

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2003 SEP 22 A 9 10

In the matter of

Case No. 03-MED-04-0405

Fact-finding between:

Fact-finder:

City of Oregon

Martin R. Fitts

and

FOP/Ohio Labor Council, Inc.

September 17, 2003

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Oregon (the Employer):

Paul Goldberg, Law Director
Ken Filipiak, City Administrator
Tom Gulch, Police Chief

For the FOP/OLC (the Union):

Jackie Wegman, Staff Representative
Paul K. Magdich
Timothy J. Zale

PRELIMINARY COMMENTS

The bargaining unit consists of all sergeants and lieutenants employed in the Police Department of the City of Oregon. There are approximately 10 employees in the bargaining unit. The parties held bargaining sessions on June 18, June 26, July 2 and August 11. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on May 30, 2003. The fact-finding hearing was held on August 28, 2003 at the offices of the City of Oregon, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were 13 issues at impasse, found in the following articles: Hours of Work and Overtime; Wages; Hospitalization; Vacations; Duration; Posting & Bidding; Termination & Severance Pay; Holidays; and Drug & Alcohol Program. The parties accepted mediation at the hearing, and 4 issues were withdrawn at the hearing, and tentative agreements were reached on 2 issues. Thus 7 issues were submitted for Fact-finding.

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 August 28, 2003 hearing.

ISSUES AND RECOMMENDATIONS

Issues withdrawn at the hearing

At the hearing the Union withdrew its proposals for: Article 24, Hours of Work and Overtime, Section 10; Article 36, Hospitalization, Section 5; and Article 38, Vacations.

The Employer withdrew its proposal for Article 39, Holidays, except for its proposal for the section on bereavement leave.

Issue: Article 24, Hours of Work and Overtime, Section 1, Shift Assignment

Positions of the Parties

The Union proposes permanent, non-rotating shifts for all road command officers in the bargaining unit. It argued that there are health concerns for officers facing double-back shifts, which are disruptive to internal circadian rhythms. It noted that other officers in the same department work fixed schedules, and other departments with the same number of command officers also provide fixed, permanent shifts.

The Employer proposes the retention of current language. It argued that the rotating shifts have been a long-standing practice and that manpower limitations make this a necessity. It noted that double-shifts were limited to less than one per month due to a grievance settlement within the last year. It stated that the impact of the rotating shifts varies among the six positions affected, and that employees have the opportunity to bid on more preferable assignments based upon seniority.

Findings and Recommendations

The arguments with regard to this section of the agreement were intertwined with those for Article 24, Section 6 below. While the Union makes some strong arguments regarding the disruption this schedule causes members of the bargaining unit, the Employer's arguments regarding manpower considerations are just as strong. Further minimizing the effects of the rotating shifts are the fact that it does not affect all members of the bargaining unit equally, and that the bid process allows some employee control over the actual schedule that the employee receives. No compelling evidence was presented by the Union that convinces the Fact-finder to recommend a change in the schedule through the fact-finding process. However, the Fact-finder believes the issue of compensation for double-back shifts is compelling and will be dealt with later in this Report.

Therefore, the Fact-finder recommends the Employer's proposal for the retention of current language for Article 24, Section 1.

Issue: Article 24, Hours of Work and Overtime, Sections 4 & 5, Early Report/Quit

Positions of the Parties

The Union proposes a change in the agreement that would extend the early report time and quitting time premium pay received by road command officers to all command officers. It argued that this would allow them uninterrupted time to handle administrative matters before becoming involved in day-to-day tasks.

The Employer proposed the retention of current language. It argued that the current language allows road patrol command officers to be compensated for the extra duty of roll call. It said that other command officers have ample time to do their job.

Findings and Recommendations

Road command officers, by the very nature of their duties, must supervise employees that are out on road patrol. The contract provisions that build in overtime by virtue of a 15-minute early report and 15-minute later quitting time are designed for specific purpose of roll call, to ensure that necessary information is passed along from shift to shift. These are essentially duties that cannot be adequately performed within the normal 8-hour shift. The Union did not provide compelling evidence that the non-road command officers have duties that cannot adequately be performed within their 8-hour shift.

Therefore, the Fact-finder recommends that current language of Article 24, Sections 4 & 5 be retained.

Issue: Article 24, Hours of Work and Overtime, Section 6, Overtime

Positions of the Parties

The Union proposes a language change that would compensate command officers working a double-back shift with an additional 100% of their base pay. It argued that such shifts are extremely disruptive to the employees, and that by placing a premium on

it, the Employer is less likely to schedule them. It claims that the double-back shifts are hazardous for the command officers.

The Employer proposed the retention of current language. It noted that currently it pays overtime rates only if the command officer is actually working beyond their normal 40 hours, but that the Union proposal would be paying employees overtime rates for hours worked within their normal 40 hours. It stated that it already tries to avoid scheduling double-backs as much as possible.

Findings and Recommendations

This appears to be the most contentious issue regarding the rotating schedule. There is no question that the double-back shifts are extremely disruptive to employees and their families, and also result in inadequate rest between shifts. Compensation at overtime rates would offset this inconvenience and disruption, as well as give the Employer further incentive to avoid double-back shifts whenever possible. However, the Union's proposal for double-time is excessive. There is no compelling reason for the hours worked in a double-back situation to be paid at a rate greater than the normal overtime rate of time and one-half.

Therefore, the Fact-finder recommends the Union's proposal for Article 24, Section 6, with the exception that the compensation rate for double-back shifts be at the normal overtime rate of one and one-half (1 ½) times the regular hourly rate.

Issue: Wages

Positions of the parties

The Union proposal is for an increase of 1.25% in the rank differential in the first year of the agreement, a 3% wage increase in the second year, and a wage re-opener in the third year. The Union argued that the City's 2003 appropriations provided for a 3.8% increase in wages for police command officers. It argued that its proposed increase in the rank differential (taking it from the current 13.75% to 15%) would cost less than the 3.8%, and the higher differential would better reflect the appropriate benefit for their employees' supervisory roles. It also argued that the City is trying to protect its rainy day fund, and that in reality the cash is there to fund a wage increase.

The Employer proposes a 0% increase in year one of the agreement, a 0% increase in year two, and a 2% increase in year three. The Employer argued that its economic outlook this year is bleak, with no evidence that revenues will increase in 2003. It also has experienced a decline in investment income. It noted that its reserve fund was

factored into this year's budget, and thus will be spent and not available in the future. It argued, and the Union agreed, that the Employer has historically paid high wages.

Findings and Recommendation

The Union offered little in its argument to justify an increase in the rank differential. No additional command responsibilities or duties were cited, nor any circumstances that provide a compelling argument that a greater differential is justified. The Union noted that the cost to the City of moving to the higher differential is relatively small. The Employer made a compelling argument that it is experiencing a difficult year revenue-wise, and that depleting its modest reserves is not prudent. Blending these two positions together, it would seem that a very modest percentage increase in the first year would achieve reasonable middle ground, providing a small wage increase without increasing the rank differential.

The parties are farther apart in their proposals for year two of the agreement. The Fact-finder is persuaded that the financial prospects for year two are not considerably better than the current year, and recommends a modest wage increase effective in July, 2004.

The Union is proposing a wage re-opener in year three, while the Employer proposes a 2% increase. Both parties freely acknowledged that the Employer has historically been a generous wage and benefit provider over the years. While the Employer would prefer a known figure for the third year's wages, it would seem reasonable in the current economic climate for a delay in setting the third year's wages. Should the economic outlook significantly improve by year three, the Employer's history would imply that it would be open to rewarding this bargaining unit for accepting some of the economic burden in 2003 and 2004. Likewise, the Union bears the risk with a re-opener that things will not improve and it would go into re-opener negotiations with little bargaining power.

Therefore, the Fact-finder recommends that 1% wage increase in the first year of the agreement, retroactive to the first pay period in July, 2003; a 1.5% wage increase in the second year of the agreement (July, 2004); and a wage re-opener in the third year..

Issue: Article 46, Duration

Positions of the Parties

The only issue unsettled in this article was the Union's proposal to amend the language to agree with its proposals for re-openers in wages and health care. There was no dispute as to the effective dates for the new agreement.

Findings and Recommendations

The Fact-finder's recommendations elsewhere in this Report do call for re-opener in wages in the third year.

Therefore, the Fact-finder recommends the language for Article 46 as agreed to by the parties with the addition of a provision for a wage re-opener in July, 2005.

Issue: Article 15, Posting & Bidding

Positions of the parties

The Employer proposes a change in this article that will provide the Chief of Police the right to reassign any employee, regardless of seniority, to any command position he deems in the best interest of the department, subject to the provisions of Article 11, Section 7. The Employer's proposal would also eliminate seniority as a limiting factor in assigning an employee to a vacancy to which no employee requests assignment. Also to be eliminated under the Employer's proposal is a provision that currently exists that specifies that a "special need" situation or assignment cannot be made as a substitute for discipline. The Employer also argued that employees would still retain plenty of due process rights and access to the grievance procedure under these proposed revisions.

The Union proposed the retention of current language. It argued that these changes would gut the seniority provisions of the agreement. It also argued that the Employer has presented no evidence of a need for these changes, noting that the Chief already has significant ability under the current language to assign employees. It argued that the "special needs" language in the current agreement grants the Chief an ability to make exceptions to seniority. It also noted its concern that the Employer's proposal eliminated language protecting employees from reassignment as a form of discipline.

Findings and Recommendations

The preservation of seniority is always a prime objective of labor unions. The Union's argument against the Employer proposal is that it would basically gut the seniority provisions of the contract. The Fact-finder agrees with the Union that Employer's provisions would devalue seniority to the bargaining unit. Further, the Fact-finder agrees with the Union contention that the "special skills" provision in the current contract gives the Chief of Police a reasonable ability under certain conditions to make appointments without regard to seniority. Lastly, the Union makes compelling arguments in favor of retention of the current language, while the Employer lacks a compelling case for change.

The Fact-finder recommends the retention of the current language for Article 15, Posting & Bidding, Sections 1 & 2.

Issue: Article 28, Termination & Severance Pay

Positions of the Parties

The Employer proposes to change the language in this article in order to reduce the retirement sick pay cash-out currently provided. The proposed reduction would only affect employees hired after July 1, 2003. Current employees of the bargaining unit would be grandfathered in at their current benefit level. The proposed change would provide the new employees with the same benefit level enjoyed by all other bargaining unit employees at the City of Oregon.

The Union proposed retention of current language. It called this enhanced benefit an incentive for a patrolman to move up into a command position. It also believes that the enhanced cash out provides an incentive for command officers to use less sick leave. It further objected to the creation of a two-tier system for employees within the same bargaining unit.

Findings and Recommendations

This proposal by the Employer would not affect any of the current command officers in the bargaining unit. This is a small bargaining unit, and the economic benefit of the proposed change would not be realized immediately, despite the Employer's focus throughout on the poor financial condition currently facing the City. That being said, the Employer has offered no compelling reason for a change in the current provision, except that the other bargaining units in the City have now agreed to such changes.

The Fact-finder recommends that the current language of Article 28, Section 3 be retained.

Issue: Holidays

Positions of the Parties

The Employer proposed a change in Section 3, Bereavement Pay in this article. Currently the contract calls for an additional two days of leave for travel if the death or burial occurs more than 60 miles from Toledo. The Employer proposed new language that would set the distance at 250 miles from Oregon. It argued that 60 miles is not a significant distance to travel by car in one day.

The Union's proposed the retention of current language, arguing that the Employer presented no concrete reason for this change.

Findings and Recommendation

The proposal to replace Toledo with Oregon in the language makes sense, as the Employer is the City of Oregon, with all police functions based within its corporate limits.

The Employer also makes a compelling argument that the current language providing for two additional days' leave for travel involving more than 60 miles is too generous. However, the Employer's proposal for a trigger of 250 miles seems too restrictive. A distance of 150 miles is more reasonable, as a round-trip of 300 miles would be a reasonable one-day trip for a funeral.

The Fact-finder recommends that the third paragraph of Article 29, Section 3 read as follows:

Should death or burial in the immediate family occur in a city located more than one hundred and fifty (150) miles from Oregon, an additional two (2) days for travel shall be granted and paid.

Additional recommendations of the Fact-finder

The Fact-finder recommends the tentative agreement reached by the parties for Article 36, Hospitalization reached at the hearing.

The Fact-finder also recommends the tentative agreement reached at the hearing by the parties for Article 43, Drug & Alcohol Program.

The Fact-finder has reviewed all the tentative agreements the parties reached during prior bargaining sessions, and recommends them all as well.



Martin R. Fitts
Fact-finder
September 17, 2003