

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2007 JUN 18 P 12: 29

JUNE 15, 2007

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

CASE # 06-MED-09-1100

and

CUYAHOGA COUNTY SHERIFF'S
DEPARTMENT

FACT FINDING REPORT

APPEARANCES

For the Union

Michael John Hostler, In House Counsel
Jeff Perry, Business Agent
Kenneth Carr, Member, Bargaining Committee
Terry Neff, Member, Bargaining Committee
Victor Hester, Member, Bargaining Committee
Frank Costanza, Member, Bargaining Committee

For the City

Christopher Russ, Employee Relations Administrator
Kevin McDonough, Warden
John Summers, Lt.
Kenneth Kochever, Director of Corrections
Karen Neiman, Budget Analyst
Mary O'Toole, Employee Relations Specialist

ROBERT M. LUSTIG
Fact Finder
615 Leader Building
526 Superior Avenue, E.
Cleveland, Ohio 44114-1964

Introduction

This fact finding involves the Corrections Officers (“C.O.s”) of the Sheriff’s Department represented by the Ohio Patrolmen’s Benevolent Association (“OPBA” or the “Union”) and the Cuyahoga County Sheriff’s Department (the “Sheriff” or the “Employer”). The Agreement between the OPBA and the Sheriff expired December 31, 2006.

The undersigned was duly appointed Fact Finder. A mediation session held May 8, 2007 was unsuccessful. The fact finding hearing was set, by agreement of the parties, for May 29 and 30, 2007. The hearing commenced at 9:00 AM both days and was closed at about 4:30 PM on May 30.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, Union Exhibits 1-7 and Sheriff’s Exhibits 1-33B. The Fact Finder thanks both parties for their professionalism and courtesy.

In considering the recommendations made in this report, the Fact Finder considered the criteria set forth in Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 private employment.

Facts

The parties entered in a collective bargaining agreement (the "CBA") covering the period 1/1/04 through 12/31/06 which has expired. Joint Exhibit 1.

This negotiation involves the 586 C.O.s who guard the inmates in the two buildings that comprise the Cuyahoga County Jail. This jail is unique among the county jails of this state in that the entire inmate population is either convicted felons awaiting transfer to prison or persons charged with felonies and awaiting trial. The inmate population numbers about 2,000 persons. The average length of stay is about 50 days. Inmates are housed in pods of 48. There are four to eight pods to each floor of the jail.

With that as background, we turn to the issues that were presented at the fact finding hearing, in the order they were presented, bearing in mind that the burden of proof is on the party advocating a change.

Preliminary Organization of the CBA

The present CBA is unusual in that the provisions, while titled, are not numbered.

The parties have agreed that the provisions of the new CBA will be reorganized and numbered.

Issue I
Union Representation
Sub-Issue 1
Pay for Training

Union Position: Pay up to 16 hours to attend training.

The Union provides extensive training for its Directors, Stewards and Bargaining Committee Members to attend training sessions to make them better qualified and give them a better understanding of what can and should be done. Some other counties pay for such training.

Employer Position: No change.

No other bargaining unit within the Sheriff's Department has such a clause. The cumulative affect of this, along with other Union requests has a significant impact on the total compensation package.

Discussion

While some Sheriff's Department employees are paid for training, it is the Union that actually pays for that time by reimbursing the Sheriff.

Finding and Recommendation

No change.

Issue I
Union Representation
Sub-Issue 2
Number and Name of Union Reps

Union Position: That the number of Union representatives who are authorized to represent the Union in collective bargaining and in grievance matter be changed from 9 to 11 and that the titles of "Steward" and "Director" be combined to "Director".

Employer Position: No objection.

Discussion

This matter is agreed.

Contract Language

Section 1 under Union Representation (p. 4 of the CBA) be altered from “9” Stewards to “11” Stewards.

The following shall be added to Section 1:

The terms Director and Steward will be combined to the word Director as far as powers and duties of the representative in relationship to the Department. The bargaining unit shall still maintain four (4) Bargaining Unit Members that may or may not also hold the position of Director.

Issue I
Union Representation
Sub-Issue 3
Pay for Negotiations

Union Position: Bargaining Unit Members should be paid for the time spent in negotiations.

The Union asserts that other unions within Cuyahoga County have such a provision, building security services being one such union. Further, SERB classifies C.O.s as SG (security guards) as distinguished from police and deputy sheriffs and that comparables show pay for negotiating time. Finally, the Union claims the Employer was late for bargaining sessions thereby placing an undue burden on members who were attending on their own time.

Employer Position: No change.

This issue should be under Leave of Absence. There are eight bargaining units within the Sheriff's Department. For the four who work in the jail other than the C.O.s, their union reimburses the Sheriff for negotiation pay in three units while the fourth is paid by the Sheriff. Of the other three units, two get no pay and one, the Deputies, reimburse the Sheriff. Sheriff's Exhibit 1.

Discussion

Obviously, there is no uniformity within the department. No evidence was offered of what the practice is in the rest of the county.

The argument that the Employer would take greater care to start negotiating sessions on time if it was paying the negotiations is met with the argument that, if being paid, negotiations would have incentive to prolong negotiations.

However, no other unit is being paid for time spent in bargaining sessions by the Sheriff.

Recommendation

No change.

Issue I **Union Representation** **Sub-Issue 4** **Pay for Union Rep at Step 3 and Grievance**

Union Position: Pay Union Rep for attending a Step 3 or a Grievance while off-duty.

Step 3s are generally heard between 10:00 AM and 2:00 PM on one Thursday each month. There may be 5 to 20 hearings. Those on-duty are heard first. Sheriff's Exhibit 1 shows others are paid by Sheriff for such attendance.

Employer Position: No change.

The comparables do not support this change.

Discussion

Sheriff's Exhibit 1 does show three of the other seven units are paid by the Sheriff for attendance at disciplinary hearings without reimbursement to the Sheriff. This is different from the pay for negotiations.

Recommendation

Union Reps attending Step 3 and Grievances who are off-duty should be paid.

Contract Language

Add a new Section 2 to Union Business Leave of Absence (CBA p. 4) as follows:

Each Union Director shall be allowed to attend grievance and other Union related events while that Director is on-duty, with no loss of pay. In the event a Director has to attend a step three or an arbitration hearing, while off-duty, the Director (s) will be paid for the period of time spent at any hearing but in any event the rate of compensation will not be less than for a minimum of one (1) hour.

Issue II **Hours of Work** **Sub-Issue 1** **Breaks**

Union Position: C.O.s should get a 30 minute break/lunch for each four hours worked.

C.O.s should be give two 15 minute breaks during a 12 hour shift plus their 30 minute meal break per 12 hour shift. The Corporal's CBA gives them two 15 minute breaks. The C.O.s need these breaks given their long hours.

Employer Position: No change.

The current practice has no limit on the number of breaks.

Discussion

It is evident that, at current staffing levels, C.O.s have difficulty getting any kind of relief. It is also evident that breaks cannot be formally scheduled. However, the Break language is in the Corporal's CBA.

Recommendation

Adopt language similar to the first sentence of the Corporal's Break language.

Contract Language

Two 15 minute breaks will be provided to each Employee during their normal work day, whether 8 hour or 12 hour in addition to the meal break.

Issue II **Hours of Work** **Sub-Issue 2** **Shifts and Hours**

Union Position: Add three 8 hour shifts and stagger the days worked to allow weekends off.

The Union advocates return to the 8 hour shift claiming that this would reduce overtime and provide staffing adequate to provide full coverage, breaks and coverage in emergencies.

Currently there is a 2-10 shift that gets two days off but never a weekend day. These 8 hour people are the ones who get extended when a shortage arises on the night shift.

Employer Position: No change.

The 12 hour shift was adopted two contracts (six years) ago. When on 8 hour shifts, there were 700 C.O.s. Now there are 586. In the 1990s, while on 8 hour shifts, the C.O.s had a 50% turnover. The Sheriff went to 12 hour shifts after a consultant reviewed operations. While this results in overtime for the week in which a C.O. works four days, economically, it is an overall saving in total compensation due to reduced amount of fringe benefits, particularly health care costs.

While the Sheriff realizes this issue is of major importance, it could only partially accommodate this request if the Union agreed to double posting on the night shift as that would eliminate 15 posts at night. Then the Sheriff could add a 6 AM-2 PM hour shift.

The jail was designed to have one C.O. per floor at night. Most jails have reduced staff at night.

Discussion

While many jails work with a reduced staff at night, it also appears that most jails work 8 hour shifts. Double podding raises obvious safety issues for both the C.O.s and the inmates, especially on a 12 hour shift.

What the Union really appears to want is a return to the 8 hour shifts and elimination of the 12 hour shift. Neither that nor requiring the Employer to add another 8 hour shift is within the authority of the Fact Finder. Ohio Revised Code Section 4117.08(C) allows the Employer to “determine the adequacy of its workforce.” The Management Rights Clause of the CBA reserves to the Employer both the above statutory right and:

- 4) The right to determine the overall methods, process, means and personnel by which operations are to be conducted; (emphasis added).

However, other 24/7 safety forces have managed to provide rotating schedules so employees have one, if not two, full weekends off. In this day of the computer, devising a schedule that allows some weekends off is certainly possible. Police and firefighters have such provisions.

Recommendation

Adopt a police/firefighters type scheduling that rotates days on and off to provide at least one Saturday/Sunday off out of four weekends.

Issue II **Hours of Work** **Sub-Issue 3** **15 minutes for roll call**

Union Position: Reduce the workday by 10 minutes.

The CBA calls for an 8 hour and 15 minute and a 12 hour and 15 minute period to accommodate roll call. There is no roll call. Employees clock in at the access point, get their assignments and go to their posts. There is no need for the extra time.

Employer Position: No change.

The extra 15 minutes is covered by the fact that the 30 minute lunch period is only paid for 15 minutes.

Discussion

There is no roll call. There appears to be no need to clock in 15 minutes ahead of the start of one's shift.

Recommendation

Reduce the definition of workday for 8 and 12 hour shifts by 10 minutes.

Contract Language

Adjust Hours of Work, Sections 1, 2 and 3 accordingly (CBA p. 11).

Issue III
Overtime
Sub-Issue 1
Compensatory Time Off

Union Position: Comp time must be granted unless it would unduly disrupt operations.

The Union claims the current language of the CBA, which is Section 2 under "Overtime," CBA p. 12, violates the FLSA and the holding in *Beck vs. City of Cleveland* 390 F3d 912 (6th Cir, 2004).

Employer Position: No change.

The language of the CBA tracks Ohio Revised Code Section 4111.03. Further, there has never been a grievance about denial of comp time.

Discussion

What Beck says is that an Employer cannot deny a request for comp time to avoid incurring overtime because that is not "unduly burdensome."

Comparing the CBA with the Corporal's, it does appear the second sentence of Section 2 is unnecessary and may be confusing. That sentence does not appear in the Corporal's CBA.

Recommendation and Contract Language

Delete the second sentence of Section 2, Overtime, CBA p. 12, which reads:

Compensatory time shall be used within 180 days of accrual.

Issue III
Overtime
Sub-Issue 2
Emergency

This issue was agreed. Delete the words "permitted or" from Section 3 of Overtime, CBA p. 13.

Issue III
Overtime
Sub-Issue 3
Volunteer List

Union Position: Specify the criteria for lists of voluntary and involuntary overtime.

Five years ago these lists were computer generated. Further, presently, it is the 8 hour shift that is being required to work overtime because a 12 hour person could not be required to work beyond 16 total hours.

Employer Position: No change.

The software from which the lists were generated is no longer available. Today the list is prepared by hand.

Discussion

Section 4 of the CBA now provides:

The Employer shall equitably offer daily overtime to Employees on seniority using a rotating list method.

However, Section 6 of the CBA (p. 13) seems to cover this issue in that it provides for involuntary overtime in reverse order of seniority.

Recommendation

No change in existing language.

Issue IV
Employee Discipline

The parties have agreed to add a new sentence to the end of the first paragraph of Section 2 and a new sentence after the first three sentences of the third paragraph of Section 2 (p. 18 of the CBA) as follows:

(bold face indicates new language)

SECTION 2. Pre-Discipline: An Employee has the right to Union representation at investigatory interviews upon request if the Employee has reasonable grounds to believe the interview may be used to support disciplinary action against that Employee. **The Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted, unless mutually agreed otherwise.**

. . .

The hearing shall be conducted by a neutral administrator selected from those administrators not directly in the chain of command of the Employee. The Employer shall elect the neutral administrator. At the pre-disciplinary hearing, the Employee shall have the right to be represented by the Union. **The Employee may elect to have a particular Union representative in attendance, provided that such representative is on-duty and the operations of the Employer are not unduly disrupted, by giving notice to the Employer on the response form currently utilized, unless mutually agreed otherwise. . . .**

Issue V
Grievance Procedure

The parties have agreed to the following changes to the article titled Grievance Procedure

beginning on p. 19 of the CBA.

- 1) Add a new additional sentence to Section 6 so that Section 6 will read as follows:

SECTION 6. The grievant is entitled to have a Union Steward at every step of the Grievance procedure. **The Employee may elect to have a particular steward, provided that the Steward is on-duty, the operations of the Employer are not unduly disrupted, and the Employee gives reasonable notice.**

- 2) Revise Section 8 (p. 19 of the CBA) to read as follows:

SECTION 8. Within thirty (30) days after a timely request for arbitration is submitted, the Union shall request a list of arbitrators from the Federal Mediation and Conciliation Service, the Ohio State Employment Relations Board (S.E.R.B.), or any other mutually-agreed labor arbitration service which shall contain the names of at least seven (7) arbitrators (**DELETE:** who are members of the American Arbitration Association.) **Failure to make a timely request for the list of arbitrators shall constitute a resolution of the grievance based upon the Employer's Step 3 response.**

Within thirty (30) calendar days after receiving such list, . . .

Arbitration fees and expenses shall be borne equally by the Employer and the Union.

Issue VI
Longevity

Union Position: Increase Longevity pay.

Currently, C.O.s get \$125 after five years and \$25 per year thereafter. The Deputies get \$375 after five years and \$75 per year thereafter. C.O.s in surrounding counties receive two to four times the longevity pay of Cuyahoga County C.O.s.

Employer Position: Demand is excessive.

Corporals and Inmate Services now get \$125 after five years and \$50 per year thereafter to a maximum of \$975 for Corporals and \$950 for Inmate Services. Cooks get the same as C.O.s with a \$700 maximum and RNs have no longevity pay.

Discussion

Longevity pay is not comparable to that in surrounding counties nor is it comparable internally with the Deputies.

Recommendation

Increase Longevity pay to \$250 after five years and raise the annual increment to \$50.

Contract Language

Alter the numbers in “Longevity” (CBA p. 22) accordingly.

Issue VII
Uniform Allowance
Sub-Issue 1
Uniform Maintenance

Union Position: Raise the Uniform Maintenance Allowance to \$900.

C.O.s are issued two sets of trousers and two shirts annually. They provide their own shoes and belts. Presently they receive \$150 per year as a maintenance allowance. The Deputies now get \$900. Surrounding counties pay \$650-775.

Employer Position:

Deputies are not comparable. Their uniforms are dry clean only. Corporal's CBA provides \$200.

Discussion

The uniform maintenance allowance is low compared to surrounding counties, but it is not

clear what, if any, are the differences in the required uniform.

Recommendation

Increase the uniform maintenance allowance to match the Corporals.

Contract Language

Alter Section 4 of Uniform Allowance and Appearance from \$150 to \$200.

Issue VII
Uniform Allowance
Sub-Issue 2
ID Badges

Union Position: Limit cost of a new badge to \$5. Allow use of initial in place of first name.

Badges need to be replaced due to wear and tear.

Employer Position: No change to cost. Agrees to use of initial.

Badges are made by the County. Sheriff is charged \$20 by the County. The Sheriff supplies a new badge once every three years without charge. Employees may change to use of initial on badge replacement.

Discussion

Sheriff's position is reasonable.

Recommendation

Allow use of initial rather than first name. Sheriff to replace badges every three years without cost to the Employee. Charge for replacement of lost or damaged badges will be limited to Sheriff's cost from the County.

Contract Language

Add new sentences to Section 5 of Uniform Allowance:

Employer to furnish new badges after three years without cost to Employees. Employees may use initial in place of first name.

Issue VIII
Holidays
Sub-Issue 1
Day after Thanksgiving

Union Position: Request the day after Thanksgiving be an additional holiday.

All other county employees including the Deputies have the day after Thanksgiving as a holiday.

Employer Position: Denied.

Other county employees gave up the half day off for a general election in exchange for the day after Thanksgiving.

Discussion

Comparables indicated this request should be granted.

Recommendation

C.O.s should have the day after Thanksgiving as an additional holiday.

Contract Language

Alter Section 1 of Holidays and Holiday Pay (CBA p. 26) to add the day after Thanksgiving as #10 and renumber Christmas Day to #11.

Issue VIII
Holidays
Sub-Issue 2
Observance

This issue was agreed at hearing.

Add the following language at the end of Section 1 of Holiday and Holiday Pay:

except Christmas Day, New Year's Day, Veterans' Day and Independence Day will be observed on the actual day.

Issue IX
Sick Leave
Sub-Issue 1
Sick Leave Credit

Union Position: Increase sick leave credit from 3.6 hours per 80 hours worked to .0575 hours per hour worked.

.0575 per hour equals 4.6 hours of sick leave for each 80 hours worked. This is the credit that is provided for non-bargaining unit employees in Section 4.04 of the Sheriff's Policies and Procedures Manual.

Employer Position: No change.

There is a terrible abuse of sick leave by the C.O.s, particularly on Saturdays and Sundays. This has led to a serious budget problem as the use of sick leave has caused much unanticipated overtime.

Discussion

While the Sheriff went to great lengths to demonstrate what it perceives as a serious overtime problem being caused by abuse of sick leave, that does not deal with the issue of whether the C.O.s are being treated comparably with other Sheriff's Department employees. The high use (abuse?) of sick leave may arise from the 12 hour shifts and scheduling issues.

The only evidence offered on this point is the Sheriff's own stated policy from its Policies and Procedures Manual.

Recommendation

Grant the request to increase sick leave credit to .0575 per hour worked but retain the 120 hour cap.

Contract Language

Alter Section 1 of Sick Leave (CBA p. 27) to change the rate from 3.7 hours per 80 hours worked to .0575 hours for each hour worked.

Issue IX
Sick Leave
Sub-Issue 2
Immediate Family

Union Position: Add step relations to definition.

Sick leave and bereavement leave may be taken for the “immediate family.” That term, as defined in the Sheriff’s Policies and Procedures Manuel includes step-parents, step-children, step-brother and step-sister. Those categories are not included on the definition in the current CBA.

Employer Position: Partial acceptance.

There is a specific disclaimer in the Policies and Procedures Manuel that the CBA governs. The new Deputies’ CBA does include some step relations but not step-brother or step-sister.

Discussion

The definitions of immediate family should be brought in line with the Deputies’ CBA.

Contract Language

Add “step-parents” and “step-children” to the definition of immediate family in Section 3 of Sick Leave (CBA p. 28) and Section 2 of Bereavement Leave (CBA p. 36).

Issue IX
Sick Leave
Sub-Issue 3
15 Minute Increments

The Union’s request to utilize sick leave in 15 minute increments was withdrawn.

Issue IX
Sick Leave
Sub-Issue 4
Incentive

Union Position: Institute an incentive of \$250 for each three month period an employee uses no sick time.

Such a program would encourage less use of sick time. Most surrounding counties have such a program.

Employer Position: Deny.

77 C.O.s qualify for FMLA. As the Employer cannot discriminate against them, it would have 77 employees eligible for no use of sick time incentive despite the fact they were off for FMLA leave. Such a program would add a cost without a benefit to the Employer.

Discussion

Given the large number of employees under FMLA, there would be little, if any, benefit from an incentive program.

Recommendation

Deny the request.

Issue X
Illness/Injury Leave

This issue was agreed. Insert the word "calendar" after "120" and before "days" in Section 1 of Illness/Injury Leave (CBA p.34).

Issue XI
Use of Vacation Leave

Requested changes to Section 2 and 4 (CBA p. 36) were withdrawn.

The parties agreed to add the following to Section 1:

An employee can combine any unused vacation balances with available compensatory time; or use the balance of less than a regular scheduled day on a “no pay/no AWOL” basis.

The parties agreed to add a new Section 5:

SECTION 5. An employee may use his time in one hour increments or greater, if staffing permits.

Issue XII
Access to Refreshments

The following changes were agreed to for this Article, which appears at CBA p. 43:

Section 1. Add “areas for” after “provide”.

Section 2. Add “with lid” after “cup”.

New Sections 3 and 4 as follows:

SECTION 3. Employees shall be permitted to bring into the jail, through the access point, one (1) 24 ounce, sealed bottle of non-alcoholic beverage per entry through the access point.

SECTION 4. The Department shall provide adequate size refrigeration/cooler units for employee lunches and beverages outside the secure area.

Issue XIII
Health & Safety

Union Position: The following additions to this Article (CBA p. 29-30):

- a) All doors in both jails will remain secured.
- b) Each floor have a rover/relief officer at all times.
- c) All control rooms be manned and have at least one working two-way radio.
- d) Officer assigned to a double pod be paid at 1½ times rate for time in a double pod situation.
- e) Each officer will have rotation of posts on the floor and not work the same pod on back-to-back days.

- f) All SRT members will be equipped with “shank vests”.
- g) When SRT is called out, the team will be provided full equipment and safety gear.
- h) There shall be no double podding of cells based on the DiLeone case.
- i) In an emergency, double podding will be permitted for no longer than 45 minutes and all prisoners will be “locked down” during these periods.

These are self-explanatory except for “e”. The jail has two buildings. Jail 1, the older, has six to eight pods per floor. Jail 2 has four pods per floor. Inmates are divided by age and past record. Presently C.O.s select a post, i.e. shift, floor and pod, by seniority each six months. The request is to rotate pods daily or weekly.

Employer Position:

- a) Doors are kept as secure as possible.
- b) This would require additional personnel. County has a hiring freeze plus budgetary problems.
- c) Jail 1 is 20 years old. Some central rooms are no longer used.
- d), h) and i) The DiLeone arbitration decision 10 years ago required a C.O. for each pod. However, one C.O. has handled two pods (double podding) during meals and in emergencies throughout the period.
- e) Having a C.O. at the same post fixes responsibility.
- f) and g) Equipment is individualized and is kept at the 10th floor. There is full equipment for the SRT.

Discussion

Present Section 4 of this Article requires the Employer to “take all appropriate steps” to correct any “unsafe conditions”.

The detailed requests infringe on Ohio Revised Code Section 4117.08(C) and the Management Rights Clause.

If there is an unsafe condition, the Grievance process seems a better way of dealing with the problem.

Recommendation

Deny these detailed requests.

Issue XIV
FMLA

Union Position: Replace current Section 8 of Sick Leave with a restatement of the FMLA.

In arbitration of discharge cases where the employee claims he should not have been charged as AWOL because he had FMLA leave, the Sheriff asserts that defense is not available but, instead, must be litigated in Federal Court. Further, the requested language is in the County Commissioner's CBA with the Department of Central Services.

Employer Position: No change.

The terms of the FMLA are in the Policies and Procedures Manual. None of the other CBAs in the Sheriff's Department have other than the existing Section 8.

Discussion

As previously mentioned, the terms of the CBA are controlling. The Policies and Procedures Manual is not part of the CBA. However, the only evidence on this point is that the FMLA language is not in any of the Sheriff's CBAs.

Recommendation

Deny.

Issue XV
Wages

Union Position: Increase starting pay 3% and annual 4½% increases. Add a Step 6 to the pay scale.

The Cuyahoga County Jail is unique in that it has the largest inmate population in the state, averaging 2,000 inmates. Further, unlike other county jails that have both misdemeanors and felonies, Cuyahoga County has only felonies, the misdemeanors being sent elsewhere. This is a high stress, difficult job, yet it is paid less than other C.O.s in Northeast Ohio. For a 10 year employee, Lorain and Geauga Counties pay \$22 per hour, Medina pays \$19.76 and Lake pays \$19.43.

Employer Position: 2.5% increase for 2007. Wage reopener for 2008-09.

Sandy Turk, Director of the Office of Budget and Management for the county, reviewed the budget for the county which, with explanations for some unusual items, shows revenue for the General Fund for 2001-07 is flat. There will be no early retirement buyouts for 2007 and the Commissioners have instituted a hiring freeze and asked the elected officials to do the same.

Ms. Turk conceded the county was planning a 3% increase in pay across the board, yet no provision was made for any increase in expenditures for wages for the C.O.s for 2007-09 (though they make up 586 of the Sheriff's 1087 FTEs), ostensibly because the amount of the raise was unknown when the estimate was made.

When compared to others in the SERB classification "SG" (security guard) (Sheriff's Exhibits 24 and 25), the C.O.s are among the highest paid.

Discussion

The Union uses estimates of pay that are based on 2080 hours. The Sheriff uses pay for the C.O.s based on 2184 hours, but it is unclear what the comparables are based on.

Comparing the C.O.s to the SERB SGs seem improper. The SG category includes people working at metal screening devices in public buildings. Even where it includes jail guards, as previously discussed, the Cuyahoga County Jail is unique.

Comparing the C.O.s to Lake, Geauga, Lorain and Medina Counties and having due regard for working conditions in Cuyahoga County, the C.O.s are being paid at the low end of the scale.

Further, reference to the Bureau of Labor Statistics' Consumer Price Index shows an increase in the CPI from 2005 to 2007 of 5.8%. The C.O.s received a 5% increase (2½ in 2005 and 2½ in 2006), so a .8% adjustment is needed to keep pace with ordinary inflation.

Recommendation

Increase for 2007, retroactive to January 1, 2007 of 4.25%

3% increases for 2008 and 2009.

Contract Language

Alter the pay under Wages accordingly.

Issue XVI
Shift Differential

Union Position: Pay additional \$0.60 per hour for night shift.

Extra pay for night shift is a normal perk. The RNs have \$2 shift differential. A number of counties provide a shift differential.

Employer Position:

Neither the Deputies nor the Corporals have this.

Recommendation

Deny. There is no history of paying a shift differential.

Issue XVII
Group Insurance

Union Position: 1) Retain present cost sharing.

2) Add a me too clause.

3) Add a provision to continue benefits during layoff for up to one year.

As to (1) and (2), this is to protect the current benefit. The continuation of medical coverage during layoff is a benefit the Deputies have had for 20 years.

Employer Position: 1) Bring eligibility in line with the Commissioners criteria.

2) Increase cost sharing from 5 to 7½% and \$20/10 to \$30/20 for HMO.

3) Reopen cost sharing in 2009.

The Security Officers and the Sergeants' CBAs provide for a reopener. The Commissioners demand the health care reopener for 2009.

The Sheriff's request for new Sections 4 and 5 was agreed.

Discussion

Cost sharing for medical costs is a contentious issue. The recommended increase in wages would be offset by an increase in the employees share of medical coverage premiums.

The existing contract language appears adequate in Sections 2 and 3. As the health plan is a cafeteria plan offered to all county employees, there is no need for a "me too" clause.

The request for extending medical benefits during layoff up to one year has previously been rejected in Conciliation.

Clarifying eligibility is appropriate.

A reopener is not appropriate.

Contract Language

Add "who satisfies the eligibility criteria established by the Board of Commissioners of Cuyahoga County" at the end of the first sentence of Section 1 of Group Insurance (CBA p. 25).

Add new Sections 4 and 5 by agreement:

SECTION 4. An eligible employee may elect or change coverage only during the annual enrollment period, as determined by the County, except in case of eligible changes in status, as determined by Section 125 of the federal Internal Revenue Code.

SECTION 5. Cuyahoga County shall be entitled to increase the cost containment features of the Flexcount Plan”, consistent with the March 17, 2003 arbitration decision and award involving Cuyahoga County, provided that cost containment shall not result in a reduction of benefit levels.

Issue XVIII
Retirement

Union Position: Increase payout for accumulated sick time from 25 to 50%, increase maximum accumulation and pay excess over 50% at minimum wage.

The Union seeks this increase to reward faithful service.

Employer Position: Deny.

Deputies have the same limits. This benefit for the C.O.s is equal to or better than the other units in the Sheriff's Department.

Discussion

There is no evidentiary basis for this request.

Recommendation

Deny.

Issue XIX
Promotion by Testing

This issue was agreed: Delete “with Ohio Administrative Code Section 123:1-7” and add the following at the end of Section 1 Promotion by Testing (CBA p. 14) after “with”:

the pertinent provisions of the Ohio Revised Code and Ohio Administrative Code.

Issue XX
Sick Leave Donation Program

It was agreed to add this as a new article as follows:

SICK LEAVE DONATION PROGRAM

SECTION 1. The intent of the Sick Leave Donation Program is to allow bargaining unit Employees to voluntarily provide assistance to co-workers in the bargaining unit who are in critical need of medical leave due to an extended injury or illness.

SECTION 2. A bargaining unit Employee may receive donated sick leave, provided that the donee Employee has:

- a) A serious medical condition as defined under the Family Medical Leave Act (FMLA) that would require the Employee to be away from work for more than ten (10) consecutive working days. Employees with intermittent absences (less than 10 consecutive days) do not qualify for leave donation;
- b) Exhausted all accrued leave, including sick time, vacation time, compensatory time and workers compensation benefits;
- c) Submitted documentation from a physician verifying the medical condition and duration;
- d) Submitted a fully-executed FMLA Dept. Of Labor Form WH-380;
- e) Given written permission to inform the Employee's fellow bargaining unit members of the need for donated time.

The maximum amount of donated leave that a donee Employee may receive is three hundred (300) hours.

SECTION 3. A bargaining unit member may donate sick leave, provided that the donor Employee:

- a) Voluntarily elects to donate the leave and does so with the understanding that the donated leave time will not be returned;
- b) Donates a minimum of one (1) hour and does not exceed thirty-six (36) hours per

calendar year. Donations must be in full hour increments;

c) Retains a minimum of thirty-six (36) hours of accrued sick leave at the time of donation;

d) Completes a leave donation form identifying the recipient Employee, the number of hours being donated and certifying that the leave donated is voluntary.

The Sheriff's Department will not solicit leave donations from Employees; the Union and/or bargaining unit members will be responsible for solicitation of donations and completion of the necessary documentation. The donation of sick leave time will occur strictly on a voluntary basis. No Employee can be forced or coerced to donate. Any Employee who feels they are being pressured to donate should contact the Employee Relations Department.

The Union and Sheriff's Department representatives will meet one year after the program is implemented to discuss any issues that may exist.

Issue XXI **Overtime**

Employer Position: Delete sick time from the calculation of overtime.

Unanticipated overtime is a major problem. The Sheriff plans for 104 hours of OT for the 12 hour employees. That results in 98,384 hours of planned OT. In 2006, there were an additional 19,667 hours of unanticipated OT. As previously discussed, the call offs, particularly for Saturdays, Sundays and holidays, result in much OT.

Under the new HB 187, time worked does not include OT. 48 counties now exclude or restrict sick time from the OT calculation. Other Sheriff's CBAs do not count sick time for OT.

Union Position: No change.

HB 187 leaves this question up to the parties. The bill does not forbid use of sick time in the OT calculation.

Such a rule will not lead to any significant savings and will only reduce the pay of the unfortunate 12 hour employee who gets sick in a week where he or she is scheduled to work four days.

Discussion

If all the 19,667 hours of unanticipated OT were paid at the top pay rate (\$18.29 per hour), the savings, if it were all eliminated, would be \$9.11 times 19,667 hours or \$179,166.37 or less than ½ of 1% of the Sheriff's 2006 actual expense for Personal Services.

Obviously, even if this change were made, all unanticipated OT would not disappear. No evidence was presented as to what actual effect this proposal would have.

As to the other CBAs, they vary considerably. The Deputies do count sick leave used in the prior week. The Corporals count "compensated sick time," as do the Communications Workers, while the RNs count "sick" time.

Recommendation

Deny.

Issue XXII **Part-Time Employees**

Employer Position: Seeks the right to use supervisory and part-time employees to cover unexpected absences.

Asserts this is needed when extremely shorthanded.

Union Position: Deny.

Opposes use of part-timers. It is divisive and dangerous. What this request really shows is the failure of the 12 hour shift.

The problem of absences could and should be solved by rotating work schedules to give

weekends off at least once a month.

Discussion

There is no provision anywhere in the CBA for the use of part-time employees nor is any such provision shown from any other CBA.

Recommendation

Deny.

Issue XXIII
Shift and Days Off Selection

Employer Position: Change selection from semi-annual to annual.

Most C.O.s keep the same shift. Would make a once a year selection in the spring.

Union Position: Opposes.

Discussion

There is no evidence why the existing system of semi-annual selection should be changed. Even if just a few employees change their shift or days off, there is no apparent advantage to denying them the ability to do so.

Recommendation

Deny.

Issue XXIV
Employees No Sick Time

Employer Position: Need to bring this section in line with Commissioners' requirements.

The present language has led to conflicts with the County Benefit Office's requirements.

Union Position: Opposes.

Discussion and Recommendation

This is a housekeeping change that should be granted.

Contract Language

Add the following at the end of the first sentence of Section 1 of Employee's No Sick Time

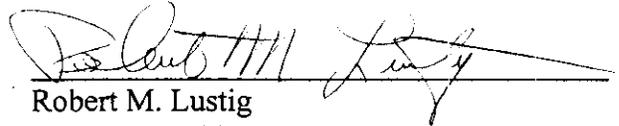
(CBA p. 25):

in accordance with eligibility requirements established by the Benefits
Office of Cuyahoga County.

Issue XXV
Probationary Period

This was agreed.

Delete "for cause" in Section 2 of this article (CBA p. 9).

A handwritten signature in black ink, appearing to read "Rob Lustig", written over a horizontal line.

Robert M. Lustig
Cleveland, Ohio
June 15, 2007

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by email and by regular U.S. Mail June 15, 2007 to:

Cuyahoga County Sheriff's Department
Justice Center
1215 West 3rd Street
Cleveland, Ohio 44113

Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
North Royalton, Ohio 44133

Attn: Christopher J. Russ
Employee Relations Administrator

Attn: Michael J. Hostler, Esq.

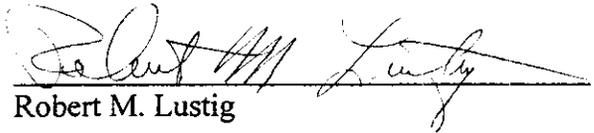
Via Email: shcjr@cuyahoga county.us

Via Email: attyhostler@yahoo.com

and by mail to:

State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

Attn: Edward E. Turner
Administrator, Bureau of Mediation


Robert M. Lustig