

STATE EMPLOYMENT
RELATIONS BOARD

2003 MAR 13 A 10: 54

IN THE MATTER OF FACT-FINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE

AND

CITY OF DOVER

BEFORE: Robert G. Stein

SERB CASE NO. 02-MED-08-0680 & 0681

PRINCIPAL ADVOCATE FOR THE UNION:

Chuck Choate, Sr. Staff Representative
FRATERNAL ORDER OF POLICE OLC, Inc.
2721 Manchester Road
Akron OH 44319-1020

and

PRINCIPAL ADVOCATE FOR THE CITY:

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Dover City Law Director
SPACE & SPACE CO. L.P.A.
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INTRODUCTION

The bargaining unit is comprised of twenty-one (21) employees holding the classifications of Dispatchers, Patrol Officers, and Captains. The parties met for two negotiation sessions in October of 2002 and one mediation session with the Fact-finder on November 7, 2002. The parties were successful in resolving all but four (4) issues during the negotiations. The issues brought to impasse were: Article 20, Wages & Salaries, Article 24, Hospitalization Insurance, Article 34, Overtime and Substance Abuse Policy. The parties suspended negotiations and mediation for the Thanksgiving holiday and the Fact-finder met with the principal representatives of both parties on December 20, 2002. The parties agreed to submit post-hearing briefs to the Fact-finder in lieu of holding a hearing. The positions of each party were clearly articulated during the mediation session, making the additional time and cost of a hearing unnecessary.

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 actual text of the parties' proposals 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 20 WAGES & SALARIES

Union's position

SEE UPS. It is seeking a 4% raise in each of the next three years of the collective bargaining agreement.

Employer's position

SEE EPS. It is offering a 2% raise in each of the next three years of the collective bargaining agreement.

Discussion

The Union argues it is seeking a reasonable wage increase that is not out of line with those recently provided to other City officials (See Union brief, p. 4). It points out that these increases ranged from 3% to 14.5%. During the same period, the Union asserts the City hired a new Telecommunication Administrator at a salary higher than that of police officers. The Union also points out that the Fire bargaining unit settled for across-the-board wages of 4% (Ux 6). However, it is noted that the Firefighters' settlement also included an agreement that the City would discontinue its 10% pension payment for Firefighters. This is simply another form of compensation that was discontinued. In essence, it discounted the 4% first year wage offer of the City. However, it is also noted that the Firefighters were compensated for this change with a "conversion factor" of 7%. According to the City, the net wage offer to the Firefighters was 1% for the first year, 3.22% the second year, and 3% the third year. Yet, Appendix C of the Employer's

brief lists an increase cost of 3.18% for the first year, plus a 7% pension giveback for a total of 10.18% (Appendix C). The difference in these compensations depends upon the basis one uses to calculate the net costs.

A recent settlement that resulted from a fact-finding report occurred in the nearby city of New Philadelphia. In that settlement the police bargaining unit received wage increases of 3% the first year, 2.5% the second year, and 2.5% in the third year of their contract. The City contends its offer of 2% will keep its officers competitive with the police officers of New Philadelphia and they will continue to be paid more than officers in the city of Cambridge. The City also presented information that cites the fact that its collection of taxes has fallen since it settled with the Firefighter bargaining unit. I find this argument to be persuasive, yet what the City is offering still falls short of what the Firefighter bargaining unit received, even after the pension pick-up is taken into consideration. In addition, other city employees received significant increases during these times of budgetary caution.

Recommendation

1st year: 3%, retroactive to December 1, 2002

2nd year: 2.5%

3rd year: 2.5%

ISSUE 2 Article 24 HOSPITALIZATION COVERAGE

Union's position

See UPS

Employer's position

See EPS

Discussion

The Union is seeking to maintain current language, a position it has held for months during the negotiations and fact-finding process. The Union acknowledges that the Firefighter's bargaining unit accepted increased co-pays, prescription, and premium percentage payments. However, it points out that the 6% increase that the City is offering over three (3) years does not offset the increased cost of these insurances in the same way the 12% increase did for the Firefighting unit. The Union is willing to consider healthcare payments if it can secure wage increases comparable to those of other employees. This option does not appear to be as viable in 2003 as it did in 2002.

The City cites its current economic condition and the increase in the cost of health care premiums it has experienced as factors that have severely impacted negotiations with the police unit. It points out that the value of a family health care benefit is approximately \$7200 per year, and the single coverage is worth \$3600 per year.

The reason it is difficult to apply internal comparables to this matter is that the City's wage offer is substantially lower than that for which it settled with the Firefighter unit in the first year, even after one accounts for the "pension pick-up give back." According to Appendix C-1 of the City's brief, the Firefighter unit received a total of 16.40% over three years.

At this point in time the City is not in a financial position to ask for health care contributions toward the monthly premium when it is unable to offer wage increases at or near 3% for all three years of the collective bargaining agreement. In 2002, the financial picture was less gloomy. It could afford to trade higher wages for increased co-pays. However, tax collections in 2002 were \$500,000 less than they were in 2001, and according to the City's advocate, 2003 does not promise to be an improvement. The state's economic condition is even worse, and it casts a shadow of uncertainty over the entire public sector, save for a handful of wealthy cities. What the City is proposing in terms of health care premium contributions is not in and of itself unreasonable in today's labor relations environment, yet these changes on top of asking the bargaining unit to accept more minor healthcare changes discussed below represent too much for the bargaining unit to absorb at this time.

The above addresses the rationale for keeping health premiums fully paid for employees; however, there are two notable exceptions to the above rationale: the cost of prescription drugs and the appropriateness of providing the bargaining unit with an improved dental plan. Prescription drug increases have far outpaced general health care premium costs, and I find the City's arguments to increase deductibles to be persuasive and in line with increases for other public employees (See City's brief). The same dental

plan that is currently offered to the Firefighter's bargaining unit should be applied to the Police bargaining unit in order to maintain benefit parity.

Recommendation

1. Article 24.02: Maintain current language regarding health care premiums.
2. Article 24.05: Update the dental plan for the bargaining unit to be the same as the Firefighter's bargaining unit, including new premiums. See City's brief for language.
3. Article 24.04: Change deductibles for prescription drugs to: \$3/\$6 for preferred pharmacies and \$5/\$12 for non-preferred pharmacies. See City's Brief for language.

ISSUE 3 Article 34 OVERTIME

Union's positions

See UPS. The Union wishes to maintain current language.

Employer's position

See EPS. The City desires to lower the accumulated compensation time maximum from the current 480 hours to 55 hours. It also wants to limit the number of employees who can take compensation time to three (3) employees year round, instead of the current 5/3 year plan.

Discussion

The issue that is the central focus of the impasse between the parties centers upon the accumulation and use of compensation time. During prior negotiations that led to the current collective bargaining agreement, the parties spent a considerable amount of time negotiating the compensation time benefit. The Union stated it was surprised to see the City's proposal once again surface in the current round of negotiations. The City on the other hand argues that the current collective bargaining agreement contains inequitable provisions regarding compensation time. The City persuasively argued that the current compensation time provisions are inefficient in that they can have a detrimental effect on departmental operations and may cause a shift to fall below minimum manning levels.

Each employee in the bargaining unit is permitted to accumulate up to 480 hours of compensation time. This substantial total creates a potential situation of constant use of compensation time and may affect staffing. The City also argues that the current and the potential use of hundreds of hours of compensation time annually also creates morale problems among the employees of the bargaining unit. For example, in order to provide adequate coverage for people on compensation leave, employees are forced to cover for the absent employee. One employee's absence often requires the scheduling of overtime, which in turn often creates more accumulated compensation time, asserts the City. The City also argued that the use of compensation time during periods when employees are absent for other reasons (e.g. illness) exacerbates an already difficult situation. The City references statements of Chief Johnson who on one occasion was unsuccessful in his attempt to procure overtime to fill in for absent employees after making twelve telephone

calls. In other situations, supervisors had to go to the homes of bargaining unit members in order to find adequate police coverage due to contractual compensation time usage.

The Union points out that a major part of the City's problems with filling positions left vacant by the use of compensation time has to do with short staffing. The Union argues that the complement of officers has not been filled in a timely fashion and this staff shortage has greatly contributed to the City's frustration with maintaining adequate staffing. The City states in its brief that "*...the City and its residents (as well as some employees) would be much better served by limiting the total number of comp days permitted per week to three (3) ...capping the number of permitted comp time bank hours to a reasonable number (far less than the current 480 hours per year) would serve to promote this same end.*"

The parties only recently (during last contract negotiations) placed limits on the number of people who are permitted to be off on compensation time during the summer and winter months (3 and 5 days respectively). Both parties acknowledge that there is a need for additional police officers and that the Department's complement of officers is below authorized levels. The City provided comparable data from surrounding bargaining units, including the cities of New Philadelphia, Cambridge and the Tuscarawas County Sheriff's Department. In two of these, the employees have a much lower accumulated compensation time maximum (40 hours). The Employer adds that the current compensation time provisions contained in the collective bargaining agreement do not conform to FLSA standards. Without a full complement of officers, it is difficult to determine exactly how the City's need to manage the use of compensation time can best be met. Restricting the number of officers who can be off does not relieve the

pressure of having hundreds of banked hours that officers find they must use. It seems far more reasonable to approach this problem from a reduction of accumulated hours over the life of the agreement.

Recommendation

34.4 (B) An employee shall be permitted to accumulate up to **a maximum of one hundred and fifty (150) hours (1st year), one hundred (100) hours (2nd year), seventy-five (75) hours (3rd year)** of compensatory time off in a compensatory time bank. Such a bank may be drawn upon by the employee with the hours first credited to be the hours first deducted.

All other provisions of Article 34 shall remain unchanged, unless by mutual agreement of the parties.

ISSUE 4 New Article SUBSTANCE ABUSE POLICY

Union's positions

See UPS.

Employer's position

See EPS.

Discussion

It is not uncommon for a policy on substance abuse to be supported by law enforcement parties and to be negotiated by them in earnest. However, from the facts it appears the Union and the City were unable to devote sufficient time to this issue. It is recommended they return to the bargaining unit after the contract has been ratified and negotiate a substance abuse policy.

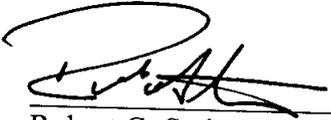
Recommendation

Within 30 calendar days following ratification of this Agreement, the parties shall begin meeting to establish a new substance abuse policy. The parties shall establish a specific time limit for these negotiations. The parties have previously requested that the undersigned Neutral serve as a final arbiter of any issues not resolved in these negotiations. If called upon, the undersigned Fact-finder has agreed to serve in this capacity.

TENTATIVE AGREEMENTS

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 12th day of March, 2003 in Portage County, Ohio.


Robert G. Stein, Fact-finder