

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2008 JUL 21 A 9:43

In the matter of	*	07-MED-12-1281
	*	
Fact-finding between:	*	
	*	Fact-finder
Lake County Sheriff	*	Martin R. Fitts
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	July 17, 2008
(Deputies and Court Officers)	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Lake County Sheriff Services (the Employer):

Tom Grabarczyk, Labor Relations Management, Inc.
William E. Crosier, Chief Deputy
Mike Matas, Lake County Budget/Finance Director

For the OPBA (the Union):

Mark Volcheck, Attorney
T. Corey Svagerko, Deputy Sheriff
Randy L. Woodruff, Deputy Sheriff

PRELIMINARY COMMENTS

The bargaining unit consists of all sworn Deputy Sheriffs serving in the capacity of Deputy Sheriff, Court Officer, and Court Officer Corporal. There are approximately 41 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on May 16, 2008. The parties began negotiations in February 2008. The fact-finding hearing was held on June 24, 2008 at the Lake County Sheriff's Office in Painesville, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. At the hearing the parties reached tentative agreements on the following issues: Article 37 – Term of Agreement; and Article 27 – Overtime (Daylight Savings Time). There were six issues that remained at impasse: Article 14 – Sick Leave; Article 16 – Annual Leave (vacation); Article 17 – Seniority Payment; Article 18 – Wages; Article 23 – Court Time; and Article 25 – Holidays. Thus these six issues were submitted for fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the June 24, 2008 hearing.

ISSUES AND RECOMMENDATIONS

General Discussion

The Employer provided considerable economic data on the current and projected financial state of the County. It has many concerns about revenue in 2008 and 2009, and noted among other things that investment income is down considerably. Despite these concerns, the Employer is still offering a 3.0% annual increase, and notes that other bargaining units within the County have settled for similar increases in their contracts. It also noted that this bargaining unit has a history of receiving wage increases even when the Lake Narcotics Task Force contract, which was cited often by the Union as a comparable, has not received one.

The Union countered that the while other units may have settled for the 3.0% increases, nothing precludes this unit for negotiating for a greater wage settlement. It also argued that comparables outside of Lake County bargaining units were appropriate comparisons for this Fact-finder to consider, as bargaining units performing similar work regardless of jurisdiction appropriately set the market for wages for such work.

It is interesting to note that while the collective bargaining agreements that have been settled with other bargaining units within in Lake County were most often cited by the Employer as the most compelling comparable for the wage issue and others, the Union used the comparable of the contract with the Lake County Deputized Sergeants and Court Sergeants itself in support of its proposal for an improvement in the vacation schedule and for the addition of one holiday.

In fact, this Fact-finder does find that the internal Lake County Sheriff's Office contracts, especially that with the Deputized Sergeants and Court Sergeants, are generally the most valid contracts for comparison with the instant bargaining unit. That does not mean the provisions of one comparable should indiscriminately be applied to the instant contract, as some issues do impact bargaining units differently based upon frequency of occurrence, different work performed, other benefits provided, or other such factors. Further, at times other comparables are also valid, where they compare similar work performed in similar or nearby jurisdictions.

For the purposes of this Report, the recent settlements of the internal Lake County bargaining agreement comparables offered most often by the Employer generally are compelling, except where specifically noted herein.

In reaching the Recommendations outlined below, the Fact-finder has considered the economic arguments of the parties, the comparables offered, the other testimony and exhibits offered, and the general interests of the taxpayers of Lake County.

Issue: Article 14 – Sick Leave

Positions of the Parties

The Employer proposed an amendment to the language in the sick leave provisions to delete the current provisions for mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law contained in the current definition of “immediate family” in the Agreement.

The Union proposed the retention of the current language.

Discussion

The Employer provided evidence that other bargaining units have either agreed to delete these provisions or otherwise never had them included in their contracts.

The Union argued that the Employer offered no compelling reason to make such a change. In fact, the Employer acknowledged that it does not track this specific usage, and offered no evidence that sick-leave abuse problems have arisen due to it. It also acknowledged that its specific concern was not with this bargaining unit, but it was concerned with this issue having a whipsaw effect and appearing as an issue for inclusion in other agreements.

The Union is correct in asserting that there was no cause offered for the deletion of this language from the agreement. Further, the Union demonstrated that these provisions have been in the labor agreement for a number of prior agreements, appearing at least as early as 1993.

Undoubtedly when this language was first agreed-upon by the parties, it addressed some issue at the time and was a result of some give and take. There was no compelling evidence that there was a corresponding “give and take” in the current negotiations and nothing offered in return for this bargaining unit to give up this benefit.

Findings and Recommendation

In consideration of the discussion above and in light of the overall Recommendations contained in this Report, the Fact-finder recommends the Union’s proposal for the retention of the provisions for mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law as currently found in the Agreement.

Issue: Article 16 – Annual Leave (vacation)

Positions of the Parties

The Union proposed an improvement in the vacation schedule effective April 1, 2009. This improvement would decrease the years of service to move through the vacation steps, plus add an additional step for those with 25 years of service or more.

The Employer proposed the retention of the current vacation benefit schedule.

Discussion

As noted earlier, the Employer offered as comparables other settlements reached with bargaining units within the Lake County Sheriff's Office that reflected a 'package' settlement. Included in that package was an improvement in the vacation schedule very similar to that which the Union has proposed for this bargaining unit. On this issue the Union is the one offering the other settlements as the appropriate comparable, while the Employer position does not incorporate any vacation schedule improvements.

The Fact-finder notes that the Employer repeatedly referred to the other settlements as "packages" which implies that the costing those agreements included a calculation for the cost of the vacation schedule improvements. In fact, the Employer agreed that an improvement in vacations for this unit could be acceptable as part of a package with offsetting costs/benefits for both parties.

The Union argued that every additional day of vacation received by bargaining unit members will not necessarily result in that person being replaced by another person working. It is reasonable, however, to conclude that some additional costs will be borne by the Employer, especially when, as testified to by Chief Deputy Crozier, sick leave, vacation time, and other leave time is factored in.

Given that the greatest cost issue in these negotiations is the wage increase issue, and given that the Employer proposal for wages is given great consideration by the Fact-finder in the Recommendations below, and lastly given the comparable of the Employer's agreement with the Lake County Deputized Sergeants and Court Sergeants, an improvement in the vacation schedule is reasonable. However, in keeping with that comparable, the proper recommendation is one that mirrors the vacation schedule in that agreement rather than the Union's proposal.

Findings and Recommendation

In consideration of the discussion above and in light of the overall Recommendations contained in this Report, the Fact-finder recommends that language providing for a revised vacation schedule to become effective April 1, 2009 be added to Article 16, Section 1.

However, the Fact-finder recommends that the revised schedule be as follows:

<u>YEARS OF SERVICE</u>	<u>YEARLY ENTITLEMENT</u>
Less than 1 Year	-0-
1 Year But Less Than 6 Years	(3.1 x 80)
6 Years But Less Than 12 Years	(4.6 x 80)
12 Years But Less Than 19 Years	(6.2 x 80)
19 Years But Less Than 25 Years	(7.7 x 80)
25 Years or More	(9.3 x 80)

Issue: Article 17 – Seniority Payment

Positions of the Parties

The Union proposed that \$50 be added to the annual seniority payment in the first year of the contract, that an additional \$50 be added in the second year, and an additional \$50 be added in the third year.

The Employer proposed the retention of the current benefit level.

Discussion

The Union argued that this unit was deficient with regard to comparables it offered, including the Lake County Narcotics Unit. The Employer countered that the seniority payment is “just money” and that when its proposal for no addition to the current seniority payment is considered along with the Employer’s proposed 3% annual increase in wages, this bargaining unit will remain in the same relative position with other bargaining units as far as total compensation.

The Fact-finder notes that while this is not a large cost issue, the Union’s argument for an increase in the Seniority Payment is still not found to be compelling, especially in light of the recommendations for improvements in the vacation schedule and for the addition of a holiday made elsewhere in this Report.

Findings and Recommendation

In consideration of the discussion above and in light of the overall Recommendations contained in this Report, the Fact-finder recommends the Employer's position for the retention of current language and provisions for Seniority Payments.

Issue: Article 18 – Wages

Positions of the Parties

The Union proposed an increase of 3.75% in each of the three years of the Agreement. It also proposed the customary methodology for the implementation of the increase in each year. Further, it proposed the addition of the Court Services Corporal classification.

The Employer proposed an increase of 3.0% in each of the three years of the Agreement. It agreed with the Union's proposed customary methodology for the implementation of the increases, and it also agreed with the addition of the Court Services Corporal classification.

Discussion

The Employer's concerns with budgetary constraints are well founded, in light of its inability to unilaterally increase its overall annual budget and in light of the general state of the economy. However, it is clear that the Employer considered all the economic costs when arriving at its proposal for three 3.0% annual wage increases during the life of the new contract.

As noted earlier, this Fact-finder has seriously considered the Lake County Sheriff's Office internal comparables offered by both of the parties throughout the hearing as generally persuasive. Certainly the Union is correct that the fact that the other bargaining units settled for three 3.0% annual increases does not preclude this unit from seeking a higher settlement. And certainly the Union is correct that consumer costs are rising significantly. However, those arguments are not a compelling reason to support the Union's position for a higher wage increase.

In this regard, the Employer's argument for three 3.0% annual increases balances well with the Union's proposals for improvements in vacations and holidays, as evidenced by those other settlements. Together they provide both reasonable wage increases during the life of this agreement as well as provide "quality of life" improvements for the employees, at a cost to the Employer that it appears to be reasonable.

Findings and Recommendations

In arriving at the recommendations outlined below, the Fact finder has considered the economic arguments of the parties and the facts discussed above, as well as the entirety of the recommendations contained in this Fact-finding.

Therefore, the Fact-finder recommends that Article 18 and Appendix B be amended to reflect the addition of the Court Services Classification tentatively agreed upon by the parties.

Further, the Fact-finder recommends that Article 18 and Appendix B be amended to reflect a 3.0% increase effective at execution, with back pay to March 30, 2008; an additional 3.0% increase effective March 29, 2009; and an additional 3.0% increase effective March 28, 2010.

Additionally, the Fact-finder recommends the customary methodology for implementing the increase as tentatively agreed-upon by the parties.

Issue: Article 23 – Court Time

Positions of the Parties

The Employer proposed an amendment in the current provisions for the minimum payment for court time appearances when an officer is required to appear in court on off-duty time. It proposed that when an officer is required to appear in court on off-duty time for less than one hour, the compensation be reduced from the current three hours pay at time and one-half to a payment of two hours pay at time and one-half. Minimum payment for time when the officer is not released within one hour would remain at the current three hours at time and one-half.

The Union proposed the retention of current language.

Discussion

The Employer argued that the retention of this benefit level in the agreement would offset any other gains it proposed at the hearing. It noted that if a bargaining unit were at court for an hour or more, the current provision would still apply. It argued that this change is intended to reduce the Sheriff's costs where minimal time is actually spent in court.

The Union argued that this issue greatly impacts this bargaining unit. It's members who work second or third shift are called into court on their off-duty time and deserve adequate compensation. It noted that these provisions were changed in 2002 in return for other things that are not on the table in these negotiations. It also noted that the Employer could not demonstrate how many times a deputy was in court for less than an hour, and therefore it could offer no compelling reason for the change. Further, it showed that the current 3-hour provision was in line with what other surrounding jurisdictions pay for court time.

The Fact-finder is sympathetic to the Employer's concerns for payment for time not actually spent in court. However, the Union persuasively argues that that when a deputy is called into court it is a significant impact on their off-duty time, especially if the appearance is scheduled for 10 a.m. when a Deputy has just come off shift at 7 a.m.

The Employer offered no concrete evidence as to the expected savings of its proposed change. On the other hand, the Union's evidence showed that the current provisions are not out of the ordinary compared to court time provisions found in the collective bargaining agreements of nearby jurisdictions. The Fact-finder simply cannot conclude that there was a compelling economic reason offered at this time to merit a change in the current provisions.

Findings and Recommendation

In consideration of the discussion above and in light of the overall Recommendations contained in this Report, the Fact-finder recommends the Union's proposal for the retention of currently language in Article 23 regarding Court Time.

Issue: Article 25 – Holidays

Positions of the Parties

The Union proposed the addition of one premium holiday – New Years Day.

The Employer proposed the retention of current language.

Discussion

On this issue the Union again offered as a comparable the Employer’s agreement with the Lake County Deputized Sergeants and Court Sergeants. In that settlement, as part of the total economic package, that bargaining unit received the same increase of one premium holiday as is sought by this bargaining unit.

As the Employer itself offered this contract numerous times as the most appropriate comparable to be considered by the Fact-finder, the Fact-finder must draw the conclusion that the increase in one premium holiday was a consideration in the overall economic package found in the Deputized Sergeants and Court Sergeants settlement and thus should be a similar factor in this one.

Findings and Recommendation

In consideration of the discussion above and in light of the overall Recommendations contained in this Report, the Fact-finder recommends the Union’s proposal for the addition of New Years Day to the premium holidays listed in Article 25, Section 2.

Additional recommendations of the Fact-finder

In addition to the above, the Fact-finder has reviewed all the other tentative agreements reached by the parties during their negotiations.

The Fact-finder recommends all tentative agreements reached by the parties at the hearing and during these negotiations.

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

Martin R. Fitts
Fact-finder
July 17, 2008