STATE EMPLOYMENT
RELATIONS BOARD

2006 SEP 29 A 11:50

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

CITY OF AVON (Employer)
and
FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC. (Employee Organization)
CASE NOS.: 2005-MED-04-0555
2005-MED-07-0738

FACT-FINDING DECISION OF THOMAS R. SKULINA, FACT-FINDER

PRELUDE

The fact-finding hearing was conducted on August 29, 2006 at the City Hall in the City of Avon. The City's advocate was Sandy Conley, Account Manager at Clemans-Nelson & Associates, Inc. The Union was represented by Lucy A. DiNardo, Staff Representative.

Mediation meetings on May 15, 2006, May 18, 2006, and June 15, 2006, resolved a number of issues. The Uniform Allowance issue (Article 18) was resolved on August 29, 2006, leaving the following issues:

1. Health Coverage
2. Compensation/Wages
2a. Work Capacity (Sergeants and Lieutenants)
2b. Sign in Bonus
3. Compensation Wages (Dispatcher)
4. Work Week/Scheduled Hours
5. Holidays
6. Sick Leave
7. Discipline
8. Duration.

Case number ending with 0008 involves Sergeants and Lieutenants. One other case ending 0738 includes Dispatchers.

Patrol Officers were in the last CBA represented along with Sergeants and Dispatchers. The present union, at this fact-finding, have the Sergeants and Lieutenants, as well as the Dispatchers, but not the Patrol Officers.

The Lieutenants that number three have been recently added to the bargaining unit. The City has been growing and the Police Department has added Lieutenants. There is a pay differential issue for these promoted officers that shall be addressed. I have addressed ten (10) issues. Two (2) of same, i.e. work capacity and sign in bonus, are sub-parts of Issue 2.

ISSUE 1 - ARTICLE 13
HEALTH COVERAGE

The City proposes that this bargaining unit have the same provision for health care that is the same as the rest of the City, union and non-union. Though much discussion ensued over the availability of potential other plans, the bottom line is that the City has a group plan which presently is a Lorain County Group plan.

To make the changes more palatable, the City had increased the life insurance benefit. Wages shall also be increased.

It is a sound practice that all City employees from the Mayor through non-union and union members all be on the same page when it comes to health care. The issue of the cost of health care has been a topic of concern to everyone. Whether the individuals are public or private sector persons or retirees, or any other status, all have the same concern about the rise in health care.

The City proposal is fair. It does not increase employee contributions until the first pay in July, 2006.

Family coverage shall come to $240.00 per month, while single coverage shall be $120.00 per month. Under the cost plan for 2006, the costs shall be $223.60 per month for family and $89.20 per month for an individual plan.

Section 1. Past CBA with the Fraternal Order of Police January 1, 2003 through December 31, 2005 shall remain the same. The change in language is contained in the Issue 1 fact-finding that follows:

FACT-FINDING: ISSUE 1 - ARTICLE 13
HEALTH COVERAGE

Section 2. the City agrees to pay eighty per cent (80%) of the premium contribution costs for health coverage for each eligible full-time employee enrolled in any of the health coverage plans offered by the City.

The election if single or family coverage rests with the eligible bargaining unit employee.

Each eligible bargaining unit employee electing single or family coverage, shall pay twenty percent (20%) of the monthly premium/contribution costs. For these bargaining unit employees, increased employee contributions for calendar year 2006 shall commence with the first pay in July.

ISSUE 2 - ARTICLE 17 AND APPENDIXES A-1 AND A-2
COMPENSATION/WAGES

The police unit has materially changed with the addition of three (3) Lieutenants to the bargaining unit. A study of comparable statistics indicate that the Lieutenant's wags are below average, while the Sergeants are above average. The City attempted to taper the Sergeants and move the Lieutenants.

It appears that a twelve percent (12%) differential would fall within the comparable statistics. Presently, the Sergeants have a fifteen percent (15%) differential over a Patrol Officer.

The Sergeants had more duties when there was only one (1) Lieutenant but there are now three (3) Lieutenants. To adjust the rate structure, I shall recommend for the first pay period (1st pay in July, 2006) there be no change in the percentage rates. Nor should there be a change from fifteen percent (15%) in 2007. In 2008, the differential shall be twelve percent (12%).

The Lieutenants differential should be twelve percent (12%) in the 06 segment and twelve percent (12%) for 2007 and 2008.

There should be an increase to $1.25 for each hour a Sergeant acts as a Training Officer.

To offset the higher cost of health care, I will recommend a signing bonus of $1,500.00 for Sergeants and Lieutenants.

The wage structure I shall recommend will reflect comparable wages and bring the Lieutenants to an appropriate wage differential. Thus, in time, a Patrol Officer gets boosted twelve percent (12%) upon promotion to a Sergeant and another twelve percent (12%) if the officer gets to become a Lieutenant.

FACT-FINDING - ISSUE 2 - ARTICLE 17 AND APPENDIXES A-1 AND A-2
COMPENSATION/WAGES

Section 1. All full time Lieutenants shall be paid in accordance with the following scale:

Lieutenants shall receive a rank differential pay rate equal to twelve percent (12%) greater than the rate received by a Sergeant in the highest wage rate.

Section 2. The state mandated employee's contributions to the OPFPF shall be deducted from the employee's gross pay before state and federal taxes are withheld in accordance with IRS rules.

Section 3. Whenever the Chief of Police assigns a Lieutenant the primary duties and responsibilities of the Chief of Police for two (2) consecutive days or more, the assigned employee shall be entitled to receive the Captain hourly rate of pay for the period of time served in that capacity.

FACT-FINDING - ISSUE 2a. - APPENDIX A-2
WORK CAPACITY (SERGEANTS AND LIEUTENANTS)

Section 1. All full-time Sergeants shall be paid in accordance with the following scale:

A. Sergeants shall receive a rank differential pay rate equal to fifteen percent (15%) greater than the rate received by a police officer in the highest wage rate for the first two (2) years of this contract. The rank differential for the third (3) year shall be twelve percent (12%).

Section 2. The state-mandated employee's contribution to the OPFPF shall be deducted from the employee's gross pay before state and federal taxes are withheld in accordance with IRS rules.

Section 3. Whenever the Chief of Police assigns a Sergeant the primary duties and responsibilities of the Chief of Police for two (2) consecutive days or more, the assigned employee shall be entitled to receive the Lieutenant hourly base rate of pay for the period of time served in that capacity.

Section 3.1. Whenever a Sergeant is assigned the primary duties of a Lieutenant for two (2) consecutive days or more, the assigned employee shall be entitled to the Lieutenant hourly base rate of pay for the period of time served in that capacity.

Section 4.3. Any bargaining unit employee acting as a Training Officer for a newly hired Patrol Officer will be compensated $1.25 per hour for each hour of training during the formal FTO training.

It should be noted that Patrol Officers received a six percent (6%) increase beginning the first July pay period of 2006, a four percent (4%) increase in 2007 and a three and one-half percent (3.5%) in 2008. With the additions in Appendix A to the wage differential, these rate increases shall be the basis for the rates the promoted officers shall receive.

FACT-FINDING - ISSUE 2b. - ADDENDUM TO APPENDIX A-1 AND A-2 SIGN IN BONUS

Upon ratification of this Agreement, the Sergeants and Lieutenants shall each receive a sign in bonus of Fifteen Hundred and 00/100 Dollars ($1,500.00).

ISSUE 3 - APPENDIX A-3
COMPENSATION WAGES (DISPATCHER)

According to the comparable presented at the hearing, the Dispatchers for Avon are on the high end of the scale. Evidence was that the Avon Dispatchers are required to dispatch both Police and Fire. The Fire Department has recently acquired one (1) Dispatcher. There are no Clerks nor administrative secretaries.

The Fire Dispatcher is paid the same but does not answer phones and is in a set hour work week.

The Dispatchers attend Tack training, validate entries and sign off on a computer. Tasks that usually are performed by officers. Two are Tack offices, one validate stolen vehicles.

Though the Dispatchers may be at the high end of the scale in view of the health cost increase, and their different work load, I do not think this is the Agreement to get the Dispatchers lower so that they are lowered on the comparable wage charts. I shall recommend the same increase that shall be paid the Patrol Officers beginning on the first pay period of July, 2006.

FACT-FINDING - ISSUE 3 - APPENDIX A-3
COMPENSATION WAGES (DISPATCHER)

Section 1. Effective with the first period of pay from July, 2006, the rate of pay for all full time employees shall be raised six percent (6%).

Section 2. The rate for all full time employees shall be raised four percent (4%) in 2007.

Section 3. The rate for all full time employees shall be raised three and one-half percent (3.5%) for 2008.

It should be noted at this time that the City of Avon has been growing rapidly and is strong financially, but all its employees have endured higher health costs.

ISSUE 4 - ARTICLE 19
WORK WEEK/SCHEDULED HOURS

The City proposed some changes in the work week scheduled hours.

It does provide for call in compensation for court appearances outside the city, for departmental staff meetings, Avon Municipal Court, and in-service training sessions.

The parties differed over the accrued time of compensatory time. To cut it to sixty hours from ninety hours is not unreasonable.

FACT-FINDING: ISSUE 4 - ARTICLE 19
WORK WEEK/SCHEDULED HOURS

Section 1. For the purpose of this agreement, a work day shall normally consist of eight (8) scheduled consecutive hours in a twenty-four (24) hour period commencing with the start of a shift. A normal work week for full time employee shall normally consist of forty (40) scheduled hours within a calendar week. The "work week" schedule shall include two (2) consecutive days off except to accommodate training needs/adjustments. This article is intended to define the normal range of work hours for regular full time employees. Schedule requirements may on occasion result in shift assignment wherein a member has eight (8) off hours separating two (2) scheduled shifts. Such shift assignments shall be considered as separate work days and paid at straight time rates, where such shift assignment is part of a standard shift schedule, or results from changing to a new schedule.

Section 2. Compensation for regularly scheduled eight (8) hour days shall be at a straight rate of pay.

Section 3. An employee who is called in to work, including call-ins for court appearances outside of the City, at a time which doe not abut his scheduled work hours shall receive a minimum of four (4) hours work, or four (4) hours pay, at the applicable rate of pay. This provision shall not apply to any schedule change(s) or scheduled overtime. Any employee called in to work at a time which does not abut his scheduled work hours shall for purposes of departmental staff meetings, Avon Municipal Court, or in-service training sessions shall receive a minimum of two (2) hours work, or two (2) hours pay, at the applicable rate of pay.

Unworked minimum call-out hours shall not apply for purposes of overtime computation; however, an employee shall be compensated at the highest of either the actual hours worked or the minimum call-out hours.

Section 4. Any duty hours in excess of forty (40) hours of in a work week shall constitute overtime. Compensable time (holidays, vacation days, sick days, compensatory days, and actual duty hours) shall be considered as time worked for the purposes of computing overtime. Overtime shall be compensated at one of the following rates as applicable:

A. Time and one-half (1 1/2) for all hours of duty in excess of eight (8) in one (1) work day, or forty (40) in a work week.

B. Double time for all hours on duty in excess of twelve (12) consecutive hours in a work day.

C. Double time for hours worked during scheduled vacation when an employee is called out and required to report to work by the Employer. In such case, the employee will receive the double time for a minimum of four (4) hours or the actual number of hours, whichever is greater. Days off abutting a full work week of requested time off, i.e., vacation, compensatory time, or holiday time, shall be considered "vacation" for purposes of this provision.

When an opening on a shift occurs due to the absence, for any reason, of a bargaining unit employee, and the position is to be filled by someone working in an overtime capacity, the first right of refusal for the resulting overtime shall be given to the remaining members of the applicable bargaining unit.

Section 5. At their option, employees may elect to take overtime compensation in the form of pay or compensatory time off. Conversion of overtime to compensatory time is available for whole hours increments only. Employees may not accrue nor use more than sixty (60) hours of compensatory time at any one time or use more than sixty (60) hours in any calendar year. If an employee does not indicate an election for compensatory time, or has an accumulation of the maximum number of compensatory hours, the employee shall be paid for the overtime. Requests for overtime compensation of compensatory time shall be made within the same work period the overtime was earned. Compensatory time off shall be scheduled in advance at the request of the employee subject to the approval of the Chief and operational needs.

Section 6. Premium or overtime compensation shall not be paid more than once for the same hours worked.

Section 7. Tentative work schedules will be posted two (2) months in advance recognizing the right of the Employer to adjust the schedule, following posting, as necessary. The Employer may also adjust the schedule as determined necessary once the time period for submitting vacation requests has elapsed.

Section 8. Employees may request to trade shifts with another employee in the same classification with such requests normally being for a single work day. Requests will be approved or denied within the seven (7) calendar day period following the date of submission of the request. The trading of shifts shall occur within the same pay period and shall not result in overtime.

ISSUE 5 - ARTICLE 20
HOLIDAYS

The Union seeks to retain the current language of the previous contract (January 1, 2003 - December 31, 2005). The City seeks to require that forty (40) hours of holiday at a minimum be used in a year with no carryover. The existing language allows or carry over to the next year. The Union argued that due the nature of their work, the Police Officers have occasion when they cannot take a holiday.

FACT-FINDING: ISSUE 5 - ARTICLE 20
HOLIDAYS

I find that the language in Article 20 Holidays from the (January 1, 2003 - December 31, 2005) contract be retained and incorporated in this agreement.

ISSUE 6 - ARTICLE 21
SICK LEAVE

The Union seeks to change the sick leave proposal so they can get sick leave accrued for overtime worked. The City for all its eligible employees in the City uses the policy contained in Article 21 of the (January 1, 2003 - December 31, 2005) contract.

This approach is not unreasonable. Patrol Officers, Fire Fighters, non-union persons, etc., are under this policy. Hence, I shall recommend no change.

FACT-FINDING: ISSUE 6 - ARTICLE 21
SICK LEAVE

I find that the language in Article 21 from the (January 1, 2003 - December 31, 2005) contract be retained and incorporated in this agreement.

ISSUE 7 - ARTICLE 24
DISCIPLINE

There is an extensive proposal by the City for this Article. The point of dispute is that the Union wants written reprimands to be appealable. The City points out that it seeks to limit applications to the grievance procedure to only discipline involving reductions in pay or positions. This is consistent with the provisions of other bargaining agreements within the City. It is also consistent with CBA's from other cities that I have seen.

The officer that receives a written reprimand is protected by the opportunity to provide a written and signed comment or rebuttal. Written reprimands and warnings cease to exist after one year as long as the disciplinary action is not repeated in that year.

The City is consistent in its agreements on this issue. The full grievance process that ends in arbitration can be costly and time consuming. To use this grievance process for a minor infraction with a one year duration for the warning or written reprimand can be denied as a management right and a desire to maintain uniformity among the bargaining units.

FACT -FINDING: ISSUE 7 - ARTICLE 24
DISCIPLINE

Section 1. The tenure of every employee subject to the terms of this agreement shall be only during good behavior and efficient service. The Employer may take disciplinary action against any employee in the bargaining unit only for just cause. Forms of disciplinary action are:

A. Instruction and cautioning (documented oral warning).

B. Written reprimand.

C. Suspension without pay. (At the option of the employee, and with the concurrence of the Employer, accrued vacation or holiday time may be forfeited equal to the length of the suspension. Record of suspension will be maintained).

D. Reduction in pay and position (demotion).

E. Discharge.

Section 2. Whenever the Employer determines that an employee may be suspended, demoted, or discharged for just cause, a predisciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. A notice of the predisciplinary conference shall be provided to the employee and shall contain a general description of the alleged misconduct. The employee shall have the right to have a Union representative present at the conference if he so desires. When possible, the date and time of the predisciplinary conference may be extended to accommodate a desired Union representative. If immediate attention is required, an alternate representative will attend. In any event, predisciplinary hearings shall be completed within thirty (30) calendar days from presentation to the employee of the notice of alleged misconduct. A written report will be prepared by the hearing officer concluding whether or not the alleged misconduct occurred. The Employer will decide what discipline, if any, is appropriate. A copy of the hearing officer's report will be provided to the employee, and the Union representative if applicable, within fourteen (14) calendar days following the close of the hearing. Any resulting disciplinary action will be issued within forty-five (45) calendar days of the receipt of the hearing officer's findings.

Section 3. Disciplinary action involving a reduction in pay or position may be appealed through the grievance procedure set forth herein. Appealable disciplinary actions (reductions in pay and/or position) must be filed at the Mayor's level of the grievance procedure within ten (10) calendar days of the receipt of the notice of discipline to the employee. Receipt will be deemed to have occurred three (3) calendar days from the date of mailing, or at the time of hand delivery.

Section 4. Any employee under indictment or arrested for a crime of moral turpitude who is not disciplined or discharged by the Employer shall be placed on a leave of absence with pay until resolution of the court proceedings. An employee may use accrued vacation or holiday time during the leave. An employee found guilty by the trial court shall be summarily discharged. An employee found innocent of the charges may be returned to work or placed on administrative leave and shall have any vacation or holiday time used restored to his credit, and may be subject to disciplinary action if such action was held in abeyance. The Employer shall continue to pay the Employer's share of the health premium/contribution during the leave of absence,; however, if the employee is summarily discharged, the amount of such premium/contribution shall be reimbursed to the City by the employee.

Predisciplinary hearing will be conducted by a representative of the Employer (hearing officer). The employee may choose to:

A. Appear at the hearing to present oral or written statements in defense;

B. Or appear at the hearing and have one (1) chosen representative present oral or written statements in defense of the employee;

C. Or elect in writing to waive the opportunity to have a predisciplinary hearing.

Failure to elect and pursue one of these three (3) options will be deemed a waiver of the employee's rights to a predisciplinary hearing.

At the predisciplinary hearing, the hearing officer will ask the employee or his representative to respond to the allegations of misconduct as outlined to the employee.

At the hearing, the employee or his representative may present any testimony, witnesses, or documents which explain whether or not the alleged misconduct occurred. The hearing officer may request the employee to respond directly to any inquiry. The employee shall provide a list of witnesses and the name of his representative, if any, to the Employer as far in advance as possible, but no later than eight (8) hours prior to the predisciplinary hearing. It is the employee's responsibility to notify his Union representative and witnesses that he desires their attendance at the hearing.

Section 5. Any suspension imposed shall not be deducted from the employee's seniority date.

Section 6. Any investigations, interviews, and disciplinary procedure hall be conducted in a professional manner. Discipline and/or corrective action shall be conducted in a private manner and not in the presence of the employee's co-workers or the public.

Section 7. The employee shall, at his request, have the right to have a Union representative present at any investigation or interview where the employee reasonably believes disciplinary action may result. If the Union representative is not available immediately, the Employer and the Union representative shall attempt to agree to a time reasonable for both parties, or an alternate Union representative will be assigned by the Union.

Section 8. File Review. The employee may request his personnel file upon a written request; such request must be submitted five (5) days prior to the date of review. Should an employee, upon review of his personnel file, observe materials of a negative or derogatory nature, the employee may provide a written and signed comment or rebuttal, and such response shall be attached to the material in question. The comments or rebuttals shall remain in the file with the adverse material.

Section 9. Media. When a department member is charged with or is under investigation for alleged violations of departmental rules and regulations, reasonable efforts consistent with applicable law shall be made to withhold publication of the officer's name and the extent of the disciplinary action taken or contemplated until such time as final inter-departmental ruling has been made and served upon the officer. If any of the aforementioned are leaked to the media, it will not negate the Employer's right to proceed with the matter at hand.

Release of photographs or personal information about any officer in relation to departmental matters shall not be provided to any news or related service without consent of the subject officer.

Members of the bargaining unit shall be notified of third party requests to review their files.

Section 10. Cease to Have Force and Effect. Written reprimands and warnings shall cease to have force and effect one (1) year from the date of the discipline provided no other disciplinary action of a like nature has occurred during that period.

Suspensions or demotions shall cease to have force and effect five (5) years after the date of the discipline provided no other disciplinary action of like nature has occurred during the period.

Section 11. Disciplinary action which exceeds the time limits set forth in Section 10 above may be removed from the personnel file upon written request of the affected employee. Such disciplinary records will be maintained in a separate file. Pre-hire investigative reports shall also be maintained in a separate file. The parties recognize the obligation of the Employer to comply with the provisions of Ohio's Public Records Law.

ISSUE 8 - ARTICLE 37
DURATION

Though there was a delay from December 31, 2005 to the present to arrive at a contract, the starting date of this agreement should pick up from the first of the year. There are some provisions that begin benefits later in the year, but those provisions are specific.

FACT-FINDING: ISSUE 8 - ARTICLE 37
DURATION

This Agreement shall be effective as of January 1, 2006 and shall remain in full force and effect through December 31, 2008.

THOMAS R. SKULINA
Fact-Finder

DATE ISSUED: September 28, 2006