

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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Case No. 03-MED-10-1228

In the matter of *
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Fact-finding between: *
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Toledo-Lucas County Port Authority *
*
and *
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OPBA *
*
*

Fact-finder:

Martin R. Fitts

March 22, 2004

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Toledo-Lucas County Port Authority (the Employer):

James B. Yates, Attorney
Paul L. Toth, Jr., Airport Director
Linda L. Friend, Manager, Airport Administration
Mark W. Fisher, Chief of Public Safety

For OPBA (the Union):

Michelle T. Sullivan, Attorney
Justin D. Burnard, Attorney
James R. Pauken, Sergeant
Joseph P. Musil, Patrolman
Erin Kaiser, Patrolman

PRELIMINARY COMMENTS

The bargaining unit consists of all police officers directly employed by the Toledo-Lucas County Port Authority. There are approximately 10 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on November 28, 2003. The parties held negotiation sessions on December 2, 2003, December 4, 2003, December 16, 2003, December 17, 2003 January 9, 2004, January 15, 2004, January 16, 2004, January 20, 2004 and January 21, 2004. In addition the parties participated in a mediation session on February 13, 2004 with a federal mediator. The fact-finding hearing was held on March 1, 2004 at the Toledo Express Airport in Swanton, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. The parties signed tentative agreements on six issues at the hearing. There were eleven issues at impasse: Other Training Officers; Preamble/Jurisdiction; Bill of Rights/Disciplinary Procedure; Transfer of Sick Leave; Catastrophic Leave Program; Health Insurance; Wages; Longevity; Acting Sergeants Pay; Tuition Reimbursement; and Owed Training Time. Thus, these eleven 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 at the hearing on March 1, 2004.

ISSUES AND RECOMMENDATIONS

Issue: Other Training Officers

Positions of the Parties

During negotiations a Union proposal that a wage premium be paid to any member of the bargaining unit that performs training was part of an overall settlement package proposed by the Employer. As the overall package was not ultimately agreed upon, the Employer maintains its original position for the retention of current language. The current agreement provides for a designated Training Officer to be paid a premium.

The Union position is that any bargaining unit member that is designated by the Training Officer to serve as an instructor on specific subjects, with the prior approval of the Chief of Public Safety, should also receive the training officer premium.

Discussion

The Union presented testimony that there are a variety of specific topics that one member of the bargaining unit may receive certification in that would benefit the entire department. In the current climate of heightened security awareness and the desire to have safety forces prepared for a wide range of contingencies, the Union's proposal has some merit. In addition, the Union's proposal vests the authority with the Chief of Public Safety to pre-authorize any such assignment, thus the cost to the Employer is within its control.

The Employer argued that it has, in many cases, already paid for the employee to be certified in a subject. While this may be true, the Employer will benefit from that training being passed along to the other employees in the bargaining unit. As the training function is an additional duty, it is only fair that the employee who is asked to perform it receives some additional compensation. Further, as the Employer retains total control over the use of this contractual change, it also retains control over the costs associated with it.

Findings and Recommendation

The Fact-finder finds a compelling argument for adopting the Union's proposal. However, no compelling reason was presented for an increase in the training officer premium.

Therefore, the Fact-finder recommends that Article 32, Wages, Section 4 be amended to read as follows:

Section 4. Employees who also serve as training officers shall receive an additional fifty cents (\$0.50) per hour in addition to their hourly wage. Training officers are permitted, with prior approval from the Chief of Public Safety, to designate other employees covered by this Agreement as instructors on specific subjects. Any employee who serves as an instructor in this manner shall be paid an additional fifty cents (\$0.50) per hour for the time spent as an acting instructor.

Issue: Preamble/Jurisdiction

Positions of the Parties

The Union proposes striking the words “Division of Aviation” from the preamble and adding a new article to the collective bargaining agreement that would specify the jurisdiction of the Port Authority’s police officers as including all Port Authority property. Its proposal seeks to expand the police officers’ investigatory abilities beyond Toledo Express Airport to all the other properties owned by the Port Authority.

The Employer’s position is the rejection of the Union’s proposals and to maintain current contract language.

Discussion

The Ohio Revised Code provides in Section 4582.04 that port authorities may employ “special police officers” and may “seek the assistance of other appropriate law enforcement officers to enforce its regulations and maintain order.” Further, the ORC provides that police officers employed by a port authority “shall serve as police officers with respect to the property, grounds, buildings, equipment, and facilities under the control of the port authority”. The bargaining unit employees currently do not perform law enforcement duties at the other Port Authority properties. Law enforcement authorities in whose jurisdiction those properties are located perform that function.

The Employer maintained that the ORC provides port authorities with the discretion to employ its own police officers or allow other law enforcement jurisdictions to handle that work. This Port Authority employs its own police officers to handle law enforcement at the airport in large part because it is mandated to provide for a ten-minute response time for law enforcement to the screening area. It expressed no need to have its police officers

involved in law enforcement at its other properties on a regular basis. Further, it is concerned that adopting the Union's proposals would lead to demands for increased manning levels that would prove too costly. Also, it expressed concern that routinely having its police officers traveling to the Port Authority's other properties would expose it to additional liability.

The Employer maintained that the words "Division of Aviation" are appropriate in the preamble due to the fact that the police officers not only perform their functions at the airport, but are also paid out of the Division of Aviation's budget.

Findings and Recommendation

The Employer's arguments are sound relative to the rejection of the Union's proposals for the change in the language and the addition of a new article relative to jurisdiction. There is simply no compelling reason to change either the preamble or to add a new article specifying the jurisdiction of the police officers in this bargaining unit.

Therefore, the Fact-finder recommends the Employer's position for the retention of the current language in the preamble and that no new article specifying jurisdiction be added to the current agreement.

Issue: Bill of Rights/Disciplinary Procedure

Positions of the Parties

The Union proposed that Article 9 of the existing agreement be replaced in its entirety by two new articles. One is an Employees' Bill of Rights and the second is a revised Disciplinary Procedure.

The Employer maintained that the language in the current Article 9 was just agreed upon three years ago, and proposed that the current language should be retained.

Discussion

From the testimony of the witnesses, there does not seem to be a compelling reason to throw the current language completely away and replace it with the Union's proposal. It is clear that some communication breakdowns may have occurred, but there is no evidence that bargaining unit members' rights have been violated or that discipline has been handed out indiscriminately or unfairly.

It is true that the Union's proposed language is not uncommon in police and sheriff agreements. However, the Employer rightfully points out that this is a small department and problems can be adequately addressed informally.

From the witness testimony provided, one issue does bear attention. An employee is entitled to be advised in a timely manner whether or not discipline is going to be undertaken following an incident or complaint.

Findings and Recommendation

There was no evidence that the current contract language in Article 9 regarding disciplinary investigations, coupled with the protections of the grievance procedure outlined in Article 10, are inadequate except for the issue of timely disciplinary decisions. The addition of two provisions of the Union's proposed Employees' Bill of Rights would adequately address this.

Therefore, the Fact-finder recommends that Article 9 of the current agreement be amended by the addition of a new Section 4, that would read as follows:

Section 4. Disciplinary action shall be instituted within sixty (60) calendar days of the occurrence or knowledge of the facts giving rise to the disciplinary action, except in the event of a criminal investigation or prosecution of the employee. When no disciplinary action is to be taken as a result of the investigation, the employee shall be so advised within a reasonable period of time after the conclusion of the investigation.

Issue: Transfer of Sick Leave

Positions of the Parties

The Union proposed adding language to Article 25, Section 1 that would allow employees hired on or since January 1, 2001, with prior employment with other public agencies located in the State of Ohio, to transfer up to 240 hours of their previously accumulated but unused sick leave.

The Employer had at one time proposed language consistent with the benefit that non-bargaining unit employees enjoy, which is an ability to transfer up to five days. It objected to the retroactivity of the Union's proposal, noting that three years ago the

parties in essence threw away their old agreement that contained such a provision and bargained every provision anew. The Union at that time did not negotiate for this benefit.

Discussion

While the maintenance employees currently enjoy the 240 hours of sick leave transfer benefit level, the non-bargaining unit employees have the five-day benefit. At the current level of accumulation, an employee of this bargaining unit accrues up to 120 hours of sick leave in a year. The Union's proposal would, in essence, grant a new employee the equivalent of two years worth of sick leave accrual. This is excessive. The Employer rightfully notes that unused sick leave presents a liability to the Port Authority, which will pay either for its use or possibly for its cash-out value at retirement. There was no evidence that the Employer has a difficult time attracting applicants for vacancies. With the recommendations found herein regarding sick leave donation, a new employee who has not accrued enough sick leave to accommodate a long-term illness could be the beneficiary of the leave donation program, and thus be protected.

The Union's proposal also calls for this benefit to be retroactively applied to employees hired after January 1, 2001. There is simply no justification for making this benefit retroactive.

Findings and Recommendation

As this benefit does not exist in the current agreement, the best internal comparable is the modest benefit level of the non-bargaining unit employees. Further, the Fact-finder finds no compelling reason to make this provision retroactive to employees already hired by the Port Authority.

The Fact-finder recommends that Article 25, Section 1 be amended by adding the following sentence to it:

Employees who were previously employed by a government agency within Ohio but were not compensated for accrued sick leave upon separation from employment with that agency may be credited with a maximum of 5 days of sick leave for use during employment with the Port Authority.

Issue: Catastrophic Leave Program

Positions of the Parties

Currently the collective bargaining agreement, in Article 25, Section 7, provides simply that sick leave donation may be considered by the labor-management committee on a case-by case basis. The Union proposed a new article that would provide for a structured catastrophic leave program.

The Employer proposed the retention of the current language in Article 25, Section 7.

Discussion

The Union argued that the inclusion of the existing language was an attempt to be open-ended and give a sick leave donation program a try. The lack of structure resulted in the OPBA and Port Authority attorneys dealing with implementation of it, rather than the labor-management committee.

While the existing language may not have given the parties the results they both desired, the Union's proposal is quite restrictive. The Union even noted at the hearing that it would be open to changing some of its provisions such as the eligibility requirement of two-years seniority, the qualifying illnesses, and dealing with sick leave abusers.

The Employer noted that it has allowed non-bargaining unit employees to donate vacation and other earned time, such as compensatory time and personal time. It desires the flexibility the current language provides.

Findings and Recommendation

The current language places the responsibility for administering any leave donation with the labor-management committee. As this is a small bargaining unit, this approach appears reasonable to the Fact-finder. The individual situations that may lead to a request for sick leave donations are likely to be quite varied and as a result are best left to the individual consideration that the labor-management committee can give. In the long run the flexibility of the existing language may well serve the parties interests much better. That being said, the contract should specify that the labor-management committee is free to draft policies or conditions regarding the implementation of this provision.

Having said that, the bargaining unit members should be contractually entitled to the additional benefit of having the ability to donate earned time such as personal leave, vacation and compensatory time as well as sick leave. The Employer acknowledged at the hearing that non-bargaining unit employees have been afforded this benefit.

Therefore, the Fact-finder recommends that Article 25, Section 7 be amended to read in its entirety:

Section 7. When appropriate, sick leave donation may be considered on a case-by-case basis through the labor-management committee. The labor-management committee may adopt reasonable and fair rules regarding sick leave donation. When such donation is approved by the labor-management committee, bargaining unit employees may donate sick leave as well as vacation time and other earned leave.

Issue: Health Insurance

Positions of the Parties

The Union proposed expanding the language found in Article 29 of the current agreement to specifically state benefit levels and to add to the current coverage.

The Employer proposed the retention of the current language.

Discussion

The current contract calls for the bargaining unit to receive the same group health insurance benefits as the non-bargaining unit employees of the Port Authority receive. The Employer argued that it is simply impractical for it to split off the ten employees in this bargaining unit from the rest of the Port Authority for the purposes of providing health care. As it is, the Employer has between 60-70 employees, an already small group for the purposes of health insurance. Despite that small group, the bargaining unit employees and non-bargaining unit employees enjoy good coverage at minimal cost to the employee.

The Union wishes to place specific coverage levels in the agreement, in order to ensure that the Employer negotiates benefit levels directly with this bargaining unit. The Fact-finder agrees that this is simply not a sensible approach for the Employer. The health insurance market today makes it difficult for smaller employers to find affordable coverage, and splitting off these ten bargaining unit employees would make no economic sense and would likely lead to both increases in costs for coverage and reduced levels of benefits. The most sensible and reasonable approach to health care coverage is for the Employer to have all of the Port Authority employees lumped together for the purposes of health insurance. Additionally, the Union's proposal would lock in one set of benefit

levels and costs for the employees, while the current plan provides for two options. This flexibility likely is a plus for the employees, and would be lost in the Union's proposal.

The Union's proposal includes the addition of vision and dental insurance benefits. No cost estimates were presented, nor any evidence that other Port Authority employees receive such benefits. Therefore, no compelling reason for the addition of these benefits exists. As this would represent a splitting off of this bargaining unit from the remainder of the Port Authority employees for the purposes of health-related coverage, it would likely prove to be an exceedingly costly benefit to provide in any event.

There are some compelling reasons to consider some parts of the Union's proposal, however. The Union seeks to ensure that substantially similar health benefits are provided should the insurance carrier change. This is certainly fair, as many other aspects of the collective bargaining agreement are negotiated with the costs and benefit levels of health care in mind. The words "seek approximately equivalent benefit levels" may not be strong enough to ensure this.

Additionally, the Union's proposal for assistance for employees who experience a hardship in paying for prescription drugs under the current plan is reasonable. The Employer was not completely opposed to this, but preferred to enter a letter of agreement rather than incorporate this provision in the collective bargaining agreement.

Lastly, the employees are entitled to reasonable notice when health care benefit changes occur. Placing a minimum 30-day notification period in the collective bargaining agreement is reasonable and a fair compromise between the current language and the Union's proposal.

Findings and Recommendation

The Fact-finder is persuaded that the language in Article 29, Section 1 should be strengthened to ensure substantially similar benefits are offered to the employees for the life of the agreement. Further, the Employer had expressed a willingness to provide assistance to employees in cases of hardship relative to the purchase of prescription drugs. The Fact-finder believes that as the contract is presently being negotiated, this commitment should be expressed in the collective bargaining agreement itself rather than in a side letter of agreement.

Therefore, the Fact-finder recommends that Article 29, Health Insurance read in its entirety:

Section 1. The Port Authority will provide group health insurance benefits to bargaining unit employees in the same manner as Port Authority non-bargaining unit employees. The Port Authority retains the right to change carriers, self-insure,

institute cost containment programs, or modify its insurance program so long as the Port Authority provides at least thirty (30) days prior notice to the Union. In the event of a change in health insurance, the Port Authority agrees to seek and provide substantially similar benefit levels from health insurance carriers. Either the Port Authority or the Union may request the Labor-Management Committee to meet and consider the impact of changes to health insurance coverage.

Section 2. In cases of hardship, the Port Authority may advance to the employee or family member covered under the Employer's health insurance money to cover the cost of prescription drugs. In order to qualify, the prescription drug must be prescribed for a serious health condition and the cost of the prescription drug must exceed fifteen (15) percent of the employee's weekly gross pay. In the event the Port Authority advances money to cover the cost of a prescription drug, the employee's share of twenty (20) percent will be deducted from the employee's next paycheck.

Issues: Wages & Longevity

Positions of the Parties

The issues of wages and longevity are so interrelated that the Fact-finder will deal with both of them together.

The Union proposed a wage increase of 3.25% the first year, 3.5% the second year, and 3.75% the third year. In addition, the Union proposed an increase in the premium differential for sergeants from 5% to 7%, and to base it on the top rate rather than the applicable rate. It also proposed that the current 10% premium for captain/lieutenant be based on the top rate rather than the applicable rate. Regarding longevity, the Union proposed longevity payments for first tier employees (those hired before August 1, 1997) and for second tier employees (those hired after August 1, 1997). Presently only the first tier employees receive longevity payments. The Union's proposal provides for different longevity schedules for the two tiers, with the second tier employees to take two years longer to be eligible for longevity payments.

The Employer proposed wage increases of 2% in the first year, 2.25% in the second year and 2.5% in the third year, with longevity payments for the first tier employees to be frozen at current rates, and the elimination of any future increases in longevity.

Discussion

The parties differ as to what comparables are most applicable to this bargaining unit. Given the unique nature of the job responsibilities, which include aircraft rescue and firefighting in addition to more traditional police duties, it is difficult to accept the premise that this unit should be compared to area law enforcement agencies. Additionally, the revenue sources for the airport are considerably different than those for city or township police departments or county sheriffs. Yet it appears that local law enforcement agencies provide the Employer with a steady resource for job applicants, so the rates of pay these agencies pay bears some consideration. The Union stated at the hearing that while it did not claim these employees underpaid, they are not overpaid either, leading the Fact-finder to conclude that the current rates of pay are reasonable and that only determining an appropriate wage increase is at issue.

Prior to the current agreement a two-tier wage scale existed. In the current agreement the parties reduced the disparity between the two tiers, with the top rate of pay in the step program equal to the base rate of pay earned by employees hired before August 1, 1997. However, longevity is paid to the first tier employees, and not to the second tier. The Union's proposal is to eliminate this disparity by creating a longevity payment scale for the second tier employees. The Employer's proposal is to minimize this disparity by freezing the longevity payment for the first tier employees. The Union's proposal would add considerable cost to the Employer, and includes a built-in disparity in the longevity rates for the two different tiers of employees. The Employer's proposal does not negatively affect any of the employees, including the employees currently receiving longevity payments. This makes the Employer's proposal more attractive and reasonable.

Findings and Recommendation

There is no compelling reason for a large wage increase for these employees, as they are fairly in the middle of the pack regarding wages. However, the financial resources of the Employer are such that a reasonable wage increase for this bargaining unit will have minimal affect on its financial resources. There is no question that the Employer is absorbing rising costs for health care. In addition, the recommendation for the creation of a tuition reimbursement program contained in this Report will also increase the Employer's costs associated with providing benefits to this bargaining unit. The Fact-finder believes that the wage increase recommended below takes into consideration the Employer's costs and yet provides the employees with a reasonable and fair wage increase.

The Fact-finder finds no compelling evidence that the premium rate of pay for sergeants needs to be increased. Further, the Fact-finder believes that having the premiums for sergeant and captain/lieutenant pay tied to the applicable rate of pay rather than the Union's proposal for the top rate of pay is fair. First of all, employees reach the top step in pay by their seventh year. Secondly, as the premium is tied to the rate of pay

applicable to the individual's seniority, there can be no claim made that any employee would receive less pay for holding the higher rank than he or she would be entitled to if they were a patrolman.

Therefore, the Fact-finder recommends that Article 32, Section 1 read as follows:

Section 1. Employees shall receive a two and one half percent (2.5%) increase to base wages on January 1, 2004, a two and three-quarters percent (2.75%) increase to base wages on January 1, 2005, and a three percent (3.0%) increase to base wages on January 1, 2006. Rates of pay and their effective dates during the term of this Agreement shall be set forth in "Appendix A," which is attached hereto and made a part of this Agreement. All sergeants will receive a five percent (5%) premium over the applicable patrolmen hourly rate. The captain/lieutenant will receive a ten percent (10%) premium over the applicable patrolmen hourly rate.

The parties made great strides in the current agreement to minimize the effects of the two-tier wage system, and those efforts should be supported by the Fact-finder's recommendations for longevity. The Fact-finder believes the Employer's proposal is fair to all the employees in the bargaining unit while supporting the previous efforts of the parties to eliminate a two-tier wage system.

Therefore, the Fact-finder recommends the Employer's proposal that the longevity payments for first tier employees will be frozen and current rates for the life of this agreement.

Issue: Acting Sergeants Pay

Positions of the Parties

The Union proposed amending the agreement to include a provision for a \$0.75/hour premium in acting sergeant pay for the most senior officer on duty when no sergeant is present. At the present time there is no provision for acting sergeant pay in the contract.

The Employer proposed the retention of current language.

Discussion

The Union offered comparables from other police agencies as evidence that in other jurisdictions officers serving as “acting sergeants” receive additional compensation.

The Employer countered that in this instance, the most senior officer on duty does not undertake additional command, supervisory, or administrative responsibilities on a daily basis. While some additional duties may arise in an emergency, there are procedures already in place and the sergeants and chief carry pagers and are on call 24 hours.

There was no evidence presented that demonstrated that the most senior officer has additional responsibilities which rise to the level of justifying additional compensation.

Findings and Recommendation

The Fact-finder finds that there is no compelling reason to create a provision for acting sergeants pay in the agreement.

Therefore the Fact-finder recommends the Employer’s proposal for the retention of current language in this regard.

Issue: Tuition Reimbursement

Positions of the Parties

The Union proposed a new article calling for tuition reimbursement for bargaining unit employees. Currently the contract has no provision for education benefits.

The Employer proposed the retention of current language that does not provide for education benefits. However, the Employer noted that it had proposed language similar to the Union’s providing for tuition reimbursement, and provided that original proposal to the Fact-finder. It was proposed as part of an overall settlement package, and would provide the bargaining unit employees with the same benefit as non-bargaining unit employees of the Port Authority receive.

Discussion

There is no doubt that both parties benefit from tuition reimbursement. The employees gain the opportunity to advance their educational level, while the Employer benefits from a better-educated workforce.

The Employer's original proposal had two points that the Union found objectionable. In the Employer's proposal eligibility is based upon the availability of funds and at the sole discretion of the Director of Airports. The Employer correctly noted that, as no contractual provision currently exists, adoption of its proposal would get the Union's foot in the door.

Findings and Recommendation

In light of the overall recommendations contained herein, the Fact-finder believes that the Employer's original proposal for a new article titled Tuition Reimbursement contains a solid first step for the addition of an education benefit in the agreement.

Therefore, the Fact-finder recommends that the Employer's proposal for a Tuition Reimbursement article be added to the agreement.

Issue: Owed Training Time

Positions of the Parties

The Employer proposed that Article 20, Section 5 be amended to increase the amount of "owed training time" from 16 hours to 32 hours.

The Union proposed the retention of current language.

Discussion

The Employer believes that increasing this amount of "owed training time" will provide some payback to the Employer for the costs of the economic gains the Union will receive in this contract. In addition, the Employer cited increased training that is required by the federal government, and its own desire to do more re-certification training.

This is a contractual provision that was negotiated by the parties three years ago. It is likely that it is the result of the normal give and take of proposals that occurred. With that in mind, there is no compelling reason for the Fact-finder to recommend an increase in the "owed training time" at this time.

Findings and Recommendation

The Fact-finder recommends the retention of current language in Article 20, Section 5, number (5) setting the “owed training time” at 16 hours.

Additional recommendations of the Fact-finder

The Fact-finder recommends all the tentative agreements on all other issues reached at the hearing or previously by the parties during their negotiations.



Martin R. Fitts
Fact-finder
March 22, 2004