

IN THE MATTER

OHIO EMPLOYMENT
RELATIONS BOARD

OF

2007 SEP 14 P 12: 24

FACTFINDING

BETWEEN

THE CITY OF YOUNGSTOWN, OHIO

AND

YOUNGSTOWN POLICE ASSOCIATION/
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (OPBA)

Issue: Factfinding
Dates of Hearing: May 7, May 9; and June 15, 2007
Location: City of Youngstown; Law Department Offices
Case No: 06-MED-09-0943
Date of Award: September 13, 2007

Finding: Each recommendation is specifically addressed below.

Union Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

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September 12, 2007

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RE: City of Youngstown -and- OPBA
Issue: Factfinding
Case No.: 06-MED-09-0943

VIA FACSIMILE and Regular Mail

To each,

Enclosed please find two (2) copies each of the report and recommendations and two (2) copies each of the Factfinders bill.

In the meantime, I thank both Parties for giving me the opportunity to serve you in this matter and, if the occasion should so arise, I look forward to working with you in the future.

Cordially yours,

Michael Paolucci

cc: SERB /

attorney | arbitrator | patent attorney

Administration

By letter dated November 17, 2006, from Edward E. Turner, the Administrator with the Bureau of Mediation, the undersigned was informed of his designation to serve as Factfinder in a procedure mandated by R.C. 4117.01, et al., more specifically R.C. 4117.14(C)(3). On May 7, May 9; and June 15, 2007, hearings 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.

Unresolved Issues presented

The following thirty three (33) issues were presented for factfinding:

1. Article 2 – Scope of Contract/Application of Civil Service Law/Mid-Term Bargaining
2. New Article – Union Activity/Union Time
3. New Article – Bargaining Unit Work
4. New Article – Part-time work/Auxiliary Officers
5. Article 7 – Salary and Wages
6. Article 8 – Insurance Benefits
7. Article 9 – Holidays
8. Article 10 – Vacations/Side Letter
9. Article 11, Section 1 – Sick Leave
10. Article 11, Section 4 – Longevity
11. Article 11 – Methods of Pay for Ancillary Benefits/Side Letter
12. Article 11, Section 6 – Retirement and Severance
13. Article 11, Section 7 – Uniform Allowance
14. Article 11, Section 9 – Accumulated Time
15. Article 11, Section 10 – Injury on duty
16. Article 11, Section 15 – Fitness Fee
17. Article 11, Section 17 – On-Call
18. New Article – Extra Job Duties/Government Programs/Chevrolet Center
19. Article 12, Section 10 – Vests
20. Article 15 – Seniority
21. Article 17 – Duration/Termination of Contract
22. New Article – Residency
23. Article 19 – Employee Parking
24. New Article – Tuition Reimbursement
25. New Article – Ten (10) hour shifts

26. New Article – Discipline
27. New Article – Physical Abilities Testing
28. Article 16 – Personnel Files
29. New Article – Critical Incident Procedure
30. New Article – Maintenance of Benefits
31. New Article – Health Care Committee
32. New Article – Retirement Conversion/ Appendix B, Drug and Alcohol Testing Policy #7

* * *

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 City is located in Northeastern Ohio; its approximately one hundred and seventeen (117) police officers are represented by the Union. The Agreement as configured prior to the beginning of negotiations has been in place since sometime in the 1980's and the Parties have been involved in collective bargaining since the early 1970's. In the past the Parties have entered into factfinding twice and conciliation once.

The City began negotiations with the notion that the Agreement was disorganized, self-contradictory, and in need of "housekeeping" changes. The Union described the City's attempts as wanting to "throw away" the Agreement and "start over." It wanted to make sure that any changes that were made would not result in unforeseen consequences. Negotiations started in August 2006 and the Union claimed that the City's proposals were not just a change in the structure of the Agreement, but would result in cuts to significant benefits. It also complained that the proposals were a "no increase in wages" based proposal.

The Union claimed that the City has shown that it is in good financial condition and points out that there has been no "ability to pay" arguments put forward. It cited the City's general fund carry-over as being the largest in thirty years.

After extensive negotiations, mediation, and some agreement, the Parties reached a consensus that the Agreement should be re-structured. Agreement on thirty (30) issues was reached prior to the first day of factfinding. After the first day of factfinding, when the Parties were prepared to present over fifty (50) issues to the undersigned, the Parties were encouraged to

attempt additional negotiations. Following that attempt, agreement was reached on many of the issues and thirty two (32) were presented to the undersigned.

Contentions of the Parties
And Recommendations of the Factfinder

The following issues were presented at the hearing:

1. Article 2 – Scope of Contract/Application of Civil Service Law/Mid-Term Bargaining
2. New Article – Union Activity/Union Time
3. New Article – Bargaining Unit Work
4. New Article – Part-time work/Auxiliary Officers
5. Article 7 – Salary and Wages
6. Article 8 – Insurance Benefits
7. Article 9 – Holidays
8. Article 10 – Vacations/Side Letter
9. Article 11, Section 1 – Sick Leave
10. Article 11, Section 4 – Longevity
11. Article 11 – Methods of Pay for Ancillary Benefits/Side Letter
12. Article 11, Section 6 – Retirement and Severance
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1. **Article 2 – Scope of Contract/Application of Civil Service Law/Mid-Term Bargaining**

Recommendation

This issue was settled after the factfinding hearing. The settlement is incorporated herein as a recommendation.

2. **New Article – Union Activity**

The Union proposes new language that would require the City to pay for certain union officers to attend union-related seminars; contract negotiations; and for union meetings to be announced at roll call.

The City proposes no change.

Union Contentions

The Union contends that its proposal is only a memorialization of a long-standing practice. It contends that the contractual mandate is modest; would not cause a hardship on the City since it is already being done; and would prevent future management from changing the benefit it now enjoys for Union officers. The Union contends that its proposal is not only in line with comparables, it is far less than some.

The Union objects to the current situation where time is given at the discretion of supervisors. It argues that there are indications that changes are about to occur, and it wants to contractually mandate what has been the Parties' long-standing practice. Therefore, it asks that its proposal be adopted.

City Contentions

The City rejects the Union's proposal because no other bargaining unit in the City either has the benefit, or has shown a need for the benefit. Since it is not a problem, it contends that no changes are necessary. Its comparables are contiguous cities and Parma – which is comparably sized. It contends that the Union's proposal is vastly different from the comparables, and it argues it is too broad a benefit. It contends that only one supervisor has had a problem with providing notice of union meetings, and therefore such is insufficient to require the benefit in the Agreement.

The City contends that no other City contracts mandate providing paid time off for attendance at union seminars; it points out that these employees receive a large paid time off benefit that can be used for this purpose; it asserts that the Union's proposal would result in Union officers receiving a "blank check" that could be used to protract negotiations; and it asserts that the issue is best addressed in the ground rules made prior to each negotiation.

Recommendation

It is recommended that some of the Union's proposal be included. The evidence indicated that some of the supervisors are having problems giving notice of union activity and therefore a problem exists. This is not an uncommon benefit, especially in large cities with large bargaining units where communication is a problem. Moreover, the comparables show that, at least during negotiations, paid time off is given when negotiations occur during scheduled shifts. Based on these factors, it is recommended that:

Notices of union activities must be made during roll-call; space on the bulletin board shall be granted; and union officers must be paid to attend negotiation sessions when they occur during scheduled shifts. No other changes are recommended.

3. New Article – Bargaining Unit Work

The Union proposes language in response to the City's proposal (Issue 4). The Union's proposal would strengthen the current language to remove any ambiguity as to the City's ability to hire part-time police officers.

The City proposes no change.

Union Contentions

The Union argues that the City's proposal would impair the integrity of the bargaining unit. Although it believes that hiring part-time police officers is prohibited by the current Agreement (recognition article), its proposal would memorialize that long-time practice of the department. It contends that the City's proposal would result in a downsizing of the bargaining unit population; and it would interfere with the bargaining unit officers' ability to perform side-jobs or overtime opportunities.

City Contentions

The City contends that the Union's proposal is unsupported by the facts and has no comparable to other internal bargaining units. The City complains that the Union's proposal is permissive. It argues that it would be prohibited from assigning job duties to positions outside of the bargaining unit if duties of those jobs overlapped with bargaining unit positions, therefore it

is unreasonable. It points out that neither the internal nor the external comparables have such language, and therefore such would be an anomaly here.

Recommendation

The Union's proposal is not recommended. While its fears are understood, the language proposed is very broad and would have unintended consequences. The use of part-time employees is not unusual in police forces across the state. It is felt that the Parties would be best served by entering negotiations on the issue. If, instead, this broad language is imposed, it would be reasonable to expect that the Union would refuse to further negotiate the use of said part-timers without having negotiated over the impact. Therefore, it cannot be recommended.

4. New Article – Part-time work

The City proposes language that would permit it to hire part-time officers. Further, the proposed language would prevent it from reducing the size of the force or from reducing the amount of regularly scheduled hours.

The Union rejects the City's proposal.

Union Contentions

The Union's position is set forth above under Article 3. In addition, it cites external comparables where there are no part-time officers. It complains that the City used the safety forces to help it push for new tax increases under the promise that it would put more officers on the streets. Instead, it argues that the City is attempting to use the increased revenues to hire cheaper part-time officers. Although the City cited public statements made by officers, it points

out that those statements were used to get the tax increase passed. It argues that the City has failed to use any of the new revenues to the benefit of officers.

The Union showed that there were 145 officers in 2002; and that it was promised that there would be at least 145 officers if the tax increase passed. Since there are only 117 officers now, then it argues that the City has not followed through with its promises. It complains that the higher ranked officers are not moving out and therefore there is no way for any of this bargaining unit's officers to move up in the ranks. It contends that the City's proposal does nothing to protect the bargaining unit.

City Contentions

The City contends that its proposal would allow it to utilize part-time/auxiliary officers in order to supplement staffing and increase patrols. It argues that the proposal would protect current officers by requiring that the use of such officers not cause a reduction in force or regularly scheduled hours among the bargaining unit. It contends that this is a public safety issue since its labor relations should not interfere with its ability to put more officers on the street in an efficient, economic fashion and where reasonable protections are provided to bargaining unit personnel for job security.

The City cites instances where the Union has made public comments about the need for more officers to better handle the workload. It cites the fact that other police forces already utilize part-time/auxiliary officers, and it contends that it is reasonable for it to seek the flexibility in order to better protect the public. It claims that it already has more full-time officers than other comparable jurisdictions, and it contends that use of part-time officers would

give it a more cost-effective means of putting more officers on the street, allow it to better cover time off for bargaining unit members, and would allow it to better serve the public.

The City counters the Union by pointing out that it has 190 officers counting the higher ranks and that it has more officers per capita than any comparable city. It argues that its proposal is simply a cost-effective way to put more manpower on the streets without having to commit to the costs that increasing the number of full-time officers would require. It contends that its proposal is the most cost-effective manner to protect the public - something that this bargaining unit has been very vocal about in its public statements.

Recommendation

The use of part-time officers is common in large municipalities. It is accepted that use of part-time employees becomes necessary to cover absences and vacations of regular officers. While the threat to the size of the bargaining unit is legitimate, if an employer agrees not to use part-time officers in a way that would reduce the workforce, then it becomes more acceptable by being less threatening. While the City's proposal is reasonable, there is an open consideration as to how much overtime will be lost due to the use of part-time employees rather than full-time employees. While overtime is typically considered a punishment toward an employer for working their employees too many hours, many employees see it is a benefit that must be protected. Except for handling this issue, the City's proposal is reasonable as being typical.

However as noted above, this is an issue that is best negotiated rather than imposed. Therefore, a recommendation has been crafted that would take into account the different concerns, and would assist the Parties in negotiating over the change. To accomplish this goal, it is recommended that the provision be adopted with the following changes:

- No part-time employees are permitted unless there are one hundred twenty (120) bargaining unit employees;
- After one hundred twenty (120), the City may hire no more than five (5) part-time employees; and,
- that the Parties continue bargaining on the issue by having a re-opener after two (2) years to determine the appropriate limitations; and that the issue of the use of part-time employees be addressed as it impacts overtime opportunities.

5. **Article 7 – Salary and Wages**

The City proposes wage increases of 1.5%, 1.5%, and 1.5% in each year of a three (3) year Agreement, with it being made effective as of the signing of the Agreement.

The Union proposes wage increases of 4.5%, 4.5% and 4.5% in each year of a three (3) year Agreement, made retroactive to December 1, 2006.

Union Contentions

The Union cites the other police bargaining unit raises of 3%, 4.5%, and 3% as being the most comparable. Moreover, it points out that the City has not made an inability to pay argument, thus establishing its ability to pay for the increase. It cites the efforts of the bargaining unit in getting the most recent tax increase passed as justification for its proposal. It complains that not enough money is being spent on the police force and that the general fund's use is underused for the force. It contends that the City's finances are much improved; that its improvement is due, at least in part, to the Union's efforts and the attrition of the police force; and that as a result its proposal is reasonable. It contends that its proposal keeps the bargaining unit in line with the comparables, and it asks that it be the recommendation of the undersigned.

City Contentions

The City contends that its offer is reasonable by striking a balance between the need to judiciously manage public dollars and providing an equitable wage increase. It argues that Youngstown is one of the poorest demographic cities in the state; that the bargaining unit is competitively compensated among similarly sized cities in the same geography. The City complains that this bargaining unit has pushed for new language and benefits without agreeing to the reasonable changes the City has proposed. It contends that it is not reasonable for this bargaining unit to demand the same benefits the other bargaining units have received since they have not agreed to the same changes the remaining bargaining units have agreed to.

The City contends that there is no reason to further exacerbate the pay difference between this bargaining unit and their local peers. It points out that these bargaining unit members are some of the highest paid municipal police officers in the area. Since these employees have already received increases far in excess of the statewide average for wage increases; and far in excess of the external comparables; then it claims that its proposal is reasonable.

Recommendation

The City is in a poor area with a well compensated police force. It is ranked second among external comparables and the municipality that is first is Parma – a city that is performing well. It has fewer steps in the wage scale, and it is paid a higher wage than external comparables. Its internal comparable, YPRO, and it have been in lock step for many years on the wage increases. Although the City's claim that it should not be treated the same as other employees rings true, it will be the goal of the undersigned to recommend proposals that justify an increase to match YPRO's. Moreover, much of the changes that the City is requesting is

being recommended, and that alone justifies a higher wage increase than might otherwise be deserving.

It is recommended that this bargaining unit receive a 3%, 4.5%, and 3% wage increase in each year of a three (3) year agreement.

6. **Article 8 – Insurance Benefits**

The current Agreement requires the City to provide health care coverage and benefits; and requires employees to contribute 7% to the premium with a cap at \$25.00 per month for single and \$50.00 per month for family coverage. All costs in excess are paid by the City.

The Union proposes current benefits and coverages, and proposes changes to the maximum premium contribution of \$30/\$55 in year 2; and \$35/\$60 in year 3 of the Agreement.

The City proposes that certain language be changed in a non-substantive way to “clean up” the organization of the Article. It proposes a 10% premium contribution by employees, with a cap of \$35.00 for single and \$75.00 for family coverage. It proposes that the cap be increased in 2008 to \$65.00/\$115.00 and for 2009 to \$80.00/\$150.00. The City also proposes changing the date in which it must make a carrier change; permitting it to change carriers as long as it meets with the Union prior to any changes; and that will allow it to offer alternative plan coverages.

Union Contentions

The Union contends that its proposal is supported by the Parties’ bargaining history as well as by the comparables in the area. It rejects the City’s proposal as being out of line with comparables, and not justified. It argues that the City’s proposal would result in significant increases to the bargaining unit and is way out of line with the comparables it cited.

City Contentions

The City contends that its need to change the date in which a carrier can be changed is justified because of problems that have arisen in the past. It argues that delays in the bidding process have caused it to miss deadlines and forced it to continue using a more expensive plan. Its claims that its proposal on the clean up of the language is similar to other such proposals, and it argues that such would have no impact on the bargaining unit.

The City argues that its proposal on language is similar to that contained in the IAFF Agreement, the Teamster Agreement, or with that contained in the other police bargaining unit. It points out that all non-bargaining unit employees have been paying a ten percent (10%) uncapped contribution for insurance for three (3) years. It asks that bargaining unit personnel be treated the same. It contends that the proposal is reasonable and reflects the growth in employee contribution to insurance premiums that is occurring statewide.

Recommendation

The City's proposal is recommended. The internal comparables on this issue are too strong to ignore. The entire workforce is contributing in a manner consistent with the City's proposal. To grant this bargaining unit a different benefit than everyone else has already agreed to would be unwieldy, unreasonable, and unwise. This bargaining unit has benefited from having a very modest participation in the premium costs when across the state similar bargaining units have been paying higher contributions for many years. It is time for this bargaining unit to join the other officers in the state and pay more of the premium costs. Together with the wage

increase, the increased share of the premium costs is justified. Therefore, the City's proposal is recommended.

7. Article 9 – Holidays

Recommendation

This issue was settled at the factfinding hearing. The settlement is incorporated herein as a recommendation.

8. Article 10 – Vacations

Recommendation

This issue was settled at the factfinding hearing. The settlement is incorporated herein as a recommendation.

9. Article 11 – Sick Leave

The City proposes a change that would require ill employees to obtain a physician's certificate that indicates "that the employee was examined, the date and time of such examination, that the employee cannot work, and the expected return date." The City also proposes eliminating the ability to transfer sick leave to the City from other public entities. It proposes changes to address a situation where an officer is unable to perform their duties.

The Union proposes changing language regarding the use of a physician's certificate so that it does not require the doctor to state the "nature of the illness" and only needs to state that an illness justified the absence. The Union also proposes increasing the payouts for unused sick

leave to 4.5%; and that would allow employees to donate their sick leave to other bargaining unit members.

Union Contentions

The Union contends that the current language requiring the doctor to state the nature of the illness is an unnecessary intrusion into officers' private lives and may violate HIPAA. It contends that its proposals are reasonable and compensate employees for not using their Sick Leave.

City Contentions

The City contends that its proposals are justified based on the internal comparables. It argues that the Union's proposals have no comparables. It contends that the citizens of Youngstown should not be forced to subsidize employee benefits earned with another jurisdiction that was of no benefit to them. Since this is already in other bargaining unit agreements, then it contends it is justified being included here. The City contends that recent comments made by the Union officers cause it to believe that there is an issue of the ability of certain officers to serve the public. It contends that its proposal regarding removal of a disabled employee is consistent with the ADA and Ohio Administrative Code.

Recommendation

The City's proposal requiring doctor's confirmation of illness is not recommended. Such is too far reaching and too burdensome. Moreover, if abuse is suspected, the current TA's Section 7 should be sufficient coverage to discover if illnesses are not genuine. Unlike the

YPRO Agreement which only requires the examination after ten (10) days of illness, this proposal is every three (3).

The City's proposal regarding non-transferability is not recommended. There is no showing of abuse or need. Since it is already part of the Ohio Revised Code, then there is justification for its existence, and none for its removal. It is recommended that it remain.

The City's proposal regarding suspected handicaps is reasonable on its face, but unfamiliar in its need. In the experience of the undersigned, the specificity contained in the proposal is not typically necessary. If an officer has reached the stage where his performance and ability is so handicapped that an examination is justified, there is no need for specific language. Management rights and just cause provisions allow a municipality to remove an officer and determine if he/she is capable of performing their duties. While this language is not objectionable as written, there was no factual situation cited that would explain why it needs to be included now. As such, it cannot be recommended. It should be noted that the Parties should both have an interest in agreeing to language that allows this type of examination in a manner that protects officers from endangering themselves, each other, and the public. However, such is not recommended as it would be better to reach agreement rather than be imposed.

The Union's proposal on sick leave donation is not recommended. The record is not sufficient on internal or external comparables, and it was not sufficiently explained why such was needed. It is therefore not recommended.

10. Article 11, Section 4 – Longevity

The City proposes non-substantive clean up language, and proposes the current method of calculating longevity pay.

The Union proposes adding new language that it claims has been the Parties' practice. This new language would increase specific benefits at the same rate of the wage increase. These would be Sick Leave; Longevity; Hazardous Duty; Uniform Allowance; College Education Bonus; Fitness Fee; and On Call.

The City proposes clean up language; it proposes increases to these benefits at the same rate as the wage increase; and it proposes a change to the structures of the payment in a manner that is easier for the City finance department to administer. The City also proposes a side letter that would explain how the calculation is made.

Union Contentions

The Union contends that the current city ordinance could result in an officer losing a full year of longevity payment if they are suspended for one (1) day. It wants to avoid the unreasonable result by superceding the ordinance.

City Contentions

The City contends that its method results in the same payment amount to members, but is easier to administer. It complains that the Union has offered no reason as to why it cannot agree to its method of payment. Since its position matches other bargaining units, including the other police bargaining unit, then it argues that it is fair and should be recommended.

Recommendation

Similar to other portions of this factfinding report, when there is no reason to not agree to the changes proposed, then it must be recommended. The City's proposal is fair, and is arguably

The Union proposes eliminating language that would deduct time during an officer's suspension. It also proposes increasing the benefit by 4.5% in each year of the Agreement.

Union Contentions

The Union believes that an officer should not be penalized by lost longevity benefits during a suspension and makes this proposal to avoid such a result.

City Contentions

The City contends that its proposal matches the other police bargaining unit and the firefighters unit. It argues that the Union's proposal attempts to avoid caps on payment and language interpretation that the other bargaining units have agreed to.

Recommendation

As noted, the clean up language is reasonable and has no impact. The internal comparables are persuasive and support the remaining position of the City. Thus, it must be recommended. The Union's proposal on the elimination of the suspension language is also recommended. It is something of *de minimus* value to the City, and it is an aggravation that is not worth the trouble. If an employee's misconduct is not serious enough to cause a separation, then it is not serious enough to disrupt the longevity calculation. The remaining sections as it pertains to increases is addressed in other areas, and is not dealt with here.

11. New Article – Methods of Pay

better than the Union's for bargaining unit members. Since the method of calculating the benefit is based on the same percentage increase, and then divided over three (3) years, then due to compound interest the bargaining unit is getting more of the benefit sooner than its own proposal would give. Therefore, the City's proposal is recommended. This is handled in other portions of this report.

If the Union is correct on its proposal, it would be recommended. Enough doubt as to the accuracy of their claim was raised that the proposal cannot be recommended. If it is proven that an officer has lost a full year of longevity benefits because of a short suspension, the change would have to be recommended. Absent such a showing, it was only argument and was thus insufficient to justify the change. The issue should remain open until an application of the ordinance shows some inequity.

12. Article 11, Section 6 – Retirement and Severance

The current Agreement pays retiring employees 35% of their unused, accumulated sick leave upon retirement.

The current Agreement allows retiring officers with more than fifteen (15) years of service to purchase their duty weapon for \$1.00.

The Union proposes changing this to include a 50% of the accumulated sick leave that is in excess of five hundred (500) hours. The Union proposes adding a provision that if an officer retires on a disability retirement, he shall be eligible for the same benefit with only five (5) years of seniority. Its proposal allows an exception to the added provision if the retiring officer's ownership of a gun could pose a risk to the public. The Union also proposes a 100% payout if an officer dies in the line of duty.

The City proposes clean up language; it proposes new language that would match the other police bargaining unit allowing officers to convert the sick leave separation payment over a three (3) year period; and it opposes any additional sick leave payout benefits.

Union Contentions

The Union argues that the comparables justify its position. It cites numerous jurisdictions that give these benefits and it claims that it is justified here.

City Contentions

The City argues that the Union's proposal is a dramatic increase in the amount of sick leave conversion available to bargaining unit members that no other employee currently has. It argues that it is more fair to treat this bargaining unit the same as the other bargaining units by keeping the benefit the same as it currently is.

Recommendation

It is recommended that the City's proposals be adopted with some exceptions. The Union's proposal on an officer that is killed in the line of duty is recommended. These changes are fair; and the benefits are consistent with comparables. The increased payout percentage is too great a jump to be justified and is rejected.

13. Article 11, Section 7 – Uniform Allowance

The current Agreement requires a uniform allowance.

The Union proposes increasing that amount by a percentage equal to the increased wage percentage. The Union also proposes new language to memorialize the practice whereby the payment is made by April of each year in a separate check.

The City's proposes making the uniform allowance payment pro-rated if an employee retires after the payment is issued.

Union Contentions

The Union claims that the City's proposal is not in the YPRO contract.

City Contentions .

The City contends that its proposal is reasonable and is consistent with the other bargaining units

Recommendation

The City's proposal is recommended as it pertains to the pro-rated payment. It is not clear why an undeserved benefit should continue. If an employee retires after receiving a uniform allowance, they have been unjustly rewarded. The uniform allowance is to pay for the care and maintenance of a uniform and keeping money when the uniform does not need care and maintenance is unjust. The City's proposal is reasonable and matches other bargaining units. Therefore, the City's proposal is recommended.

As it pertains to the "one check" proposal, such is recommended. It appears that such has already been agreed to. Nonetheless it is recommended that the uniform allowance payment be made in one (1) check in April, except for the first year of the Agreement.

Union Contentions

The Union contends that there is no need to change the old Accumulated Time provision. It points out that the language has been in place for a long time with the same FLSA and it has always been deemed appropriate. It argues that there is no reason to change it now.

The Union argues that its proposal on Court Time is consistent with the settlement agreement the Parties entered into and is consistent with past practice. It contends that the shift changes hit the bargaining unit harder and differently than it does to the YPRO unit. Since most of the court time is spent on Monday through Friday, and since officers are the ones who have to respond to subpoenas the most, then it asserts that it should be compensated for the irregular hours.

The Union argues that the two (2) hours of AT time for training memorializes a practice that has always been in place. It contends that the language is intended to institute that practice.

City Contentions

The City contends that since the other public safety unions have agreed to the delineation language, then such should be acceptable to this bargaining unit. The City contends that since the other bargaining unit has agreed to its A/T time, and since it is reasonable, then it should be permitted here. It maintains that its position is consistent with the longstanding practice of the Parties. It argues that the Union's request is not reasonable, and would result in officers receiving as much pay as a Lieutenant for assisting with training.

14. Article 11, Section 9 – Accumulated Time

The Union proposes a change to language that would pay officers more if they receive more than one (1) subpoena per day. It contends that the proposal would match a Settlement Agreement the Parties entered into before negotiations began. The Union's proposal would pay an officer a minimum of four (4) hours if there is a gap of at least one (1) hour between successive court appearances. If there is not a gap, the officer would be paid either four (4) hours or time and one-half, whichever is greater.

The Union also proposes an added provision that would pay an officer eight (8) hours of accumulated time (in addition to overtime pay) when they are required to work overtime on a midnight shift after completion of an afternoon shift and then after returning again for an afternoon shift the next day. This is referenced as a shift change.

The Union proposes paying an officer two (2) hours of accumulated time per eight (8) hours shift in addition to his/her regular hour of pay whenever they are assigned to train a probationary police officer.

The City proposes clean up language; it proposes delineating between "old" accumulated time and "new" accumulated time by breaking the benefit into two (2) separate articles. Old time is defined as that given prior to the FLSA being made applicable to public entities. The City proposes language that would give officers four (4) hours of Accumulated Time for appearing in the morning, afternoon, or evening court. Its proposal would have the four (4) hours cover all appearances made during that time. It rejects any new proposal that would create a new category of Accumulated Time for training.

Recommendation

As it pertains to the Court Time payments, comparison of the City's proposal with known benefits for minimum pay shows that it is reasonable and in fact, generous. The Union's proposal overreaches and is far more than has been experienced by the undersigned. As noted, the internal comparables are the most persuasive and the City's proposal should match that of the other police bargaining unit. The City's proposal is recommended.

While the Union's proposal at first blush appears to be larger than is typically seen, the record shows that their argument claiming that it is only a memorialization of current practice was left un rebutted. As a factfinding matter, it must be recommended that the benefit be included in the Agreement as part of the Parties' practice. Such is common in factfinding – if a benefit is being paid as part of a pattern, then it is fair to include it in the Agreement to prevent future administrators from stopping the benefit at their whim. Thus, the Union's proposal on training pay is recommended.

15. Article 11, Section 10 – Injury on duty

The City proposes clean up language; and it proposes creation of a list of pre-approved providers that employees must use before they can receive IOD payments. In the event that an officer chose not to use the list, they would still be eligible for workers' compensation benefits.

The Union proposes the *status quo*.

Union Contentions

The Union argues that there was no showing of a problem and therefore, there is no reason to change the current practice. It contends that the officers ability to use their own

physician should remain, and it asks that it not be forced to agree to an arrangement that gives management too much control.

City Contentions

The City contends that the pre-approved list is necessary to cut down on fraud. It argues that since other bargaining units, including the other police bargaining unit, has agreed to the use of the IOD list, then it is justified here.

Recommendation

The City's proposal is recommended. In this case it is not just the internal comparables that justify the change, but also the current language that makes the change *de minimus*. The current language already allows the City to require an employee to go to a physician of its choosing; and it already mandates that that physician determines whether the employee qualifies for IOD pay. In this case, the physician of the City's choosing is changed into a list of providers. It not only is *de minimis* in the change, it is arguably a better system for the bargaining unit. Therefore, it is recommended.

16. Article 11, Section 15, – Fitness Fee

Recommendation

This issue was settled at the factfinding hearing. The settlement is incorporated herein as a recommendation.

17. Article 11, Section 17 – On-Call

Recommendation

This issue was settled at the factfinding hearing. The settlement is incorporated herein as a recommendation.

18. New Article – Government Programs/Chevrolet Center

The Parties have agreed to delete current language.

The Union proposes language that would give the right of first refusal to patrol officers to work government programs. It also proposes that it be given the opportunity to work special details at the Chevrolet Center in a manner equal to the ranking officers. It proposes a ratio of 4 bargaining unit members for every 1 non-bargaining unit worker.

The City has proposed language that is consistent with the other police bargaining unit whereby scheduling of extra duty details and notice of opportunities is spelled out. The City also proposes that language be included that sets forth the principal that employees refrain from using the color of the office and the City resources for personal gain. This would apply to officers working private employment opportunities that are not paid for by the City.

Union Contentions

The Union contends that the right to work government programs is actually a benefit to the City since this bargaining unit's wages are less than the ranked officers.

The Union argues that the ranked officers have taken advantage of their position and taken the most-favored assignments at the Chevrolet Center. To prevent future abuse, and to rectify the unfair assignment of work, it contends that its proposal is fair and would remedy the ranked officers abuse of these assignments.

City Contentions

The City argues that the Union's proposal is permissive in that it attempts to govern an employment relationship controlled by an entity other than the City. It contends that the proposal is a blatant attack on management's reserved rights under the Ohio Revised Code. It rejects any other proposal involving minimum manning as imposing on management's right to manage the workforce.

The City contends that its proposal for scheduling of details is consistent with the other police bargaining unit. It argues that such is reasonable as a method to insure that public dollars are not used to subsidize non-public employment, which it has no control over. It does not want to be put into a position where it is paying the workers' compensation costs of private employers. It compares the use of the police officers badge and authority as a misuse of the office for personal gain. It objects to the Union's proposal regarding private duty jobs.

Recommendation

It is recommended that some of the City's proposal be adopted. The Extra Duty Assignment language is appropriate EXCEPT:

1. It does not provide enough protection to these officers against abuse of extra duty assignments being given to higher ranked officers or to favored officers. Some protection is required to prevent all of the best jobs going to higher ranked officers or to favored officers. A ratio similar to that proposed by the Union is recommended. In addition it is recommended that overtime assignments be given based on a rotating group of willing officers who are chosen based on both the rotation and seniority. A recommendation on the precise ratio is purposefully not

being made because there was a lack of evidence as to the appropriate number. However it is hoped that either through bargaining or the continuation of this process a fair number can be determined.

2. The City's proposal on non-city paid assignments is recommended except that it should include language that states that the City shall not unreasonably refuse entering into documented arrangements. These are normal arrangements that police officers use throughout the state to supplement their income. There is a benefit to the City, to the officer, and to the private entity and municipalities have often entered into arrangements where approval of such private duty assignments are agreed to. It is necessary for this City to recognize that these are normal parts of a police officers duties, and as long as it does not unreasonably withhold permission, such private duty assignments should only be done through its administrative capacity.

19. Article 12, Section 10 – Vests

Recommendation

This issue was settled at the factfinding hearing. The settlement is incorporated herein as a recommendation.

20. Article 15 – Seniority

Recommendation

This issue was settled after the factfinding hearing. The settlement is incorporated herein as a recommendation.

21. Article 17– Duration/Termination of Contract

The Union proposes a three (3) year agreement effective from December 1, 2006 through November 30, 2009. The City proposes a three (3) year agreement that would effective on signing.

Recommendation

Absent some showing of bad faith, or other justification for not paying retroactivity, retroactive pay and effective date of an Agreement is typically granted. There is nothing in the record to suggest that the Union has done anything that would justify not paying wages retroactively. Therefore, it must be recommended that the wages be made retroactive, and that the duration of the Agreement be made as proposed by the Union.

22. New Article – Residency

The City rejects the notion of addressing residency in the Agreement.

The Union proposes making residency requirements only for Mahoning County, and the Counties contiguous.

Union Contentions

The Union contends that since recent Ohio law has outlawed residency requirements, then it is justified in its proposal of making residency only within the area contiguous to Mahoning County. It contends that officer safety, schooling, and economics justify its proposal.

City Contentions

The City relies on several facts to support its objection to the residency proposal. It points out that no other bargaining unit has such a provision. It argues that inclusion of the proposal here would lead to future disputes since the legality of the legislature's action and its relationship to the Home Rule Amendment is not yet resolved. Since the current state law has *not been tested constitutionally; and since as written it would supercede the Agreement; then it asks that a new provision not be included.* Otherwise, it contends, the Parties will be at odds legally immediately after the Agreement is signed. It argues that the Union's proposal would be invalid as a matter of law.

The City complains that the Union's proposal would negate the City's residency requirement; would create an unacceptable amount of uncertainty in regards to the City's obligation under the FLSA; and that it would be best left alone at this time.

Recommendation

It must be recognized that this issue is one of the more emotional issues in collective bargaining – it is especially so among the safety forces. Many factors are present when considering the issue; and many unsaid issues lie just beneath the surface. The most significant factor is the appearance of abandonment that follows when everyone on the safety force argues that they should not have to live in the very place that they are charged with protecting. If the economics, schooling, and safety are so bad then the question arises why the officers stay at all. The job of police officer is more than just a job, it is a profession where the officers serve and protect the community. If they are not a part of the community in their personal lives, then there is a legitimate sense that it is just a job where the benefits are taken, and then used elsewhere.

The municipalities in this circumstance have a legitimate purpose in preventing this from occurring.

This important consideration must be balanced with the pragmatic fact that many municipalities have too few choices to offer for places to live. An officer does not need to sacrifice everything in his/her service to their community. To offset this problem, it must be observed that there is rarely something that can not be found within the county where the subdivision is located. It is reasonable to balance these competing issues by requiring an officer to live within the same county, but to not require that they live within the city boundaries. In this way, the balance of legitimate issues is made; the municipality achieves most of what it seeks – the officers must at least reside in the county, and the officer are able to find sufficient choices in their place to live.

Under normal circumstances, the recommendation that would be made, and that has been made in similar situations, would require residency in the County, but not in the City. In this case the problem is the City's persuasive argument with regard to the legal issues that have arisen. The City showed that the Union's proposal would immediately cause a conflict of law issue between the Agreement, the City's Charter, and the Ohio Revised Code. It is bad enough that the issue would be a conflict between the constitutionally unanswered question regarding state law; when the City Charter is thrown into the mix, it becomes a different analysis. It is no longer about the equities of the Parties positions – it becomes a question about whether the Parties should include language that is guaranteed to result in a lawsuit. Whatever the merits of the Parties' respective positions, it is reasonable to conclude that new language should not be adopted if it is guaranteed to immediately go to court for final resolution. The Union's claims have some influence; however it is not sufficient to overcome the current problems in the

conflict of laws. This conclusion is thus based solely on the problem created by state (especially) and city (less so) law – the City should not be forced to adopt a provision that is reasonable to expect will end up in court immediately after its adoption. It has nothing to do with the merits of the arguments presented.

It is therefore recommended that no residency issue be included in the Agreement until the State Law issues are resolved by the State Courts.

23. Article 19 – Employee Parking

The City eliminated parking spots in a parking lot immediately adjacent to the police station. The City also paid to have a new parking lot paved that is approximately two (2) blocks from the police station.

The Union proposes modifying the provision so that a specific number of parking spots are made available to bargaining unit personnel.

The City proposes elimination of language that is no longer applicable. It proposes adding language that requires officers to adhere to the City's parking guidelines.

Union Contentions

The Union contends that its proposal is a matter of officer safety, convenience and fairness. It asserts that the distance is too far; requires officers to carry their equipment for two (2) blocks; and could put officers in danger by exposing them to attacks while walking between the parking lot to the station.

City Contentions

The City contends that since it has spent thousands of dollars repaving, lighting, fencing, and providing security measures for a parking lot that is less than a five (5) minute walk, then it should have the right to demand that officers use the lot provided for them. It argues that the Union is being petty by asking that it fix tickets received by officers who park illegally. It asks that it be able to demand that bargaining unit members comply with its regulations.

Recommendation

It is unknown why the current Agreement has the provision – it is unusual to have such a benefit as part of any collective bargaining agreement. This issue is normally within management’s discretion. Moreover, the other police bargaining unit has already agreed to the City’s proposal. It is recommended that the City’s proposal be adopted. Two (2) blocks is simply not very far – indeed it is the experience of the undersigned that the distance complained of here would be considered prime parking in other jurisdictions. There is nothing to justify the change proposed by the Union; and the City’s proposal is within normal management rights. Therefore, the City’s proposal is recommended.

24. New Article – Tuition Reimbursement

There is no current tuition reimbursement.

The Union proposes a tuition reimbursement of 50% of tuition and fees for nine (9) credit hours per semester or six (6) credit hours per quarter for law enforcement or related degree programs. It proposes minimum grade requirements

The City proposes no change.

Union Contentions

The Union contends that this benefit will be good for both Parties. It will assist those who are unable to pay for tuition costs, and the City will benefit by having a better educated workforce. It contends that the comparables justify the benefit, and it asks that it be included.

City Contentions

The City contends that the proposal is not supported by internal nor external comparables; and it completely abrogates the responsibility of management to insure that public dollars are managed judiciously. Since it makes no allowance for availability of funds; and does not require an employee to remain in the City service for any set time period, then it does not account for the important considerations of making sure that the City benefits from the costs it is paying for. It discounts the benefit since management has no say in whether coursework is job related.

Recommendation

The Union's proposal is recommended with significant changes. The fact that the higher police bargaining unit does not have the same benefit carries little weight since the period when *an officer would be most interested in taking educational courses would be earlier in their career* – when they are officers. The Union's proposal is recommended with modifications:

- the City must have approval to insure that the coursework is relevant to police work;
- there must be a two (2) year commitment to the City following receipt of the reimbursement; and

- the benefit should cover tuition only.

25. New Article – Ten (10) hour shifts

The Union proposes a set of general guidelines for an explanation of contractual benefits for officers assigned to ten (10) hour shifts.

The City proposes a side letter that would require the Parties to meet and discuss the parameters of creating ten (10) hour shifts within the department and its effects. If the Parties can agree, it proposes then including the language into the Agreement.

Union Contentions

The Union argues that the language is consistent with the general order and would assist it in helping officers who are assigned to the ten (10) hour shifts.

City Contentions

The City contends that the Union is too early; that the City is not prepared to mandate ten (10) hour shifts when there still exists too many uncertainties. It asks that the Parties be given a chance to evaluate the impact of such changes and argues that a side letter would be a better method of addressing the unknown.

Recommendation

The Union's proposal is premature. It is better to allow collective bargaining to have a chance rather than impose standards. At some point it will be proper to include new language or a side agreement to address the special issues associated with ten (10) hour shift employees.

Such is not at the inception of the program, and therefore the Union's proposal can not be recommended.

26. New Article – Discipline

This is a new article where section 1 through 5 have been agreed to.

The Union proposes that discipline not be imposed until the arbitration process has been exhausted or waived.

Union Contentions

The Union contends that the delay of discipline is justified because of the economic hardship suffered by employees that includes more than lost wages and benefits.

City Contentions

The City argues that its proposal is the same as the other police bargaining unit. It points out that in many instances the Union has simply given the City notice to arbitrate and then not even requested a list of arbitrators until months after the final step of the grievance procedure. Since the Union's proposal would delay the imposition of discipline for months after the discipline has been issued, then it contends that it is unreasonable.

Recommendation

The Union's proposal regarding the delay of discipline is rejected. Such would be unique to the American form of labor relations, and would unreasonably interfere with management's

ability to issue progressive discipline. It is not the standard in industrial relations and there is no need to make this jurisdiction a test case.

27. New Article – Physical Abilities Testing

The City has proposed an extensive physical abilities testing requirement. The program would involve gradual implementation; compensation for those who meet the goals; and other elements that would generally require bargaining unit employees to stay in good physical condition.

The Union proposes language that would expressly prohibit the City from mandating physical fitness standards as a condition of employment.

Union Contentions

The Union contends that this should be a voluntary program and that rewards should be issued based on the voluntary program. It argues that imposition of the fitness standards is unfair especially for long-term employees.

City Contentions

The City argues that many of the bargaining unit members are so out of shape that they have difficulty walking from the parking lot into the office while carrying equipment. It cites an instance in court recently where such was admitted to by an officer. It contends that the City has grave concerns about these officers and their ability to protect the public. It asks that its proposal be considered in this context as a method for improving the physical fitness of the bargaining unit employees.

Recommendation

The use of physical fitness standards has become commonplace among large cities in Ohio. Generally speaking, such is considered a good idea as long as it is implemented over time; allows bargaining unit employees to gradually get used to the standards; and does not unfairly harm employees by failing to take into consideration things such as age, and physical restrictions. These programs are reasonable based on the fact that the job of police officer is often physically demanding and requires that the police officers be in the best shape possible to defend themselves and their citizenry. Too often the demands of the job cause many officers to do just the opposite by becoming overweight, and the employer is justified in motivating officers to combat this tendency.

The City's proposal is recommended with some modifications. It should contain elements of joint participation, review of standards, and gradual implementation. The language is recommended to be modified so that the program is voluntary for some significant time; it should include a joint committee that sets the standards; that reviews the standards; and that gradually implements the standards. Although physical fitness standards are becoming the norm, so is their gradual implementation. Review of the City's proposal shows that it moves too fast; and has too small room for error. Therefore, it must be recommended that the standards be implemented through a committee; but that if the committee does not reach a conclusion on the standards within one (1) year, management has the right to implement the standards. Moreover, no discipline for failure to abide to the standards can be imposed during the life of this Agreement. This will allow employees to get used to the standards; to change their lifestyles and

habits to become in compliance; and to have the bargaining unit give some input into the effectiveness and reasonableness of the standards.

28. Article 16 – Personnel Files

The Union proposes new language that would require citizen complaints to be notarized, sworn, and in writing. If not done, it proposes that the language prohibit such complaints from forming the basis for discipline.

The City rejects this portion of the Union’s proposal, but has agreed to the majority of the rest of the provision.

Union Contentions

The Union complains that without this language false and frivolous complaints will be filed against its members. To prevent such from occurring, it asks that management be prevented from relying on such poor evidence to base its disciplinary matters.

City Contentions

The City contends that the Union’s proposal is permissive, overreaching and unnecessary.

Recommendation

Although the Union’s concerns are real, they would unreasonably hamper the participation of the citizens in the reporting of bad officers. The system typically works well

enough that there is not sufficient reason to provide the extra protection proposed by the Union here.

29. New Article – Critical Incident Procedure

The Union proposes language that would protect an officer who is “traumatized” while in the line of duty from making any statements.

The City rejects this proposal.

Union Contentions

The Union claims that this is necessary to protect officers in times of duress from making statements that may be less than accurate due to the nature of the circumstances.

City Contentions

The City argues that the proposal is unrealistic and would interfere with an investigation.

Recommendation

This proposal is unheard of. It is doubtful that the officers requesting this protection would offer the same to criminals being investigated. Indeed, an accused criminal acting in this manner would likely be painted as acting guilty at any trial that follows. It is an impractical proposal and is rejected absolutely.

30. New Article – Maintenance of Benefits

The Union proposes a “maintenance of benefits” provision that would leave any benefit that is now in effect, and which is not specifically provided for in the Agreement, to remain in effect.

The City rejects the proposal.

Union Contentions

The Union proposes this language as a way to protect its members and the benefits that they have spent a large amount of time and effort in negotiating.

City Contentions

The City describes the Union's proposal as an attempt to circumvent their duty to bargain in good faith, bring issues to the table to negotiate, and attempt to bargain those issues into the Agreement. It contends that the proposal would only promote disputes, and is too vague.

Recommendation

This proposal is the equal-opposite of the "zipper clause" that management will often propose. Just as those management proposals are not usually included unless given in exchange for some valuable benefit, this type of provision is not granted unless something valuable is given in return. Lacking specific justification that would explain the need for the proposal, it can not be recommended.

31. New Article – Health Care Committee

The Union proposes that designated members of the Union participate in all Health Care Committee meetings.

The City proposes a Side Letter that would allow it to create a committee where the remaining bargaining units in the City participate. Once all bargaining units are in the committee

the City would agree to allow changes to the insurance plan only through majority vote. Each bargaining unit would have a representative on the committee.

Recommendation

Health Care Committees are good, often well-received when created, and a positive use of the collective bargaining relationship. The only weakness in the Union's proposal is that it *mandates participation in all health care committee meetings without defining exactly what that is*. It is recommended that a Health Care Committee be created; that all bargaining units participate; and that it be separate from the internal workings of management. If these precedents are created, the Union's proposal has merit. If however, the proposal interferes with management's ability to meet privately, it is not recommended.

32. New Article – Retirement Conversion

The Union proposes including a benefit that would pay employees in the last three (3) years of employment, one (1) week of vacation and 120 hours of sick leave at a 35% payout. This benefit previously existed in the Drug and Alcohol Policy of the previous agreement (Union Exhibit – 55) and in previous agreements before that.

The City complains that the proposal is based on a clerical error.

Union Contentions

The Union argues that the benefit exists; that it was negotiated; and that it should not be simply removed because the City requests it. It argues that the benefit is enforceable and should remain.

City Contentions

The City contends that at the addresses some sort of PERS based leave conversion program that wound up in the Drug and Alcohol Testing Policy Appendix. It asserts that the provision's inclusion in the Drug and Alcohol Policy is a clear clerical error and does not belong in the Agreement. It argues that the provision is redundant; is intended for a PERS unit; and could be used to circumvent the OPFPDF, which would be unreasonable.

Recommendation

Clerical or "scrivener's" errors must be deleted when possible; and are unenforceable when discovered. In this case, no rationale would justify the inclusion of the provision, and it is recommended that it be removed.

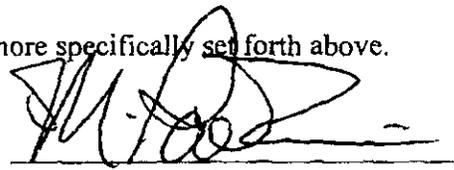
Remaining Unaddressed Issues

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 13, 2007
Cincinnati, Ohio


Michael Paolucci