support its proposal for change.

Therefore, the Fact-finder recommends the Union proposal that the current language in Article 9, Section 7 be retained.

Issue: Article 14, Sick Leave

Positions of the Parties

The Union offered a proposal that would increase the cash out of sick leave at the time of retirement. It would require an employee to be paid for 70% of up to 1,800 hours of accrued but unused sick leave. The maximum payment would be 1,260 hours. The Union argued that the one of the reasons a tentative agreement between the parties had been rejected by the Union membership was that it provided no increase in the amount of accrued sick leave an employee could cash out upon retirement.

The Employer proposed retention of current language, which calls for payment for 40% of up to 1,500 hours of accrued but unused sick leave with a maximum payment of 600 hours. The City argued that this is a difficult benefit to budget for, as the accrued liability increases as the hourly wage increases.

Findings and Recommendation

The Union presented evidence that several employees are at or near the present ceiling. It maintained that increasing the ceiling would continue to encourage employees not to use sick time. The Employer characterized this contract provision as a benefit, not an entitlement. It maintained that this benefit was originally intended to assist in retention when employees were paid at lower rates. No evidence was presented that the Employer has difficulty retaining employees in this unit today.

The Employer presented comparables that show that this benefit varies widely, with the current benefit slightly below the average. In early negotiations, the Union had originally offered a more modest proposal, which it had increased in response to changes in other economic proposals. Its final proposal would more than double the benefit for the employees. This would be an excessive increase with little compelling justification.

However, one factor does point toward recommending a small increase in this benefit. The Employer's own comparables show that the current agreement provides a less than average benefit. The Fact-finder understands that this process is designed to provide the parties with a fair agreement that is agreeable to both parties. Keeping in mind that all economic issues have a relationship, the Fact-finder concludes that a modest improvement in this area is justified. A reasonable improvement would be a payment for up to 50% of up to 1,500 hours of accrued and unused sick time, with a maximum payment of 750 hours. This will place the members of this bargaining unit in a more average position relative to the Employer's comparables.

Therefore, the Fact-finder recommends that Article 14, Section 3 read in its entirety as follows:

Section 14.3. *A full-time employee with ten (10) or more years of service with the Police Department may at the time of retirement from active service, or the legal representative of an employee with ten (10) or more years of service who dies prior to retirement, may elect to be paid in cash for fifty percent (50%) of up to fifteen hundred (1,500) hours of accrued but unused sick leave. Such payment shall be based upon the employee's base rate of pay at the time of retirement or death. Payment for sick leave under this provision shall be considered to eliminate all sick leave accrued by the employee and such payment will be made only once to any employee. The maximum payment which may be made under this section shall be seven hundred and fifty (750) hours.*

Issue: Article 16, Holidays

Positions of the Parties

The Employer proposed a change in Section 16.2 that would eliminate the eligibility for holiday time/pay of an employee who calls in sick on a holiday they are scheduled to work unless they are on a prior authorized sick leave of three or more consecutive days. It also proposed a change in Section 16.6 to make it compatible with its proposed language change in Section 16.2.

The Union proposed that current language in all Section 16.2 (and thus Section 16.6) be maintained. However, if the Fact-finder were to recommend the Employer's proposal outlined above, the Union proposed that Section 16.3 be modified to liberalize the use of personal holidays by requiring only a two-hour notice be given by the employee and eliminating the necessity of prior approval by the Chief of Police. It would also provide that the personal holiday could be utilized in four-hour increments.

The Union indicated at the hearing that it agreed with the Employer's proposal to amend language in Section 16.5.

Findings and Recommendation

The crux of the Union's argument against any change in Sections 16.2, 16.3 and 16.6 was that the Employer had not identified any problems that had arisen under the existing language. The Fact-finder agrees that no compelling reason was presented in support of changing the language in Sections 16.2, 16.3 and 16.6. No evidence of employee abuse, or difficulty with staffing holidays was presented.

Therefore, the Fact-finder recommends that the existing language in Sections 16.2, 16.3 and 16.6 of the agreement be maintained.

The Fact-finder does recommend the agreed-upon change in the language of Article 16, Section 5.

Issue: Article 20, Wages

Positions of the Parties

The Union proposed across the board wage increases of 4% effective January 1, 2003, an additional 4% effective January 1, 2004, and an additional 4% effective January 1, 2005.

The Employer proposed a 2% across the board wage increase effective at the execution of the agreement, an additional increase of 2.5% effective with the first full pay period of

January 2004, and an additional increase of 3% effective with the first full pay period of January 2005.

Findings and Recommendation

The City did not argue inability to pay, but merely argued reasonableness in its proposal. While it acknowledged that it is in decent condition compared to cities around that are facing lay-offs, it is concerned with 2004 and 2005 if the current fiscal trends continue.

The Union cited its concerns that wage increases are eroded by increases in the cost of health care coverage. It noted that the City of Norwalk has a healthy cash balance. Further, it argued that the Employer's proposal for the 2003 wage increase to be effective at the execution of the contract and not retroactive to January 1st would be unfair to the employees. It noted that negotiations began in August, a tentative agreement was reached in November, and extensions beyond December 31, 2002 were granted by the Union at the request of the Employer.

All economic provisions of the contract must be seen in the whole. As such, the recommendation made earlier in this Report relative to the cashing out of unused sick time must be considered here, as should the increases in the Employer's base contribution to health care coverage recommended later. The party's respective positions on wages are not extremely far apart, and a compromise wage increase is easily and reasonably achieved.

The issue of the effective date for the 2003 wage increase follows the same logic as the duration issue addressed later in this Report. The parties have historically had effective dates for wages retroactive to January 1st, which is a relatively common practice throughout public sector labor agreements that expire on December 31st. There simply is no compelling reason for that effective date for the first year wage increase to change in this agreement.

The Fact-finder recommends changing the language in Sections 20.1 through 20.3 to reflect across the board wage increases of 3% effective January 1, 2003, an additional 3% effective January 1, 2004, and an additional 3% effective January 1, 2005.

Issue: Article 21, Health Insurance

Positions of the Parties

The Union proposed amending the language in Section 21.2 to provide for increases in the base maximum amount that the Employer pays for health care coverage. Effective in 2003 the Employer's base contribution for single coverage would increase to \$285, and for family coverage would be \$555. Effective in 2004 the Employer's base contribution for single coverage would increase to \$330, and for family coverage it would increase to

\$600. Effective in 2005 the Employer's base contribution for single coverage would increase to \$350, and for family coverage it would increase to \$620.

The Employer proposed amending the language in Section 21.2 to provide for increases in the base maximum amount that it pays for health care coverage. Effective July 1, 2003 the Employer's base contribution for single coverage would increase to \$242, and for family coverage would be \$545. Effective January 1, 2005 the Employer's base contribution for single coverage would increase to \$265, and for family coverage it would increase to \$595.

The Union proposed amending the language in Section 21.3 to include a provision that would change the split for the excess cost for the health care coverage above the Employer's base contribution from an equal split to a 60% Employer/40% employee split. Additionally, the Union proposal would cap the employee's share of the excess cost for coverage at a maximum of \$110 for a family plan and \$60 for a single plan.

The Employer proposed the retention of existing contract language calling for the equal split of the excess cost for the coverage with no cap on the employee's share.

The Union proposed increasing the amount of life insurance provided for in Section 21.8 from \$40,000 in the current agreement to \$50,000.

The Employer proposed retaining current contract language in Section 21.8.

Findings and Recommendations

The current contract language sets the Employer's base amount at \$220 for single coverage and \$495 for family coverage. The balance of the cost is split equally (50%/50%) between the Employer and the employee. There is no provision for increases in the base amount during the life of the agreement. The Union acknowledged that as late as the end of 1999 the employees did not have to make any payments for health care coverage. However, in 2000 the employee share for family coverage was \$6/month, in 2001 it jumped to \$48/month, and in 2002 it more than doubled to \$110/month. In anticipation of substantial, continued increases in the coverage, the employees are looking for protection. Correspondingly, as the Employer pays 50% of the excess cost above the base amount, its costs have also risen dramatically.

Both parties are looking for protection from excessive increases, an impossible task for this Fact-finder. The cap on the employee's share that previously existed was negotiated out of the contract in the 1999/2000 negotiations. The Union acknowledged this, but noted that at that time it did not anticipate such large increases. Regardless, it would be unfair to the Employer to now recommend a return to a cap. The present system provides both parties with incentives to find ways to reduce the cost of health care coverage. However, it is fair to both parties for the Employer's base contribution to rise. The proposals of both sides were not that far off in regard to the amount of the base

contribution. To the Fact-finder, a fair settlement should incorporate elements of both party's proposals for Sections 21.2 & 21.3.

It is also noted by the Fact-finder that the parties testified that the 2003 costs of health care coverage would not be known until April 2003. As it is likely that the determination of health care coverage costs annually lags behind the beginning of the calendar year, the Fact-finder's recommendation for adjustments in the Employer's base contribution for 2003, 2004 and 2005 should take affect immediately upon the determination of the health care coverage costs in each year. The Fact-finder's reference to "Plan Year" in the recommendation should be interpreted as the 12-month period commencing upon the determination of the cost for the health care coverage.

The Fact-finder recommends the Union's proposal for Section 21.2 calling for increases in the Employer's base contribution for health care coverage. As increases in premiums for the plan year may not coincide with the calendar year, these increases should go into effect in the same month as the premium increase. Section 21.2 of the agreement should read in its entirety:

Section 21.2. The Employer agrees to contribute up to the following maximum base amounts toward the total premium/contribution costs for single or family health coverage, per employee, per month:

<u>Coverage</u>	<u>Maximum Base Monthly Amount</u>		
	<u>Plan Year</u> <u>2003</u>	<u>Plan Year</u> <u>2004</u>	<u>Plan Year</u> <u>2005</u>
<i>Single</i>	\$285	\$330	\$350
<i>Family</i>	\$555	\$600	\$620

Additionally, the Fact-finder recommends the Employer's proposal for the retention of the current language in Section 21.3, with no cap and including the current 50%/50% split of costs in excess of the base monthly amounts recommended for Section 21.2 outlined above.

Regarding the Union's proposal for an increase in the life insurance amount provided for in Section 21.8, the Union acknowledged that it was the least important aspect of its proposals for this Article. Further, it offered no evidence or testimony to support its position.

Therefore, the Fact-finder recommends the Employer's proposal that the current language in Section 21.8 be retained.

Issue: Article 27, Duration

Positions of the Parties

The Employer proposed a three-year agreement commencing from the date of execution. It also proposed adding language to Section 27.3 specifying that the Employer retains the right to establish and/or amend work rules, policies, procedures, and job descriptions provided that they do not result in a conflict with an express provision of the collective bargaining agreement.

The Union proposed a three-year agreement effective retroactively from January 1, 2003 through December 31, 2005. It also proposed the retention of the existing language in Section 27.3, without any additions.

Findings and Recommendations

Previous agreements between the parties have been three-year agreements commencing on a January 1st and expiring on a December 31st three years later. The Employer argued that in the past it has been difficult for the parties to conclude negotiations by the end of the year, given the interruption of the holidays. The Union countered that negotiations began very early this time, and the Union had been prepared to complete an agreement well in advance of the deadline, but negotiations were delayed at the request of the Employer. Given the Union's willingness and preparedness to complete the negotiations prior to the deadline, the Union made a compelling argument that the employees would be unduly penalized by now having compensation and other matters with cost implications effective at execution rather than retroactive to January 1st. As further evidence that the original intent of the parties was to have an agreement with compensation and other matters with cost implications effective on January 1st the Union presented as evidence the extension agreement executed by the parties on January 14, 2003 that calls for retroactivity.

The Fact-finder can find no compelling reason to change what has been the past practice of the parties to have three-year agreements commencing on a January 1st and expiring on a December 31st three years later.

Therefore, the Fact-finder recommends the Union's position that Article 27, Section 1 read in its entirety:

Section 27.1. *This agreement shall be effective January 1, 2003 and shall remain in full force and effect through December 31, 2005.*

Regarding the Employer's proposal to add language specifying management rights, the language does not appear to add or modify management rights already found in the existing agreements; rights that the Union does not dispute belong to the Employer. As

the rights already are specified in the agreement, the Fact-finder does not see a compelling reason to add the proposed language to Section 27.3 of the agreement.

Therefore, the Fact-finder recommends the Union's position that the existing language of Article 27, Section 3 be retained.

Issue: Proposed new article, Application of Civil Service Law

Positions of the Parties

The Employer proposed that a new article be added to the collective bargaining agreement, providing clear expression of the intent of the parties that where the agreement addresses an issue, related state and local statutes do not apply but are superceded by the agreement.

The Union position is that it does not understand the need for this article, and did not understand what right the Employer is attempting to protect with its proposal.

Findings and Recommendation

The Employer cited an Ohio Supreme Court decision that ruled that in order to negate statutory rights of employees, a collective bargaining agreement must use language with such specificity as to explicitly demonstrate that the intent of the parties was to preempt statutory rights.

The Fact-finder notes in the court case cited, the matter involved essentially the contracting out of work that had previously belonged within the bargaining unit. The end result of the contracting-out was that the former employees were hired by the contractor and continued to perform the same work.

The Fact-finder does not conclude that the Employer presented a compelling argument that the new provision is necessary. There was no evidence presented that the Employer was contemplating such action as occurred in the matter resulting in the Supreme Court case, nor any evidence that actions in the past have resulted in any litigation between the parties.

Therefore, the Fact-finder recommends the Union position that the new article not be included in the agreement.

Additional recommendations

The Fact-finder also recommends all of the tentative agreements reached by the parties during negotiations, mediation, and fact-finding.

The above completely represents all the opinions and recommendations of the undersigned in this matter

A handwritten signature in black ink, appearing to read "Martin R. Fitts". The signature is written in a cursive style with a horizontal line underneath it.

Martin R. Fitts
Fact-finder
March 19, 2003