

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2006 JUL 27 A 11: 24

July 25, 2006

In the Matter of Fact-Finding Between

MEDINA COUNTY SHERIFF

and

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

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Case Nos.: 05-MED-10-1241

Communication Technicians

APPEARANCES

For the City:

James A. Budzik, Esq.
Travis L. Colonius
Thomas Miller
Kenneth J. Baca
Gary Berkowitz

Attorney
Lieutenant
Chief Deputy
Captain
Director, Human Resources

For the Union:

S. Randall Weltman
Kathy Herte
Bruce Cornelious

Attorney
Dispatcher
Union Director

Fact-Finder:

Virginia Wallace-Curry

INTRODUCTION

This matter concerns the fact-finding proceeding between the Medina County Sheriff (the "County" or "Sheriff") and the Ohio Patrolmen's Benevolent Association (the "Union" or "OPBA"). The bargaining unit consists of all full-time and regular part-time Communication Technicians. There are approximately ten (10) full-time employees in the bargaining unit. The terms of the parties' collective bargaining agreements expired on December 31, 2005.

The parties held several bargaining sessions and were able to reach agreement on all but three issues. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed fact-finder in this matter by SERB. The parties declined the fact-finder's offer to mediate the issues, and a hearing was held on July 17, 2006, at which time the parties were given full opportunity to present their respective positions on the issue. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. Comparison of the 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, 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;
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.

UNRESOLVED ISSUES

The parties presented evidence and testimony on the unresolved issues in the following

Articles:

1. Article XXVIII - Rates of Pay
2. Article XXXVI - Discipline
3. Article XXXVIII - Arbitration Procedure

I. Article XXVIII - Rates of Pay

Union's Position

The Union proposes that the bargaining unit receive increases of 3.25%, retroactive to the first pay of 2006, and 3%, beginning the first pay of 2007. In addition, all full-time non-probationary employees would receive a lump-sum "APCO National Certification"¹ pay stipend of \$1100 within 30 days of the execution of the Agreement. This stipend will be rolled into the base rate of employees prior to the 3% increase of 2007. If an employee is in the probationary period when the payments are made, such employee would receive the APCO National Certification benefit within 30 days of successful completion of the probationary period.

The Union argues that its wage proposal is necessary to bring the bargaining unit nearer to the average wage package that similar employees in the northeast Ohio counties of Lorain, Geauga, Lake and Portage receive. These are the appropriate comparable jurisdictions because, according

¹Association of Public-Safety Communications Officials-International (APCP) is a not-for-profit professional organization that accredits communications agencies which implement and comply with set standards of professionalism and technical expertise in communications practices.

to Medina County's Comprehensive Annual Financial Report (CAFR), Medina County identifies itself as part of the greater Cleveland and Akron metropolitan areas and the fastest growing county in *northeast* Ohio.

When comparing Medina County Sheriff's Correction Officers and Deputies to like employees in the above counties, Medina County's employees receive about 98% of the average total wage package. However, Medina County's Communication Technicians receive only 95% of the average for like employees in the same northeast Ohio counties. Therefore, the Union proposes the \$1100 lump sum "APCO National Certification" stipend for this bargaining unit so that they may receive a total wage package comparable to other Medina County Sheriff employees in relation to the other northeast Ohio counties.

The County argues that the other unionized employees working for the County have settled for 3% for 2006 and 3.25% for 2007. It asserts that it is important for industrial relations stability for the County that this bargaining unit follow that same pattern. However, the evidence shows that in the past other bargaining units which have experienced inequities in their total wage package have received lump sum payments that have been incorporated into the base wage, as the Union proposes here. This was done with the Deputies and the Corrections Officers in past negotiations, and should be done for this bargaining unit for this contract term.

An inability to pay is not an issue with Medina County as it boasts that it is the second wealthiest county in the State.

Sheriff's Position

The Sheriff proposes wage increases of 3% for the first pay of 2006 and 3.25% for 2007. This is the wage increase that has been accepted by the other bargaining units employed by the Sheriff and should be followed for this bargaining unit. Such pattern bargaining promotes stability

and equity for the employer and its unions and protests both parties from whipsawing. An established pattern should not be broken unless the union can prove it is not a true pattern; it is an attempt to abolish unique rights and privileges of the union; it is antithetical to the functions or history of the bargaining unit; or it is an economic offer strikingly insufficient to compensate a particular group of employees. The Union in this case has been unable to prove any of these factors is present in this case. The Sheriff's offer is certainly not insufficient to compensate these employees.

The bargaining unit is not woefully underpaid in comparison with other like employees in the surrounding jurisdictions. The Sheriff argues that the Union has cherry picked its comparables and has chosen the highest paid counties in the northeast and has ignored the counties surrounding Medina County, such as Ashland, Crawford, Portage, Richland, Stark, Trumbull, Wayne and some cities, such as Brunswick, Medina, and Wadsworth. The average hourly rate for communication officers in these counties plus Lorain and Geauga counties is \$16.01 per hour compared to Medina County's \$17.54 per hour. Medina County's communication officers earn more than the average hourly rate. The Sheriff's wage proposal would maintain the bargaining unit's position relative to these comparable counties.

The wage package proposed by the Union is excessive and would far exceeds the budget for the Sheriff's office. The County Commissioners control the budget, not the Sheriff. The Sheriff must live within the budget dispensed by the Commissioners, which often falls short of the Sheriff's request, which is based on the projection of costs. An extreme shortfall between projections and actual dollars budgeted may result in layoffs.

Recommendation

1. Bargaining unit employees will receive a 3.25% increase retroactive to the first pay of 2006 for the first year of the contract and a 3 % increase the first pay of 2007.
2. All full-time non-probationary Communication Technicians will receive a lump-sum "APCPO National Certification" pay stipend of \$550 within 30 days of execution of the contract.
3. The \$550 APCO National Certification pay stipend will be rolled into the base rate of all full-time, non-probationary Communication Technicians prior to the 3% increase on the wage scale on the first pay of 2007.
4. If an employee is in the probationary period when payments are made, such employee will receive the APCO National Certification benefit within 30 days of successful completion of the probationary period.

Rationale

The Union sufficiently established that the Sheriff's Office has a pattern of deviating from "pattern bargaining" when it is necessary to close a wage gap between one bargaining unit and like employees in comparable jurisdictions. The Sheriff did so for both the deputies and the corrections officers in previous contract years by giving the units a lump sum payments that were subsequently added to base wage rate, as is recommended here.

In the case of the Communication Technicians, their bargaining unit's wage rate is lagging behind like employees in comparable jurisdictions. This is especially evident by comparing the status of the Sheriff's other bargaining units relative to like employees in those same jurisdictions. The correction officers and deputies employed by the Medina County Sheriff receive 98% of the average total wage package for like employees in six Northeast Ohio counties (Lorain, Geauga, Lake Portage, Cuyahoga and Medina). The Communication Technicians receive 95% of the

average total wage package for like employees in those same counties, minus Cuyahoga County.²

In addition to front loading the wage increases with the 3.25% in the first year and the 3% in the second, the Union requested a large lump sum payment, the \$1100 APCO National Certification stipend, to narrow that gap. However, the \$1100 payment request is seems excessive. The 3% wage difference between the 95% of average that the Communication Technicians earn and the 98% percent of average that the Sheriff's other bargaining units earn is not so extreme that it must be closed in one two-year contract term. As the Sheriff noted, the northeast Ohio counties are the higher paid jurisdictions. Like employees in the surrounding counties earn less than this bargaining unit. Therefore, it is recommended that the Communication Technicians receive a lump sum payment of \$550, which is half of what the Union requested. This stipend payment plus the 3.25% general wage increase in the first year of the contract will bring the unit close to 97% of the average total wage package, assuming a 3% average increase for those the remaining counties.

II. Article XXXVI - Discipline

Sheriff's Position

First, the Sheriff proposes a change in the language of 36.05 to include a "fine" as a disciplinary measure that the Sheriff may choose instead of a suspension without pay. A fine has the same net effect as a suspension without pay, i.e., loss of pay to the employee. However, it renders more efficiency to the Sheriff's Office, because the employee who is fined performs an unpaid working suspension and saves the Employer from potentially paying overtime to cover a

²Cuyahoga County does not have a road patrol unit. Therefore, their Communication Technicians do not have the same type of job duties as other counties with a road patrol unit.

shift for the suspended employee. Ohio Revised Code Section 124.34 permits such a disciplinary penalty, and it has been recognized by Sheriff Office rules and has been applied to deputies.

Second, the Sheriff proposes to add the following language to Section 36.09(C): “A suspension without pay or fine of three (3) days or less shall be grievable only to the Sheriff but shall not be arbitrable.” This proposal is aimed at avoiding potential, expensive arbitrations over short term, routine disciplinary unpaid suspensions or fines. The cost of arbitrating such disciplinary actions is costly to both parties. Historically within the Sheriff’s Office, short term suspensions have been accepted by the employee and Union, which establishes that the Employer has not acted arbitrarily or capriciously in meting out discipline.

Union’s Position

The Union rejects the Sheriff’s proposals as being unnecessary. With regard to addition of a fine as a disciplinary option, such arrangements have been made with employees in the past to take away a vacation day as discipline. The employee does not lose any regular pay and the Sheriff does not have to cover the suspended employee’s shift. The Sheriff has shown no need to make a fine a part of the collective bargaining agreement.

With regard to issue of not arbitrating disciplinary suspensions of three days or less, the Union argues again that the Employer has shown no compelling need for a change in this language. Such a provision would upset previously bargained for provisions and severely damage the due process rights of employees.

Recommendation

Maintain current contract language.

Rationale

Although the disciplinary option of fining an employee is permitted by statute for employees without a collective bargaining agreement, there was no showing why this language should be added to the parties' Agreement without the employees receiving something in return. Working a shift without pay seems a double penalty. Not only does the employee lose a day's pay, but he is required to work as well. Currently, the Sheriff and the employee can negotiate to have a day of vacation be used instead serving a day of suspension. The Sheriff presented no evidence of overtime costs being burdensome because of disciplinary suspensions, necessitating adding such language. Without a compelling need, this language should not be added by a fact-finder.

With regard to the language prohibiting suspensions or fines of 3 days or less to be arbitrated, again the Employer has shown no compelling reason to recommend this language. The Employer has admitted that employees accept the lesser suspensions of a three days or less without going to arbitration. Therefore, there is no need to add this language. Furthermore, unarbitrable discipline meted out in a progressive discipline scheme will ultimately be grieved at a more serious level, such as when an employee is discharged. This may realistically be almost two years after the last discipline has been imposed. This would undermine both an employee's due process rights and the element of just cause.

III. Article XXXVIII - Grievance Procedure

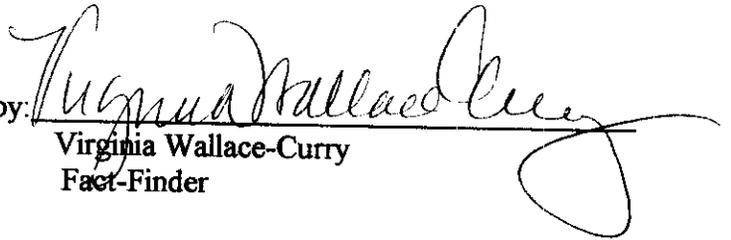
Recommendation

Maintain current contract language.

Rationale

The Sheriff proposed a change in the language of 38.01 to reflect its proposed changes to 36.09(C) regarding suspensions or fines of three days or less not being arbitrable. Because the original proposal was not recommended, the proposed change in this language is not necessary.

Submitted by:



Virginia Wallace-Curry
Fact-Finder

July 25, 2006
Cuyahoga County, Ohio

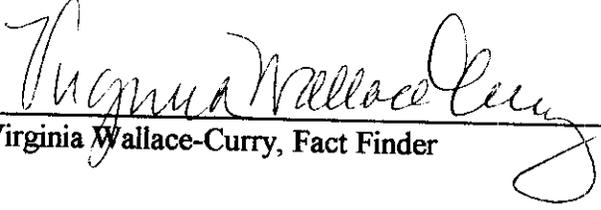
CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Report for the Medina County Sheriff and the Ohio Patrolmen's Benevolent Association was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, July 25, 2006. The Fact-Finding Report was served upon:

S. Randall Weltman, Esq.
Ohio Patrolmen's Benevolent Association
10147 Royalton Road
North Royalton, OH 44133

James A. Budzik, Esq.
Johnson & Calaluca
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1001 Lakeside Ave.
Cleveland, OH 44114

Mr. Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street
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Virginia Wallace-Curry, Fact Finder

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Arbitrator
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July 25, 2006

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Re: Medina County Sheriff and OPBA
SERB Case No. 05-MED-10-1241

Gentlemen::

Enclosed is a copy of my fact-finding award in the above captioned matter, along with the statement for my services and expenses rendered as Fact-finder.

I enjoyed working with you and hope I will have the opportunity to do so again in the future.

Sincerely,


Virginia Wallace-Curry

cc: Edward E. Turner, SERB

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