

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2002 DEC 16 A 9:04

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Rocky River)	
)	Case No: 02-MED-10-1003
and)	
)	Fact-Finder: Colman R. Lalka
OPBA, Patrolmen Bargaining Unit)	

HEARING

Date of Hearing: December 4, 2002

Location of Hearing: Rocky River, Ohio

ATTENDANCE AT HEARING

For the Employer:

William Knoble, Mayor
Dave Matty, Director of Law
Jim Linden, Safety-Service Director
Don Wagner, Police Chief

For the Union:

S. Randall Weltman, Esq.
Joseph M. Boncek, OPBA Negotiating Committee
Michael H. Bernhardt, OPBA Negotiating Committee

MEDIATION

Prior to the commencement of, and during, the fact-finding hearing, mediation was requested by the Parties. The Fact-Finder acted as mediator with all unresolved issues being negotiated. Thirty-two issues were at impasse, several of which were resolved through Tentative Agreement.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(2). Comparison of the 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;

4117-9-05(K)(3). The interests and welfare of the public, 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;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

INTRODUCTION

The City of Rocky River has recognized the OPBA, Patrolmen Bargaining Unit as the bargaining representative for certain employees of the City.

The Bargaining Unit is duly certified by the State Employment Relations Board and has a Labor Agreement in effect that expires on December 31, 2002. Formal bargaining between the Parties has been minimal but ongoing. The Fact-Finder was appointed to convene a hearing, attain relevant facts, and prepare a report and recommendation in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in their preferred manner to would allow the Fact-Finder to render a report and make recommendation on the issues at impasse.

At the outset of the Fact-Finding Hearing, the Union raised an objection, claiming non-receipt of the City's Position Paper. The City claimed its Position Paper was forwarded the previous day to the Fact-Finder, the Union's Representative, and to SERB. Evidence regarding the sending and receipt of the City's Position Paper was in equipoise, and the Fact-Finder overruled the objection, and added the Fact-Finding Hearing could be continued for one day to permit the Union time to review the City's Position Paper. The objection was then withdrawn.

Economic Background

The City and the Union presented argument regarding economic factors to be taken into consideration by the Fact-Finder.

City's Argument

As a result of the unstable economy, as a whole, and the economic uncertainties faced by the Rocky River in particular, the City is requesting an expense neutral Labor Agreement for a one year period. Economic uncertainties facing the City include a community activist who is currently circulating petitions to place a one-third income tax reduction on the ballot. The same activist has been successful in obtaining enough signatures to place two previous issues on the ballot. The City Income Tax is the primary source of revenue and a one-third reduction would be catastrophic. Additionally, with the recent change in state estate tax law, the Cuyahoga County Auditor's Office has estimated Rocky River's estate tax receipts will see a 27% decrease in 2002.

Rocky River is the base city for the Rocky River Municipal Court, which has within its jurisdiction four suburbs and part of the Metro Park. Money from the Court goes into the General Fund, and the surplus the Court has enjoyed over the past five years has decreased significantly. Due to a reduced caseload and increased expenses, the Court will barely break even this year. Its projected net through September, 2002 is \$63,000.00. In 2001, the net was just under \$490,000.00. Additionally, North Olmsted is in the process of establishing a Mayor's Court, which will result in less revenue being generated by the Court.

Rocky River uses the services of an outside entity to procure liability and property insurance, and, primarily due to the events of September 11, 2001, Ohio is part of an upward trend in the costs of insurance. The City has been advised premiums will increase at least 30% to 50%, costing the city an additional \$40,000.00 to \$65,000.00 for the upcoming year. In addition to the projected increase in liability and property insurance costs, hospitalization costs are projected to increase by 15% to 35% for 2003. An 18% increase will cost the city an additional \$200,000.00.

The City's Finance Director had previously served and it's Human Resources Director. Recently, a Court Order has issued requiring the City to hire a Human Resources Director. The cost to the City for the additional employee is expected to be about \$60,000.00.

There has been a recent one-third increase in the unemployment rate of Rocky River residents. While still below regional numbers, tax receipts will be affected. Additionally, there are over one-hundred homes for sale in Rocky River, the highest number in recent history. Houses costing over \$300,000.00 are not moving, and foreclosures are taking place. Houses in the City usually sell without a real estate sign, now there are numerous homes listed which have not sold. This is all related to the economic position of the City. Finally, 34% of the City's residents are over the age of sixty.

In summary, the City faces very unstable time for 2003, and the City must control all expenses and seek new sources of income. The City, therefore, requests an "expense neutral" agreement for a one-year period.

Union's Argument

The City has presented nothing to establish its current financial condition. The City has established only that an income tax issue might be on the ballot, however, nothing was presented regarding what is relevant, the City's current financial condition, and the financial condition for the last three or four years. Regarding the estate tax law change, the City only presented projections of tax losses that might occur. Moreover, estate tax is only a small portion of the City's revenues, and Rocky River is no worse off than any other city. As for the Municipal Court, evidence presented establishes the Court has often operated at a loss. In fact, looking back to 1980, the Court operated at an annual loss more often than at a surplus.

Regarding liability and property insurance, all cities are facing increases. A dollar figure showing the increase in insurance premiums is meaningless without the actual figures to establish the City's current financial condition. As far as an increase in the cost of hospitalization is concerned, the City has done nothing to bring employees together in an attempt to address the issue. The Union is willing to work with the City in an attempt to control costs, and it must be noted that the increases in premiums are the same for all cities, not just Rocky River. Moreover, the law suit against the City, which resulted in a Court Order mandating a Human Resources Director, is not the fault of the Union, and the Union should not bear the burden of the City's actions which resulted in the Court Order.

Unemployment rates are misleading. Unemployment in Rocky River is well below the average across the state. Most unemployment is on the hourly employee level, and Rocky River is populated mostly by white collar professionals. If the actual figures of tax revenue were presented by the City, they would likely show an increase in the amount of tax revenue received. Moreover, real estate activity is not great in high valued homes, and high valued homes are the main part of Rocky River's housing stock. A couple of houses in foreclosure is meaningless without seeing the City's financial condition.

Evidence of the City's financial condition is available to the City, but it has presented nothing to establish it hasn't been successfully managed. Only broad generalizations have been forthcoming to establish revenues of cities across the state have been decreasing. No evidence has been presented to establish Rocky River is suffering the same decrease in revenues as other localities. Medina recently had an income tax level go down in defeat, North Olmsted is suffering the consequences of mismanagement of its fire department, Bay Village is entirely residential, unlike Rocky River which has a broad, viable business base, and Parma Heights is an aging suburb, with commercial entities that recently went out of business.

ISSUES AT IMPASSE, TENTATIVE AGREEMENTS, AND RECOMMENDATIONS

Article 9, Grievance Procedure

Union's Position

The Union requests a change in Article 9 mandating a Union Representative be present at every Step Meeting unless the Grievant requests otherwise. The Union also requests the Grievant be given no less than twenty-four hours notice of any grievance meeting. The change was requested as the result of a complaint from one Bargaining Unit Member that he appeared at a Grievance Meeting in front of the Chief without Union Representation.

City's Position

The Employer responds by indicating pursuant to current procedure a letter is sent to a Grievant stating the date and time of meeting, and that the Grievant may bring a representative of his choice as well as other support people to the meeting. There have been three grievances in the past three years, and the current system has been working fine without problems. The particular

Grievant who complained had sufficient notice and could have brought representation had he so desired.

Recommendation

The Union's request is not recommended. There is insufficient evidence of problems with the current procedure to justify the change requested. Moreover, if a due process violation occurs, that issue can be addressed at that time through the grievance procedure and arbitration.

Article 11. Personnel Reductions

City's Position

The City proposes the deletion of the following sentence, "Any employee who is laid off in accordance with Section 124.37 of the Ohio Revised Code shall be entitled to Hospitalization for a period of ninety (90) days from such layoff date." This coverage is provided by existing COBRA law. Moreover, none of the police Labor Agreements from four adjoining cities contain such a provision, nor do the police Labor Agreements from three other Cuyahoga County cities of comparable.

Union's Position

This provision has been in at least the last two Collective Bargaining Agreements, and probably others. This provision has never been used, and the City has failed to show this provision is somehow causing a hardship. Under COBRA, the employee must pay what the City would have paid.

Recommendation

The City's request is not recommended. While this benefit has been unused, and neighboring cities have no such benefit, there has been insufficient showing by the City of a need to change this provision.

Article 12. Contracting Out

City's Position

The City proposes the second paragraph be amended to read, "This Article shall not apply to mutual aid agreements or to the renewal or amendments to the Westshore Enforcement Bureau

contracts currently in existence." The change is necessary to permit Westshore Enforcement Bureau agents to carry firearms and act as law enforcement officers within the City's jurisdiction. This will benefit Rocky River Patrolmen.

Union's Position

This matter has not been previously discussed, and the Union may agree to this change. Policemen involved had previously made such a request so they would be permitted to carry firearms.

Recommendation

The City's request is recommended. The change will enhance law enforcement without increasing costs.

Article 13, Salaries, Hourly Rates and Overtime

Union's Position

The Union originally proposed an increase in the wage scale by 4½% on January 1st for each year of the Labor Agreement. A compilation of wage increases for Patrolmen throughout Cuyahoga County suburban Departments establishes an average increase of 4%, including shift differential, longevity, and miscellaneous items for Patrolmen at the top of the pay scale. The top pay scale is the proper scale to use for comparisons in that Patrolmen reach that scale after two years, and that is the rate most Patrolmen receive. Also, the City has no evidence in support of its claim the Labor Agreements included in the 4% average wage increase were negotiated prior to September 11, 2001., that is, during better economic climates. For example, Barberton, Stow, and the Medina Sheriff Agreements were negotiated after September 11th. The Union requests the same 4% wage increase as current averages.

The Union also requests an increase in Detective Bureau assignment pay from \$800.00 to \$1,000.00. The \$800.00 figure has been in place for a while, and, generally, a transfer to the Detective Bureau eliminates the ability to work third-party jobs.

City's Position

The City proposes keeping the current starting wage as it is, and a 2% increase to wage levels after one and two years of service as follows: Start - \$39,748.24, after one year - \$46,721.06,

after two years - \$53,000.54. Some of the Labor Agreements included in the Union's compilation of average wage increases are probably in their second or third year. That is, the wage increases in those Labor Agreements were negotiated prior to the events of September 11, 2001, and during better economic climates. Additionally, the compilation is only for Patrolmen at the top pay scale, and doesn't take into consideration what other Patrolmen earn. The current starting pay for Patrolmen is more than adequate to attract qualified applicants.

Regarding the increase in Detective Bureau pay, the total dollar amount of the increase isn't what is at issue. The City desires to avoid the Detective Bureau pay increase in that it skews the percentage increase upward for statistical purposes, and makes it appear as though wage increases are astronomical. A wage increase from \$800.00 to \$1,000.00 appears to be a 25% increase for statistical purposes.

Recommendation

Regarding wages increases, the Union's proposal of a 4% increase on January 1st for each year of the Labor Agreement is recommended. Such an increase will maintain the position of Rocky River Patrolmen in terms of wages and miscellaneous benefits in comparison to the wages of Patrolmen in other suburban areas of Cuyahoga County. Moreover, the Fact-Finder is not convinced the City's finances are such that an increase in wages for its Patrolmen is cost prohibitive.

Regarding the increase in Detective Bureau pay, no increase is recommended. The Fact-Finder is not convinced, based on evidence presented, such an increase is justified.

Article 13 B, Shift Differential

Union's Position

The Union requests an increase in shift differential to 55¢ per hour. The Union would like to see the pay level for Patrolmen in Rocky River rise in comparison to pay levels of Patrolmen in other suburban areas. The payment of shift differential is to pay Patrolmen more for working shifts most people prefer not to work.

City's Position

The City proposes eliminating shift differential. Patrolmen work rotating shifts, and work duties performed on the afternoon and midnight shifts do not justify the differential. The midnight shift has the lightest amount of calls, and the afternoon shift has the same number as the day shift.

Recommendation

It is the recommendation of the Fact-Finder that neither position be implemented. Payment of shift differential was included in the Union's comparison figures showing a 4% average wage increase for Patrolmen in Cuyahoga County suburbs. Any changes to the differential will result in changes in the 4% wage increase, and are not justified based on evidence presented at the Fact-Finding Hearing.

Article 13 C. Membership in Recreation Center

Union's Position

The Union proposes the City provide each employee and family member with free membership to the City's Recreation Center. Such a membership would provide for a police presence in the facility, and Patrolmen would use the facility to maintain health, resulting in less medical costs to the City. This would not increase costs to the City in that it owns the facility.

City Position

No City Labor Agreement has such a provision. The Mayor, Law Director, members of City Council, and all other City employees pay for membership.

Recommendation

The Union's proposal is not recommended. There is no historical precedent for free membership in the Recreation Center, no other employees of the City enjoy such a benefit, nor is there any evidence of surrounding communities providing such a benefit to its employees.

Article 13 D. Field Training Officer Compensation

Union's Position

The Union requests Field Training Officers (FTO's) be compensated one hour pay at the overtime rate for each shift they train a new Officer. FTO's serve as a link between the City and new

officers, and leave a lasting impression on the new Patrolmen. The expense to Rocky River would not be that great.

City's Position

The rate requested would cost the City approximately \$50.00 per day, and is unreasonable. Bay Village and Fairview Park have a similar provision in their Labor Agreements, however, the amount paid is \$2.50 per hour, or approximately \$20.00 per day. The City is willing to compensate FTO's at a reasonable rate.

Recommendation

Compensation of FTO's is recommended, however, compensation is recommended at the rate of \$2.50 per hour as in Bay Village and Fairview Park.

Article 14, Longevity

City's Position

Comparable communities of Bay Village, Fairview Park, and Westlake all have caps on longevity. Pursuant to the current Labor Agreement, longevity is a percentage annual salary. Every time there is a percentage wage increase, a percentage increase in longevity results. The City desires a two tiered system that will protect senior Patrolmen while reducing costs to the City. The City proposes all Patrolmen hired after January 1, 2003 receive an amount certain below what current Patrolmen receive.

Union's Position

If longevity is reduced, the total compensation package for Patrolmen is reduced. The current longevity benefit has been in place for at least two Collective Bargaining Agreements, and may be city-wide, not just for Patrolmen.

Recommendation

The City's position is not recommended. The 4% average wage increase for Cuyahoga County Patrolmen cited by the Union above under Article 13 included increases in longevity. Thus, a reduction in longevity will reduce the 4% wage increase recommended above.

Article 15, Educational Differential

City's Position

The City proposes this Article not apply to Patrolmen hired after January 1, 2003. Berea has Educational Differential but limited to related courses. Rocky River has unlimited education and no relationship to job performance or advancement.

Union's Position

Educational Differential is a wide-spread benefit in many Labor Agreements. The City's proposal is an attempt at concessions, and will affect future membership. Such two-tiered programs are derisive and affect morale of Bargaining Unit Members.

Recommendation

The City's position is not recommended for the reasons cited by the Union.

Article 16, Uniforms and Uniform Maintenance

Union's Position

The Last sentence of Article 16 reads, "This equipment shall include a new bullet proof vest to be offered to all new Police Officers which, if accepted by said Officers, shall be replaced in accordance with current practice." The Union proposes the sentence be changed to read, "This equipment shall include a new bullet proof vest to be offered to all new Police Officers which, if accepted by said Officers, shall be replaced in accordance with the manufacturer's guidelines or recommendation."

The Union also requests an annual increase of \$50.00 for uniform maintenance for each year of the Labor Agreement.

City Position

The City receives a federal subsidy for the purchase of bullet proof vests pursuant to a federal program that remains open only part of the year. The City doesn't want to be locked into a position where it must replace the vests upon an expiration date, during which time the federal program may be closed, thus losing the subsidy. The City has done its part in keeping bullet proof vests up to date, and currently has plans to replace bullet proof vests. Moreover, if safety is the real issue, then the wearing of bullet proof vests should be mandatory for all Patrolmen.

Regarding the increase in uniform maintenance allowance, the City provides all uniforms. When uniforms wear out, they're turned in by the Patrolmen and replaced by the City. Patrolmen clean their own uniforms, which are wash and wear, and the \$50.00 annual increase comes to approximately \$10.00 per week uniform allowance to wash uniforms.

Recommendation

The Union's positions on bullet proof vests is not recommended. The current program of bullet proof vest replacement is working without problem, and the Union's proposal may lock the City into needless expense.

The Union's positions on the annual increase in maintenance allowance is not recommended. A justification for the increase has not been established.

Article 18. Work Week/Scheduled Hours

Union's Position

The Union requests language be added to this Article mandating the current scheduling practice and policy be continued for the duration of the Collective Bargaining Agreement, and that the Department be precluded from changing or otherwise rescheduling an employee's day off. Currently the City can change the schedule with little or no notice, and does so to avoid payment of overtime. This interferes with a Patrolman's plans, and causes hardship on the Patrolman and the Patrolman's family.

City's Position

The City is not aware of any problem with scheduling. Currently, employees are asked to voluntarily change their schedule, and only rarely is a change mandated. Also, this is a two way street, if an employee desires a scheduled day off for personal reasons, the employee is permitted to make such a request and rarely is the request denied.

Recommendation

The Union's request is not recommended. There has not been a sufficient showing of a problem with the current procedure to justify interference with Management's scheduling rights.

Article 19, Overtime

Union's Position

The Union requests that a provision be added to Article 19 (B) that mandates overtime opportunities be equitably distributed through the use of a call-out procedure based on rotational seniority. No contract language was proposed by the Union.

The Union also proposes that "called to duty" found in Article 19 (C) encompass any activity or action required by Management at a time that the employee is not scheduled for work. The provision currently reads, in pertinent part, "Any employee called to duty . . . shall be compensated for a minimum of four (4) hours, or the amount of time actually worked whichever is greater . . ." The proposed change was prompted by one employee whom the City, in an effort to assist, was required to report to a psychologist on his day off.

City's Position

The City has been attempting to draft language regarding the equitable distribution of overtime, but the effort is not yet complete. Moreover, the City proposes decreasing the number of minimum call-in hours in Article 19 (C) and (D) from four to three. This situation arises from time to time when a Patrolman is called in early or asked to stay past the end of the shift. The situation arises, for example, when Patrolmen are asked to remain in the station at the conclusion of the midnight shift, 7:45 a.m., for Breathalyzer certification. It doesn't seem appropriate to pay four hours of overtime for fifteen minutes of staying over. Otherwise, the City has no problem with paying four hours overtime when a Patrolman is called in on a non-scheduled day. The City goes on to propose that for Court call-ins, the employee be paid three hours instead of four. Of four adjoining communities, two pay three hours, one allows two hours, and one allows four.

Recommendation

The Union's request regarding the change to Article 19 (B) is not recommended. The Union's request is too nebulous without proposed contract language having been submitted to justify a change in the current procedure. The Union's requested change to Article 19 (C) is also not recommended. In remote instances of an employee feeling the current contract language has been misinterpreted by the City, a grievance procedure is in place to the employee for redress.

Regarding the City's proposed changes to Article 19 (C) and (D), the changes are not recommended. While the example of Patrolmen being compensated four hours of overtime for remaining over at shift's end for fifteen minutes is reasonable, a reduction from four hours to three under current language of Article 19 (C) and (D) would cover not only the Breathalyzer situation, but would also cover a Patrolmen called in on a non-scheduled day. No justification for payment of less than four hours for being called in on a non-scheduled day has been offered.

Article 20, Holidays

Union's Position

The average number of holidays for Patrolmen in other Labor Agreements is thirteen, and the Union proposes modifying the one-half day before Christmas Day and the one-half day before New Years Day to one day each. This would bring the number of holidays received by Rocky River Patrolmen up to the average.

City's Position

The City proposes eliminating Easter Day as a holiday. That day is not included as a holiday in other comparable Labor Agreements. Also, the City questions the Union's statement the average number of holidays in other Patrolmen Contracts is thirteen.

Recommendation

Both proposals are not recommended. There is insufficient evidence in support of either position upon which the Fact-Finder can justify recommending a change.

Article 21, Leave of Absence

City's Position

Article 21 (A), Military Leave, is currently out of compliance with state law, and the City proposes increasing the amount of limits from two weeks to twenty-two days of eight hours each. This would bring Article 21 (A) into compliance with state law.

Union's Position

The Union does not oppose the change.

Recommendation

The Tentative Agreement is recommended. The second last sentence of Article 21 (A) shall read, "Said policy shall be limited to an annual term of twenty-two (22) eight (8) hour days."

Article 22 (A), Sick Leave

City's Position

The City proposes adding the following sentence, "The Employer may contract with a nurse or medical services agency to verify the health of an Employee requesting sick leave." It is also proposed that for employees hired after January 1, 2003, all numbers in Article 22 (A) be reduced by 50%. The language is being proposed to prevent sick leave abuse. There have been instances in other Bargaining Units of employees calling off sick and then going hunting or fishing. Also, the two-tiered approach will permit the City to eventually reduce this expense without reducing earnings.

Union's Position

There is no basis in the Patrolmen Bargaining Unit for the proposed change. Language currently exists for written statements, signed by the employee, to justify the use of sick leave, and every Officer knows the consequences of falsification of a written statement. Also, there is no basis to cut the sick leave to new hires. There is no problem with sick leave in this Bargaining Unit and the current sick leave policy should not be changed.

Recommendation

Current language provides for a written statement from the employee justifying the use of sick leave and/or a physician certificate stating the nature of the illness or injury. Moreover, falsification of either is grounds for disciplinary action, including dismissal. There has been no showing of a need for additional language in this Bargaining Unit, and the City's proposal is not recommended. Likewise there has been no showing of a need to cut sick leave for new hires, and the City's proposed language in that regard is not recommended.

Article 22, Sick Leave (Continued)

Union's Position

The Union proposes that employees who are injured, but not in the line of duty, be granted light duty consistent with their doctor's recommendations and restrictions. No evidence in support of the proposal has been offered.

City's Position

The current policy is administered through the Chief, and there have been no problems. Light duty and other accommodations are provided.

Recommendation

The Union's proposal is not recommended. No basis was presented justifying the proposed modification.

Article 22 (B), Job Related Medical Leave of Absence

City's Position

The City proposed a reduction in the amount of time an employee disabled as the result of hazardous duties is paid from one-hundred-eighty work days to ninety. After discussion at the Fact-Finding Hearing, the proposal was withdrawn.

Recommendation

Based upon the City's withdrawal of its proposal, it is recommended Article 22 (B) remain unchanged.

Article 24, Payment for Accrued Sick Leave Credit

Union's Position

The Union requests an increase of the cap on accrued sick leave from 960 hours to 1,200. Capping the accrued sick leave is a disincentive to employees to refrain from using sick leave. The increase amounts to less than \$300.00.

City's Position

It's not what the Union is asking, it's how much. All City employees are capped at 960 hours, and will want the same increase. The increase when implemented for all City employees will end

up costing the City over one million dollars. All of these types of programs are disguised wage increases, and, if implemented, should be deducted from any wage increases for Patrolmen.

Recommendation

The Union's request is not recommended. No evidence justifying the change has been presented.

Article 26. Health Benefits

Union's Position

The Union proposes an increase in the amount the City is required to pay for dental and eye plan coverage. In the last Contract, the Union obtained a small medical benefit of dental and vision coverage. The City told the Union to start with the small benefit and build on it in future negotiations. Health care will expire at the end of April, 2003 and nothing has been done. This is not the City's fault, the information regarding health care is not yet available.

City's Position

The City proposes this Article be deleted and the following language be substituted, "The Employer agrees to pay a sum not to exceed \$3,500.00 for single and \$8,700.00 for family for the year for health, dental, and/or eye care for each employee in the Union. In addition, the City also will provide a health benefits package (health and dental) which does not require employee contribution but instead provides a reduced coverage plan with increased co-pays and deductibles as an alternative to any employee monetary participation in premium payments."

The most viable solution to the projected 15% to 40% increase in Health Care costs for the next year alone is limiting the City's expenses for Health Care coverage, including dental and vision. If costs increase to an amount greater than the proposed amounts, the employee pays the difference or accepts the lesser plan without payment. The cost of the family plan is approaching triple digit figures, and something must be done. Health Care is currently costing the City \$1,200,000.00.

Recommendation

Neither proposal is recommended. Absent evidence of the City's current finances, the Fact-Finder has no way of ascertaining whether or not caps on Health Care premiums paid by the City

are appropriate. Moreover, with the escalation of Health Care costs and the uncertainty of the costs of additional coverage, the Union's proposal cannot be recommended.

Article 27, Life Insurance

Union's Proposal

The Union requests an increase in Accidental Death and Dismemberment to \$50,000.00 per year. The benefit has been at \$25,000.00 since 1988. This is a term policy, that is, when the employee leaves the policy is terminated, and is relatively inexpensive to the City.

City's Position

The employees can purchase the increase if they desire. If an individual employee wants to increase the benefit from \$25,000.00 to \$50,000.00, most insurance carriers will write the increase, although it is not certain the City's carrier will. The cost for this benefit is believed to be approximately \$100.00.

Recommendation

The Union's proposal is recommended. The \$25,000.00 policy is becoming outdated, the cost of the increase relatively low, and \$50,000.00 for the accidental death of dismemberment of a Patrolmen is not unreasonable. Moreover, the City, while facing economic uncertainties, has not demonstrated the increase to be cost prohibitive.

Article 29, Seniority

Union's Position

The Union proposed that seniority govern in the scheduling of vacation, holidays, and days off. After discussion, the proposal was withdrawn.

Recommendation

With the proposal having been withdrawn, it is recommended Article 29 remain unchanged.

Article 33, Discipline

Union's Position

The Union proposed the Department be required to follow the tenets of progressive discipline in all disciplinary matters, and the department apply and enforce all rules and regulations uniformly.

City's Position

The City proposed the deletion of Section 3, indicating the City must have the right to immediately remove a Patrolman in extreme circumstances.

Recommendation

After discussion, the Parties reached Tentative Agreement, and the following language of the Tentative Agreement is recommended, "Section 3. Prior to any discipline involving time off without pay being imposed, the employee shall be given the opportunity to appeal through Step 3 of the Grievance Procedure contained in Article 9 of this Agreement. The employee shall then be able to appeal Step 3 decision to arbitration, as set forth in Article 9 of this Agreement. Time off with pay may be imposed at any time." The remainder of Article 33 remains unchanged.

Article 37, Internal Investigations/Procedure

Union's Position

The Union proposed changing the words "a citizen" in the second last paragraph to, "any person" to cover situations of complaints by non-citizens.

Recommendation

After discussion, the Parties reached Tentative Agreement, and the second last paragraph of Article 37 is amended with the words "any person" to replace "a citizen." The remainder of Article 37 remains unchanged.

Article 38, Term

City's Position

The City proposes the term of the upcoming Labor Agreement be for the period of January 1, 2003 to December 31, 2003. The City's income is in a state of flux and it is currently impossible

to determine what expenses will be in 2004 and 2005. Moreover, the expense of Health Care has become unpredictable.

Union's Position

Three year Contracts are standard throughout the state. There is always uncertainty, and cities have been through periods of uncertainty before. The Union doesn't want yearly Contract negotiations.

Recommendation

The City's proposal is not recommended. The uncertainties cited by the City are not sufficient to justify the change proposed.

Article 40. Service Weapon at Retirement

City's Position

The City proposes Article 40 be deleted. The cost of firearms has escalated, with the price of a Beretta 92F over \$500.00.

Union's Position

Retirements don't occur that frequently, and the expense to the City is not great. Article 40 is an expected benefit, and is not an issue unless an officer is retiring pursuant to a psychological disability.

Recommendation

The City's proposal is not recommended. There is insufficient evidence of justification for the Article's deletion.

New Article. Safety and Health

Union's Position

The Union requests minimum manpower requirements to ensure public protection and Officer safety.

City's Position

Rocky River is a small community, and response time from one end of the City to the other is minimal. Also, the City spends a great deal of money on training which ensures public protection and Officer safety. The City opposes the minimum manpower requirements.

Recommendation

The Union's proposal is not recommended. There is no evidence of public or officer safety deficiencies due to manpower shortages.

New Article, Sick Leave Donation

Union's Position

The Union proposed employees be permitted to donate accrued sick leave to fellow employees who have exhausted their own sick leave.

City's Position

The City agreed to the proposal as long done with the approval of the Chief.

Recommendation

After discussion, the Parties reached Tentative Agreement, and the following language of the Tentative Agreement is recommended, "With approval by the Chief, an Employee may transfer any unused sick leave to another Employee for use by such other Employee when no further sick leave is available to such other Employee. Such transfer shall result in a deduction from the transferring Employee's sick leave accumulation on the basis of one hour for every one hour transferred. Any such transfer shall be no less than eight (8) hours."

New Article, Third-Party Jobs

Union's Position

The Union requested all third-party jobs be equitably distributed, and, at the Fact-Finding Hearing, included this item with Article 19 (B) above.

City's Position

The City has been attempting to draft language to accommodate the request, but the effort is not yet complete.

Recommendation

The Union's request regarding this addition to the Collective Bargaining Agreement is not recommended. The Union's request is too nebulous without proposed contract language having been submitted to justify a change in the current procedure.

New Article, Probationary Period

Union's Position

The probationary period under Civil Service is two years. The Union requests newly hired employees serving the two year probationary period be subject to discipline and/or job termination with no appeal rights during their first year only, and during their second year such probationary employees may only be disciplined or discharged for just cause. Requiring just cause for discipline or discharge in the second year will promote job security for new Patrolmen.

City's Position

The City Charter requires two years, and the City prefers leaving the issue as is. A good part of a new Officer's first year goes to training and work under the guidance of an experienced Officer. Thus, a new Patrolmen's ability to independently succeed isn't established until the second year.

Recommendation

The Union's request is not recommended. There is insufficient evidence of justification for including this request in the Parties' Labor Agreement.

New Article, Alcohol and Substance Abuse Testing

Union's Position

The Union proposed the addition of language to the Collective Bargaining Agreement of testing in cases where there is probable cause and sending employees who test positive to EAP.

Recommendation

After discussion the proposal was withdrawn, and is, therefore, not recommended.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Colman R. Lalka". The signature is fluid and cursive, with the first name "Colman" being larger and more prominent than the last name "Lalka".

Colman R. Lalka, Fact-Finder

Dated: December 12, 2002
Madison, Lake County, Ohio