

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD 2004 SEP 20 A 11: 17

In the matter of	*	04-MED-02-0095
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Fact-finding between:	*	
	*	
Sandusky County Sheriff's Office	*	Fact-finder
	*	Martin R. Fitts
	*	
and	*	
	*	
Fraternal Order of Police, Ohio Labor Council, Inc.	*	September 13, 2004
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Sandusky County Sheriff (the Employer):

Donald J. Binkley, Consultant
David G. Gangwer, Sheriff
Tim Grabenstetter, County Human Resources Director
Bruce Hirt, Chief Deputy

For FOP/OLC (the Union):

Hugh Bennett, FOP/OLC Staff Representative
Dennis Sterling, FOP/OLC Staff Representative
James J. Bogner, FOP/OLC Representative
Diane L. Blue, FOP/OLC Representative
William J. Kaiser, FOP/OLC Representative

PRELIMINARY COMMENTS

The bargaining unit consists of all Sergeants and Captains employed by the Sandusky County Sheriff's Office. There are approximately 17 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on May 7, 2004. The parties held negotiations on April 7, 2004, April 23, 2004, and May 6, 2004. The Fact-finder conducted a mediation session on July 13, 2004. The fact-finding hearing was held on August 24, 2004 at the offices of the Sandusky County Sheriff in Fremont, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were nine major issues at impasse: Hours of Work/Overtime; Sick Leave; Personal Leave Attendance Bonus; Group Insurance; Compensation; Longevity; Education Pay; and Miscellaneous. Thus nine issues, which included a number of sub-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 24, 2004 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 6 - Hours of Work/Overtime

Positions of the Parties

The Union proposed new language in Section 6.3 that would compensate employees assigned to Communications at time and a half (1 ½) for all hours worked over eight in a twenty-four hour period.

The Employer proposed the retention of current language in Section 6.3.

The Union proposed amending Section 6.4 to change the current work period from 14 days/80 hours to 7 days/40 hours. It also proposed adding language in Section 6.4 that would provide that any bargaining unit member who engages in law enforcement activities scheduled to work more than 8 hours in any twenty-four hour period would be paid at the rate of time and one-half for all scheduled hours in excess of the eight hours.

The Employer proposed the retention of current language as it appears in Section 6.4 regarding the work period.

The Union proposed the elimination of flex time as it is applied in Section 6.4 of the agreement. The Employer is in agreement with this change, and the Fact-finder has included this in the recommendation below.

The Union proposed to amend Section 6.7 to increase the court duty pay from the current two-hour minimum to a three-hour minimum.

The Employer proposed the retention of current language in Section 6.7.

Discussion

Regarding the Union's proposed change for Section 6.3, the Union acknowledged that this situation does not occur with great regularity. Obviously double-back shifts are not desirable situation for either the employee or the Employer, but the Union offered no compelling evidence that a problem exists in this regard.

Regarding the Union's proposal for Section 6.4 to change the work period for patrol and Corrections personnel to a 14 day/80 hour period to 7 day/40 hour period, the Union offered little concrete evidence of undue harm endured by the bargaining unit members under the present language. The Employer's persuasively argued that this exemption for

uniformed and plain clothes employees empowered to enforce laws with the power of arrest exists in the Fair Labor Standards Act for good reason, and that this flexibility should not be taken away from the Employer through the fact-finding process. Additionally, just as with Section 6.3 above, the Union's proposal to amend Section 6.4 to provide that any bargaining unit member who engages in law enforcement activities scheduled to work more than 8 hours in any twenty-four hour period would be paid at the rate of time and a half for all scheduled hours in excess of the eight hours, is unsupported with a compelling argument.

It should be noted that by the Employer's own exhibit it can be seen that many surrounding counties have adopted the 7 day/40 hour work period for the earning of overtime. However, what is unknown to the Fact-finder is the bargaining history that those parties undertook in order arrive at the more restrictive standard than exists in the FLSA. A major operational change such as this, with considerable potential to greatly impact the amount of overtime earned and thus the overtime times incurred by the Employer, is better left to the parties to negotiate rather than impose through the fact-finding process.

Regarding the union's proposal to amend Section 6.7 to increase the court time minimum from the current two hours to three hours, the comparables in the area suggest that a two-hour minimum is the norm for the vast majority of surrounding counties. No compelling argument was made that this county has unique characteristics that would make the three-hour minimum necessary.

Findings and Recommendation

The Fact-finder finds no compelling evidence for changes in Section 6.3, 6.4 and 6.7, except for the Union's proposal for the elimination of the use of flex time as it was applied in Section 6.4 of the agreement, as agreed to by the Employer in its submission at the hearing.

Therefore, the Fact-finder recommends that Section 6.3, 6.4 and 6.7 remain un-changed except for the deletion of the last three sentences of the first paragraph of Section 6.4 that read as follows

“Based upon the operational needs and requirements of the Department, the Employer may rearrange an employee's work schedule within the fourteen (14) day work period in order that the total number of hours actually worked do not exceed eighty (80) hours maximum. Notification shall be given to the employee at least twenty-four (24) hours in advance of any such change. Such adjustments shall be on an hour for hour basis.”

Issue: Article 19 - Sick Leave

Positions of the Parties

The Employer proposed to amend Section 19.2 with language that calls for a penalty to an employee utilizing sick leave on a fourth absence of one, two or three days without a doctor's slip. The penalty would be that the first day of that fourth absence would be unpaid.

The Union proposed the retention of current language.

The Union proposed an amendment to Section 19.10 to increase the pay-out of accrued but unused sick leave from the current rate up to 100% of the value of the unused days, up to 200 days.

The Employer proposed the retention of current language.

Discussion

The Employer contended that there is a sick leave problem in the bargaining unit, and used that contention to argue for its proposal. However, it offered no evidence that this bargaining unit's usage of sick leave was different than other county employees or bargaining units. Further, it offered no evidence of having attempted to utilize existing provisions of Article 19 relative to discipline for misuse of sick leave.

Regarding the Union's proposal to amend Section 19.10 to increase the pay-out of unused sick leave at retirement, the Union argued that this creates an incentive for employees not to use sick leave. The Employer's arguments against this proposal carry significant weight, however. Most compelling is that fact that all county employees, including those in other bargaining units, all abide by the same sick leave conversion rate at retirement as is enjoyed by the members of this bargaining unit. The Union's proposal would significantly increase the current benefit level, and create a much larger liability in the future for the Employer.

Findings and Recommendation

Regarding the Employer's proposal to amend Section 19.2, the Fact-finder finds no compelling evidence for such a change. Therefore, the Fact-finder recommends the retention of the current language in Section 19.2.

Regarding Section 19.10, the Fact-finder finds numerous compelling reasons for it to remain the same and agrees with the Employer's position. Therefore, the Fact-finder recommends the retention of current language in Section 19.10.

Issue: Article 20 - Personal Leave Attendance Bonus

Positions of the Parties

The Union proposed increasing the personal leave attendance bonus that may be earned from the current three days to four days by shortening the qualifying periods in Section 20.2 from four months to three, thus adding an additional period in each calendar year.

The Employer opposes this change.

Discussion

The Employer stated that it would accept the union's proposal in return for the Union's acceptance of the Employer's proposal to amend Section 19.2. The Union declined this offer, and the Fact-finder has recommended the Employer's proposed changes for Section 19.2. The Union offered no compelling argument in favor of its proposal.

Findings and Recommendation

The Fact-finder finds the Employer's proposal for the retention of the current language to be compelling. Therefore, the Fact-finder recommends that the current language in Section 20.2 be retained.

Issue: Article 23 - Group Insurance

Positions of the Parties

The Employer proposed amending Section 23.2 of the agreement from the current provision calling for the Employer to contribute 87% and the employee 13% of the health insurance premium to instead provide that the employees of this bargaining unit would contribute an amount equal to that contributed by all other county employees.

The Union proposed amending Section 23.2 to cap the employee's present 13% share of the health insurance premium at \$62.50 per pay for family HMO coverage, \$30.00 per pay for single HMO coverage, \$90.00 per pay for non-HMO family coverage and \$40 per pay for single non-HMO coverage.

The Employer also proposed a technical change in the Section 23.3 of the agreement. It proposed deleting language that states "Effective as soon as is practical after the execution of this Agreement" from the first sentence of this section. The language appeared when the dollar amount of life insurance was changed in a previous agreement. As the dollar amount of the insurance will remain the same in the new agreement, this language is rendered unnecessary. The Union made no objection to this claim.

Discussion

The Employer called this the most important issue to the Sandusky county Commissioners. Likely it holds the same importance to the bargaining unit members. Both parties are looking to control their costs.

The Union's proposal would fix a maximum dollar amount for the employees in the bargaining unit, varying dependent upon the coverage selected by the employee. The rationale for this approach is clear; it provides a ceiling for health insurance costs in dollars that the employees can count on. The Union's proposal is an attempt to protect future gains in wages from being nullified by increases in health insurance premiums. However, to recommend this proposal would ignore the risk that the Employer also takes with regard to health insurance premiums. In fact, under the present system the employer takes a much great percentage risk than the employees.

The Employer's proposal would set the employees share of health insurance premiums at the same level as other county employees. The Employer demonstrated that one other bargaining unit recently adopted this change. The current agreement provides that the employees in this bargaining unit have the same medical insurance plan as all other county employees enjoy. For an employer to desire to administer a single plan is sensible, reasonable and practical. However, those arguments break down when it comes to how the insurance premium is paid for by the employees and the Employer. Many factors may make one type of split more desirable to a bargaining unit than to others, including other methods and levels of compensation, wage rate increases bargained for, and the demographics of the bargaining unit itself. Each bargaining unit of the county is free to negotiate terms and conditions of employment as they see fit. It is unknown to this Fact-finder what considerations were negotiated in the other bargaining agreement in return for the health insurance language change, but likely this change occurred not out of the benevolence of the other bargaining unit, but out of that unit's self-interest.

Obviously any employer has a maximum dollar figure that it can afford to put toward personnel costs. How that dollar figure is broken down, however, should remain within the purview of the collective bargaining process. Certainly it is within the Union's purview to agree to give up the ability to bargain the amount that employees will pay for health insurance. This bargaining unit has done so to some degree in the past by agreeing to a percentage split, with no guarantees as to what the actual dollar figure will be. But it demonstrated a great unwillingness to turn the entire decision-making process from plan

design to employee cost over to the Employer. The Fact-finder is likewise reluctant to do so.

Ironically, while both parties are looking to effect change in this Article's provisions, it is those very provisions found in Section 23.2 that provide for the most reasonable and equitable resolution of this matter. The existing agreement provides for the assumption of risk on the part of both parties. The Employer retains the right to determine the scope of the county's health insurance plan. And the agreement provides that the employees of this bargaining unit will enjoy no different health insurance benefit than other county employees. It does, however, provide that the bargaining unit members will pay a fixed percentage of the costs of premiums for the life of the agreement, thus sharing in the risk with the Employer should costs rise.

Other than the Employer's desire to have all county employees pay the same amount for health insurance, it offered no compelling reason to support its proposal. The Union's proposal would place the entire risk on the Employer, and thus likewise gives the Fact-finder no compelling reason to recommend it.

Findings and Recommendation

Regarding Section 23.2, the Fact-finder finds that neither party's proposal provides the best resolution. Further, the Fact-finder finds that the existing Section 23.2 provides the best resolution for the parties, as neither party is harmed and neither gains an advantage. Therefore, the Fact-finder recommends the retention of current language in Section 23.2.

Regarding Section 23.3, the Fact-finder recommends the Employer's proposal for the technical change deleting the phrase "Effective as soon as is practical after the execution of this Agreement" from the first sentence of that section.

Issue: Article 24 – Compensation and PERS Pickup

Positions of the Parties

The Employer proposed a 2.5% general wage increase effective the first full pay period that includes June 1, 2004, an additional 2.5% general wage increase effective the first full pay period that includes June 1, 2005 and an additional 2.5% general wage increase effective the first full pay period that includes June 1, 2006.

The Union proposed that base wage rates for all members of the bargaining unit be increased by 5% effective on June 1, 2004, an additional increase of 5% effective June 1, 2005, and an additional increase of 5% effective on June 1, 2006.

The Union proposed a new section, to be called Section 24.6, be added to the agreement that would provide for a hazardous duty bonus of \$1.00 for every hour worked for members of the bargaining unit that engage in law enforcement duties.

The Employer proposed that no such provisions be added to this agreement.

The Union proposed that a new section, to be called Section 24.7, be added to the agreement to provide that a member of the bargaining unit that serves in an acting capacity in a higher rank would be compensated at that higher hourly wage rate for such time.

The Employer proposed that no such provisions be added to this agreement.

The Union proposed that a new section, to be called Section 24.8, be added to the agreement that would provide for a shift differential of \$0.30/hour for working the hours of 1500 to 2400 and a shift differential of \$0.40/hour for working the hours of 2400 to 800.

The Employer proposed that no such provisions be added to this agreement. However, the Employer countered with a proposal for permanent shift assignments in lieu of a shift differential.

Discussion

Regarding general wage increases provided for in Sections 24.1, 24.2 and 24.3, the Fact-finder notes that no major changes in this agreement are recommended elsewhere in this Report. Wages are generally the "great equalizer" for such major changes, so given the absence of major change in this agreement the recommended wage increases should be reasonable in and of themselves. There is no factoring in other issues where one party or the other has made a major concession or gain. In light of this the Union's proposal for 5% increases in each of the three years is not supportable by the present economy or by comparables. The Employer's proposal is closer what is reasonable and proper. The bargaining history of these parties shows that this bargaining unit has received the same or slightly better wage increases than other Sandusky County personnel. Therefore, wage increases of 3.25% the first year, 3.0% the second year, and 3.0% the third year are considered reasonable by the Fact-finder.

Regarding the proposed new Section 24.6, the Union argued that those members of the bargaining unit engaged in law enforcement should be entitled to hazardous duty pay due to the hazardous conditions and circumstances that they face. Certainly the business of law enforcement is hazardous. And certainly there are positions in police departments and sheriff's offices that are more hazardous than others. Given that, however, the Union was unable to present any comparables that demonstrated that these bargaining unit members are missing out on a benefit that is routinely enjoyed by surrounding or similar counties.

Regarding the proposed new Section 24.7, the Union acknowledged that the situation does not occur frequently, and that when working in an “acting” capacity the employee may not be assuming all of the duties and responsibilities of the position. No compelling evidence was presented that would persuade this Fact-finder that this proposal should be recommended.

Regarding the proposed new Section 24.8, the fact that the employees currently have rotating shifts spreads the inconveniences associated with working second or third shifts throughout the bargaining unit equally. In essence, the wage rates in the collective bargaining unit already take into consideration that the employees will be working on different shifts at times throughout the year. The Union expressed no interest to the Fact-finder for permanent shift assignments as proposed by the Employer.

Findings and Recommendation

The Fact-finder recommends that Sections 24.1, 24.2, and 24.3 of the agreement be amended to reflect a general wage increase of 3.25% to be effective the first full pay period including June 1, 2004, an additional general wage increase of 3.0% to be effective the first full pay period including June 1, 2005, and additional general wage increase of 3.0% to be effective the first full pay period including June 1, 2006.

Regarding the proposed new Section 24.6, the Fact-finder recommends the Employer’s position for the retention of current language that does not provide for hazardous duty pay.

Regarding the proposed new Section 24.7, the Fact-finder recommends the Employer’s position for the retention of current language that does not provide for acting pay.

Regarding the proposed new Section 24.8 for shift differential, the Fact-finder recommends the Employer’s position for the retention of current language that does not provide for same.

Issue: Article 25 – Longevity Compensation

Positions of the Parties

The Employer proposed amending Section 25.1 and Section 25.2 to make longevity applicable only to those employees in the bargaining unit hired prior to June 1, 2004.

The Union proposed amending Section 25.2 to remove the twenty year cap and extend the longevity payment at the rate of \$100 per year of service through 24 years. The

Union also proposed adding an additional tier so that members that have 25 years of service or more would receive \$125 for each year of continuous employment.

Discussion

The Employer noted that no other Sandusky County employees receive longevity payments, and argued that its proposal would eventually do away with longevity in this bargaining unit without harming the existing employees. The Union's proposal, on the other hand, would expand the longevity provisions by creating new levels and additional payments.

It is not this Fact-finder's desire to create, in essence, a two-tier pay system in this bargaining unit. The Employer's proposal would, in essence, create such a system. A better approach to eliminating longevity would be to simply freeze the existing system at the present level. Over time the dollar amounts would become less significant to the employees and eventually reach a point where elimination through a trade-off for some other benefit or wage increases would be easily within reach of the Employer.

The Union's proposal to expand the longevity provisions is not supported by any compelling evidence that a new level of longevity needs to be established in order to retain veteran employees in the bargaining unit. The Fact-finder is of the opinion that the current contractual provisions are more than adequate in that regard.

Findings and Recommendation

The Fact-finder recommends neither the Union nor Employer positions, but rather recommends the retention of current language in Sections 25.1 and 25.2.

Issue: Article 26 - Education Pay

Positions of the Parties

The Union proposed amending Section 26.1 to raise the compensation for bargaining unit members holding an Associate Degree in law enforcement or criminal justice from the current \$300 annually up to a new amount of \$400 annually. The Union proposed amending Section 26.2 to increase the compensation for bargaining unit members holding a Bachelors Degree in law enforcement or criminal justice from the current \$500 annually up to a new amount of \$600 annually. Lastly the Union proposed adding a new Section 26.3 that would provide for compensation of \$800 annually for bargaining unit members holding a Masters Degree in law enforcement or criminal justice.

The Employer proposed retention of the current language in Article 26, with no increase and no new levels of compensation.

Discussion

The Union argued that this benefit has not been increased in twelve years and noted that it would be of minimal cost to the Employer as there are not a large number of qualifying employees. It argued that additional education is a benefit to the Sheriff's office. The Employer argued that the Sheriff does not believe that possession of these degrees makes for better deputies or supervisory officers.

When the parties negotiated these provisions for additional compensation twelve years ago, they placed a dollar value on the holding of an Associate or a Bachelors Degree by bargaining unit members. This diminishes the Employer's argument in the present negotiations that the Employer does not value the holding of such degrees today. However, the parties did not then see fit to include a Masters Degree in list of degrees for which they provided additional compensation to employees, and no compelling reason was offered by the Union for the inclusion of that degree into Article 26 today.

Twelve years is a long time for the compensation level to remain stagnant, particularly when employees who have achieved such degrees in recent years have seen their costs of obtaining them rise dramatically in that period of time. Therefore the Unions' proposed increases are reasonable.

Findings and Recommendation

The Fact-finder finds the Union's proposal to increase the compensation for an Associate Degree in law enforcement or criminal justice to \$400 annually and the compensation for a Bachelors Degree in law enforcement or criminal justice to \$600 annually, to be compelling. The Fact-finder does not find the union's argument for compensation for a Masters Degree in law enforcement or criminal justice to be sufficient to recommend it.

Therefore, the Fact-finder recommends the Union's proposal to amend the language in Section 26.1 to increase the education pay for employees holding an Associate Degree in law enforcement or criminal justice to \$400 annually.

Further, the Fact-finder recommends the union's proposal to amend the language in Section 26.2 to increase the education pay for employees holding a Bachelors Degree in law enforcement or criminal justice to \$600 annually.

The Fact-finder recommends the Employer's position that no new Section 26.3 be added to the agreement to provide for compensation for a Masters Degree in law enforcement or criminal justice.

Issue: Article 31 - Miscellaneous (reimbursement of notary fees)

Positions of the Parties

The Union proposed a new Section 31.9 be added to the agreement that would provide for a reimbursement for the cost of renewing and maintaining notary commissions, stamps and seals for those members of the bargaining unit who must hold notary commissions.

The Employer proposed that no new provisions regarding such reimbursement be added to the agreement, which presently does not provide for any such reimbursement.

Discussion

The union argued that this item would only cost the Employer a very minimal amount of money, which it projected as approximately \$40 - \$60 every five years for each employee who maintains a notary commission. The Employer noted that the employees with notary commissions are free to use that commission both within the workplace and outside the workplace, and are thus free to charge adequate fees outside the workplace to cover this expense.

While this is not a major cost item for the Employer, it is also not a great burden on the affected employees. In many respects it is similar to an employer's requirement that an employee hold a valid driver's license, which also presents a non-reimbursed cost to the employee yet is seen as a reasonable condition of employment. Further, the Union presented no evidence that the lack of such a reimbursement is a major difficulty or burden on the employees.

Findings and Recommendation

The Fact-finder finds no compelling reason to support this provision to the agreement. **Therefore the Fact-finder recommends the Employer's position that no new Section 31.9 providing a reimbursement for notary commission expenses be added to the agreement.**

Additional recommendations of the Fact-finder

In addition to the above, the Fact-finder recommends all other tentative agreements reached by the parties during their negotiations, including those reached in mediation conducted by this Fact-finder.

A handwritten signature in black ink, appearing to read "Martin R. Fitts". The signature is written in a cursive style with a horizontal line underneath it.

Martin R. Fitts
Fact-finder
September 13, 2004