STATE EMPLOYMENT
RELATIONS BOARD

2004 SEP -3 P 2:02

IN THE MATTER

OF

FACTFINDING

BETWEEN

CLERMONT COUNTY SHERIFF

AND

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL
POLICE OFFICERS

Date of Hearing:	July 27, 2004
Location:	Clermont County Sheriff Administrative Offices, Clermont County, Ohio
Case No.:	03-MED-12-1389
Date of Award:	September 2, 2004.
Finding:	Each recommendation is specifically addressed below.

Union Representative:

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OPINION AND AWARD

Michael Paolucci
Factfinder

Administration

By letter dated February 20, 2004, from Dale A. Zimmer, the Administrator with the Bureau of Mediation at the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as Factfinder in a procedure as mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(C)(3). On July 27, 2004, a hearing went forward in which the Parties presented testimony and documentary evidence in support of positions taken. The record was closed upon the submission of final arguments and the matter is now ready for factfinding recommendations.

Resolved Issues

Prior to the hearing, the Parties were able to reach agreement on numerous issues. These agreed to issues are incorporated herein, and made a part hereof by reference. They are not more specifically addressed.

Unresolved Issues presented

The following five (5) issues were presented for conciliation:

1. Article 14 – Wages;
2. New Article – Longevity;
3. Article 15 – Health Insurance;
4. New Article - Sheriff Defense Fund;
5. New Article - Life Insurance.

* * *

Under R.C. 4117.14(E) & (G)(7), a Factfinder is required to give consideration to certain factors in choosing between the Parties' proposals, on an issue-by-issue basis. That statute reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.

* * *

(G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

(a) Past collectively bargained agreements, if any, between the parties;
(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
(c) 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;
(d) The lawful authority of the public employer;
(e) The stipulations of the parties;
(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

* * *

The remaining unresolved issues are addressed giving consideration to all of the necessary statutory elements.

Factual Background

The Employer is the Sheriff of Clermont County, Ohio; its approximately sixty five (65) Police Officers are represented by the Union. The Officers are divided into two (2) classifications - approximately ten (10) in Court Services, and fifty five (55) on the Road Patrol. Ten (10) of the fifty five (55) are also investigators.

Clermont County is a mostly rural county with no urban center. Notwithstanding this general description, it is going through significant growth on its western edge from people moving to the outer edges of eastern Hamilton County, where Cincinnati is the urban center. This general population movement out-from-Cincinnati is affecting the contiguous counties, such as Clermont, with an exponential increase in population and attendant commercial growth that often follows such population movements. The Sheriff concentrated on this fact, along with its attendant increased demand on county services as evidence of its need to reserve its funds for future spending. The largest of this future spending will be on capital improvements, including for building and improving the roads to handle the larger population. While the demand on services is increasing, it points out that increases in revenue lag behind such large population increases, and thus it must keep a large amount of money in reserve for potential costs that are unforeseeable.

The County Commissioners are responsible for appropriating money to the Sheriff. Since the Sheriff has no independent means of raising revenue, this allocation comprises the sole source of money that the Sheriff has for managing his office. The Commissioners have allocated a 3% increase in appropriations for all departments in which they manage or in which they are the sole funding source. The Sheriff's office is one of those that depends solely on the Commissioners for its funding.

The Commissioners presented evidence that they are experiencing a decline in revenues as compared to expenditures. It claimed that its projections show a continuing increase in expenditures without a corresponding increase in revenues. It cited the commonly experienced decrease in government funding and other revenues that many governmental organizations are suffering through. It claims that these reductions require a period of fiscal restraint, with modest increases in wages being part of that program.

The Parties entered into negotiations in early 2004, and held two (2) bargaining sessions – on May 10, and June 15, 2004. Impasse was declared sometime thereafter, and following impasse, the Parties entered into this factfinding process as mandated by the Ohio Statute.

Contentions of the Parties And Recommendations of the Factfinder

The following issues were presented at the hearing:

1. Article 14 – Wages.

The Union proposes a seven percent (7%) wage increase in each year of a three (3) year Agreement, to be paid retroactively.

The Sheriff proposes a three percent (3%) wage increase in each year of a three (3) year Agreement, to be paid following ratification.

There was also an issue with the Milford Police Department and whether they have a pension pick-up as part of their general wage calculation.

Union Position

The Union claims that its position is reasonable and in line with all other internal and external comparables. It claims that external comparables have been receiving between 4% and 6%. It argues that since the Clermont County Supervisors received a 1% wage differential, then the County is able to afford a substantial increase for the Deputies. It points out that it received a 16.1% wage increase during the term of the last Agreement, and it asserts that a similar wage adjustment is justified for this Agreement. It contends that of all the police forces in the County, it is supposed to be the top, expert force. Notwithstanding its recognized status for talent and amount of work, it showed that other municipalities are paid a higher rate. It argues that its pay should be commensurate with this status in the County, and asks that its wage proposal be recommended to keep that status.

The Union provided evidence that the amount of work it is performing is increasing dramatically. It provided documentation that showed higher crime rates; more prisoner handling and transportation; increased calls; and increased traffic enforcement. It showed that the number of calls it makes far exceed that of any other municipality in the County.

The Union underscores the fact that the Sheriff has not made an "inability to pay" claim. It asks that the budget as set forth by the County Commissioners be given little consideration since it is simply the Sheriff's beginning position on wages. It asks that the veiled threats of the Sheriff be ignored, whether it be in the form of a threat of layoffs, or the denial of a "splitting the baby" position. It cited the financial reports of the County that show a reserve of over $100 million dollars. Moreover it showed that tax collections are healthy, and that the County has positive economic indicators for the near future.

The Union countered the Sheriff's claims on the County Funds by pointing out that the reserves are not statutorily mandated. Since the County has simply chosen a random number that it wants to hold in reserve, it asks that little weight be given to the reserve amounts – for capital expenditures and other purposes. Since those numbers are not based on any objective standard; and since they are not based on any challengeable fact; then it argues that they are not reasonable as a basis to deny the police officers a just wage increase. Moreover, even if all of the Sheriff's claims are considered, it points out that four million dollars ($4,000,000.00) remains in the General Fund to pay for things like a reasonable wage increase for police officers.

Sheriff Position

The Sheriff claims that the wage increases used in its comparables show that its proposal is reasonable and within other jurisdictions. It claims that the Union's case is hampered because one of its major comparables, Milford, has a pension pick-up as part of its wage calculation. Since inclusion of this benefit makes the wage increase appear artificially high, then it contends that it is not a comparable bargaining unit.

The Sheriff contends that the deputies are currently comparably paid; that the bargaining unit has no basis to claim that they are underpaid; and that the 3% will maintain the current level of comparability. Although the Sheriff agrees that it is not currently suffering financially, it asks that the potential risks it faces be considered. It points out that a large source of its revenue is the Local Government Fund that is being reduced.

The Sheriff underscored the large increase this bargaining unit received during the term of the last Agreement. It showed that the bargaining unit averaged a 5% increase over the last three (3) years, with a high of 7.6% in the first year of that Agreement. Since it recognized that the deputies were underpaid during that negotiations, and since the current comparables do not support the claim that they are still underpaid, then it asks that the more reasonable raise it offered be recommended.

The Sheriff believed that use of the Supervisor's contract by this bargaining unit to bootstrap its proposal is not only unjustified, but that it risks future bargaining with the Supervisors. Since the Sheriff recognized in that Agreement that a change in the pay differential was justified to reward the supervisors for their level of responsibility, and since this same union asked for those increases, then it argues that its good faith bargaining in that case must not be used to support an otherwise unjustified raise in this bargaining unit.

The Sheriff also asks that the growth it is going through be evaluated. Although it concedes that the deputies are working more, and that they have more calls, it contends that the real problem to recognize is the juggernaut of growth that the County is going through. Although such will someday result in a healthy financial situation, it contends that currently its finances are under pressure because of the costs that are often associated with an increase on the demand of government services. It points out that the large growth rate of the population brings with it an increase in government spending without an immediate increase in revenues. Although increases in property tax and sales will come, it asserts that the expenses, and the commensurate increases, are immediate. Thus, it claims that it must guard against overspending during the period of exceptional growth.

With this as a background, the Sheriff explained that the County must make sizable capital outlays; that it must spend the large balance on the Building Reserve Fund; and that the reserve in the General Fund is for a purpose exclusive from wages. Since those funds are reasonably expected to be depleted, and since they must be spent to correct the current traffic problems in the County, then it argues that they are not reasonable to use them to justify a higher than comparable wage increase.

The Sheriff describes the Union's proposal as completely unjustified. It asks that the 7% not be considered as a beginning rate from which the undersigned must split the difference. Instead, it asks that the County's problems be fairly evaluated, and that a fair and reasonable wage increase be recommended based on all the valid factors it provided.

Recommendations

After giving consideration to all of the arguments, the most persuasive evidence on the appropriate wage increase is the external comparables. Specifically, the other municipalities in Clermont County must be held as the most persuasive proof of what should be given to this bargaining unit. These comparables, along with the fact that the bargaining unit members are going to bear increased costs in the health care portion of the Agreement were given the most weight. Although the Sheriff showed that its proposal would keep the bargaining unit members ahead of the cost of living, it failed to consider that any increases in wages would be quickly used up by the health insurance premium increases that are reasonable to expect.

In addition, the Sheriff's proposal does not maintain the Officer's level with other like police bargaining units. Admittedly, it is close. However, in calculating those remaining wages, and considering the average wage increase that those municipalities are receiving, it must be concluded that three percent (3%) is too low. A more comparable wage rate based on calculations made by the undersigned is four percent (4%) in each year of a three (3) year agreement. This will keep the employees well ahead of the expected cost of living increases even if the health care premiums grow at a higher rate than normal. Moreover, when the comparables are taken into account, this percentage will more fairly maintain the deputies when compared to other similarly situated officers.

Since the Union's proposal is so large, and since there was no evidence that such a large increase would be necessary, then it must be rejected as being unfounded. However, absent some evidence that bad faith negotiating took place, there is no basis upon which the effective increases should not be made retroactive. Therefore, it is recommended that a four percent (4%) increase be made, and that the pay be given retroactively.

2. New ARTICLE – Longevity Pay

The Union proposes adding a new benefit for Longevity Pay. The proposal is that at ten (10) years, a 2%, or $800.00, payment be made. At fifteen (15) years, it would rise to 3%; at twenty (20) years it would rise to 4%; and at twenty five (25) years, it would rise to five (5%).

The Sheriff proposes the *status quo* which would result in no new Longevity Pay benefit.

Union Position

The Union cites the Milford Police Department as being an external comparable, since it is the only police department in the area that has this benefit. It also cites the employees in the Job and Family Services department as an internal comparable. Since both groups receive Longevity pay, then it argues that such is reasonable for this bargaining unit. It argues that it is a reasonable benefit to receive for the dedication and loyalty that these officers show to the Sheriff's department. While it concedes that it would rather have raises in the form of increased wages, it asks that this alternative be considered as a method to compensate employees for their loyalty. It contends that since Milford is a comparable jurisdiction, then the benefit should be judged as a fair method of compensating these police officers in a manner consistent with other police officers in the area.

Sheriff Position

The Sheriff cites the historical reason that longevity pay was given to police officers – as a method of "hiding" wage increases. It contends that this purpose is today an anachronism. Since this objective no longer exists as a reason to give the benefit, then it argues that it is not necessary here. Indeed, it points out that the use of Longevity Pay preceded the Fair Labor Standards Act, and the need to retain qualified personnel by "hiding" the wages has long since passed. It contends that the benefit is a wage increase, that it must be evaluated as a wage increase, and that to analyze it any other way would distort earnings. It contends that since there is no real reason for the benefit any longer, then it must not be recommended here.

The Sheriff contends that the small group of employees in the Job and Family Services department were grandfathered into their Longevity Pay, and that such was done under order of the State of Ohio. As a result, it asks that the comparison be found without merit.

Recommendations

One jurisdiction is not a sufficient comparable to add this benefit to this Agreement. The Job and Family Services employees have little affect since they were grandfathered into the benefit. Therefore, it is not recommended.

3. ARTICLE 15 – Health Insurance

The Union proposes instituting a method of calculating the premium contribution of employees to a flat dollar amount, a maximum of fifty dollars ($50.00) per month, rather than the current method of calculation.

The Sheriff proposes making these Officers the same as Corrections Officers. In a Conciliation Award with the Corrections Officers, the Sheriff had a 21% cap imposed on the percentage that those employees must pay. The Sheriff reluctantly proposes making this Agreement match the benefit in the Corrections Officers Agreement.

The Sheriff currently offers three (3) Health Plans, the employees choose which plan they want. Depending on the plan chosen, the percentage amount that the County pays varies. The County's contribution is sufficient to cover the costs of the single plan for all three (3) options. For the Family Plans, the percentage varies, but an employee currently pays up to 31% for the most expensive plan.

As an illustration, the Family Plan costs vary for either the HMO ($455.17), PPO I ($417.04), or PPO II ($369.80). In 2004, the County contributed $311.95 for every employee Family Plan Premium, which left the employee paying 31% ($143.22) if they chose the most expensive HMO Plan; 25% ($105.09) for the second tier; or 16% ($57.85) if they chose the lowest tier. These premium costs were on a per-paycheck calculation.

Sheriff Position

The Sheriff concedes that this issue is always difficult. Notwithstanding this recognition, it contends that the Union's position operates under a flawed theory that family health care is the obligation of the employer. It underscores this error in rationale even as it recognized that a large percentage of people look to their employer as the provider of health insurance. It simply emphasizes that the theory fails to understand that this practice is not the automatic obligation of an employer.

The Sheriff emphatically rejects the idea that the 31% maximum should be the measure of whether the benefit is reasonable or comparable. It points out that this amount is based on the most expensive of the three (3) health plans – an HMO. If an employee chooses the more reasonable PPO, the change in premium is $2,000.00 per year. It contends that it only offers this plan for those who really want it, and who are willing to pay for the "Cadillac" plan. Notwithstanding this weak argument of the Union, the Sheriff points out that its offer is to place a 21% cap on the premium contribution regardless of which plan is chosen. This amounts to a $100.00 per month savings. It argues that when the comparables are evaluated, its offer is generous and provides a reasonable health care benefit to employees.

The Sheriff cited the historical objective that it suffered through following the collective bargaining law in 1984. At that time, the County had four (4) different health insurance obligations covering three (3) bargaining units and unrepresented employees. To bring all the disparate groups under one plan, it claimed that it made many concessions in bargaining, and achieved identical benefits for all employees that lasted about ten (10) years. That trend was broken during conciliation when a Conciliator ordered a 21% cap on contributions from Corrections Officers. Other than this cap, the Corrections Officers receive the same benefits and the same access to the different Health Plans that the other employees receive.

The Sheriff agreed to extend the benefit to the Supervisors during their bargaining, and have agreed to the same benefit for these officers as noted above. It contends that there is no reason to grant even more benefits to this bargaining unit than every other bargaining unit has received. If the County's proposal is granted, the Sheriff points out that this bargaining unit, and the other two (2) police officer bargaining units will all have received the same health insurance benefit – yet will still have a greater benefit than any other employee. For these reasons, it believes that its Health Care proposal is reasonable and should be recommended.

Union Position

The Union contends that these employees are paying an exorbitant price for their health insurance. It argues that its current percentage contributions range from 16% to 31% for Family Plans; while external comparables range between 7.9% and 10.4%, with the SERB comparable being 12.6%.

The Union questions the willingness of the County to pay a fair share of the costs of a health insurance benefit. It cites the situation in Darke County, Ohio, which, it contends, has a better plan for its employees than the richer Clermont County provides. It complains that the costs of health insurance are rising so fast that any wage increase that is received is quickly used up by the increase in health insurance. It complains that these employees are carrying an unfair amount of the burden of the health insurance premium, and it contends that the County has the ability to absorb the costs better than the individual officers. The Officers argued that when they were hired, promises were made that the benefits would be at a certain level -- for many the health insurance premium was paid in full by the County. It questioned why the employees should have to pay anything since the promises that were made induced them to accept employment, and since those promises are now being reneged on by forcing the employees to cover the health insurance premium for plans that have fewer benefits.

The Union provided evidence showing comparables where less of the premium is paid by the police officers in surrounding municipalities, and it asks that it receive comparables benefits.

Recommendations

It is recommended that the Sheriff's Health Care Proposal be adopted. The internal comparables of the Corrections Officers are strong proof of what is proper. Indeed, this evidence, along with the historical benefit of this bargaining unit, outweighs external comparables that might otherwise justify a decrease in the contribution of the employees. They have had the benefit in the tri-level system for some period; the method provides a benefit to the employees in that they can choose from among three (3) different health plans; and the other police officers in the Department already have the percentages proposed by the Sheriff, with the caps. With all these already in place, the Sheriff's proposal is reasonable, is supported by strong internal comparables, and is consistent with the manner in which these same Parties have handled the issue for at least one (1) Agreement (perhaps more, it was not clear from the record). Therefore, the Sheriff's proposal must be recommended.

4. **ARTICLE - Life Insurance**

The Union proposes increasing the Life Insurance benefit from $10,000.00 to an amount equal to each employee's yearly salary. The benefit would be in the form of a term life insurance policy.

The Sheriff proposes the *status quo.*

The current language is silent on Life Insurance, but all employees get ten thousand dollars ($10,000.00) worth of coverage, with the ability to purchase more if they wish.

Union Position

The Union contends that an increase is justified; would be a modest cost; and would off-set the otherwise modest wage increases that the Sheriff is proposing. Since comparable bargaining units receive, on average $29,000 to $31,000; and since at least once receives a benefit comparable to that proposed by the Union; then it contends that it deserves a higher benefit commensurate with those other employees. This proposal is made as an alternative in the event it does not obtain the increases it is proposing in wages and health insurance – items which it concedes are more important.

Sheriff Position

The Sheriff complains that this benefit has always been provided even though it is not required by the Agreement. It objects to including it as a mandatory benefit, and argues that it should not be increased with money budgeted for the police negotiations. It contends that this is not necessarily an economic issue since term life insurance is inexpensive. It worries, instead, that the police bargaining units will begin to play off each other and continually raise the benefit. It contends that since the Corrections Officers received $25,000 in their negotiations, then the increase proposed here is unreasonable and proves that the union is playing each bargaining unit off the other with resulting escalating costs for the County.

Recommendations

The internal comparable of the Corrections Officers is persuasive evidence that the benefit should be increased to $25,000.00. The Corrections Officers, as reflected in their salary, are not the lead FOP unit, and should not receive a higher benefit. Since the benefit is minor, there is no need to go through a complicated analysis. It is enough that the Sheriff recognized that it can afford an increase, without giving the Union all that it asks. The Sheriff is correct in that the Union's proposal appears to be inconsistent with the benefit received by the Corrections Officers and would reward it for leapfrogging in its bargaining. To prohibit that habit, it is fair to not reward the proposal of the Union. Instead, the modest increase of the Corrections Officers is fair, is comparable, and must be recommended.

Thus, it is recommended that the Life Insurance benefit be increased to $25,000.00.

5. **Article – Criminal Defense Fund**

The current Agreement has no benefit for a Criminal Defense Fund. Currently, police officers receive insurance coverage through the Union.

The Union proposes including a new benefit where the Sheriff would pay for the insurance costs that would benefit officers in the event that they are sued for conduct that occurs while they are on-duty.

The Sheriff proposes the *status quo* where it makes no contribution to a Criminal Defense Fund.

Union Position

The Union argues that the Sheriff should be expected to provide counsel in the event that one of its officers gets charged with a criminal offense. It contends that the current situation is a conflict of interest since an officer that is accused of a crime is investigated and prosecuted by the same office that also must defend him against the criminal charges. It contends that having defense counsel available would help avoid the conflict and is thus justified.

Sheriff Position

The Sheriff complains that the Union's proposal fails to consider that the County is already obligated to represent an officer accused of a crime. Moreover, it asserts that the Union's proposal fails to recognize that, by statute, an officer is protected from actions engaged in while in scope and course of their employment. It contends that the proposal, if adopted, would cause an immediate conflict of interest between the officers, its insurance carrier, and the County. It argues that conceptually, it cannot have this type of benefit in the Agreement. It argues that the benefit is best provided through the Union as is currently done.

Recommendations

It is recommended that the *status quo* remain. The reasons provided by the Union to add this benefit were not sufficient to change the cost from the Union to the County.

Remaining Unaddressed Issues

All other issues not specifically addressed are ordered to be the Tentative Agreement.

Award

The recommendations are hereby as more specifically set forth above.

September 2, 2004
Cincinnati, Ohio

Michael Paolucci