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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-finding Between:

Fraternal Order of Police, Ohio Labor Council, Inc.	:	Case No. 09 MED-09-0902
and	:	Recommendations ant Report
Multi-County Corrections Center, Marion, Ohio	:	Margaret Nancy Johnson Fact-finder

2010 FEB - 5 P 2:49
 STATE EMPLOYMENT
 RELATIONS BOARD

Appearances

For the FOP:
 Robert L. Goheen, Staff Representative
 Fraternal Order of Police, OLC, Inc.
 2750 TR 155
 Cardington, Ohio 43315

For the Center:
 Thomas A. Frericks, Esq.
 Frericks and Howard
 152 East Center Street
 Marion, Ohio 43302-3978

Statement of the Case

In compliance with Ohio Revised Code sections pertinent to public sector collective bargaining, this matter came on for hearing on January 27, 2010, in a conference room of the Multi-County Corrections Center in Marion, Ohio. Pursuant to Section 4117.14(C)(3) of the referenced Code, the State Employment Relations Board, hereinafter "SERB," had appointed Margaret Nancy Johnson to serve as the fact-finder in a bargaining impasse between the Multi-County Corrections Center, hereinafter "Center," or "Employer" and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter "FOP" or "Union." Approximately thirty-seven (37) Corrections Officers employed by the Commission and engaged in law enforcement at the Center constitute the bargaining unit.

The current contract between the parties expired on December 31, 2009 but pursuant to agreement between the parties remains in effect pending negotiation of a successor contract. After six (6) sessions, on December 15, 2009, the bargaining committees reached a tentative agreement on all issues taken to the bargaining table.

To resolve the contentious bargaining over an Employer proposal for a change in Article 11, Hours of Work and Overtime, Section 11.6, in which the Employer sought an adjusted seniority date for the purpose of shift assignments, the Employer had agreed to other modifications to Article 11 as proposed by the Union, specifically changes to Sections 11.3, 11.4, 11.5, and 11.9. The 11.3 modification pertains to call-in pay; Sections 11.4 and 11.5 concern compensatory time; the 11.9 proposal simply incorporates a Memorandum of Understanding previously executed by the parties into the new labor Agreement. Additionally, the Employer had secured a tentative agreement on Section 16.5 requiring periodic call-ins by an employee using a sick day.

Objecting to specific sections of the proposed Agreement, principally the Section 11.6 and Section 16.5 changes as advocated by the Employer, the bargaining unit failed to ratify the tentative Agreement negotiated by its committee, thereby giving rise to this fact-finding procedure. Both parties timely submitted Statements to the fact-finder setting forth positions on proposed modifications to contract language.

It should be noted that hereinafter all references to current contract language include the March 9, 2007 corrections to the collective bargaining agreement. Specifically, Sections 11.4 and 11.5 of the Agreement were corrected by the parties subsequent to the publication of the January 1, 2007-December 31, 2009 document so as to conform to the mutual intent of the Union and the Employer.

Issues

In the Position Statements submitted by the Employer and the Union, seven (7) issues were presented to the fact-finder as matters upon which the parties could not reach consensus. At the hearing, an FOP proposal for changes to Article 8, New Hire Probationary Period/ Required Training and Certification, Section 8.5 of the Agreement, was withdrawn. Additionally, a tentative agreement on language and renumbering of a provision concerning compensation for employees required to work in excess of sixteen (16) hours, previously identified as a new Section 11.9, was confirmed by the parties. Moreover, there was agreement that the Memorandum of Understanding executed by the parties prior to negotiations be included within the current contract as Section 11.9. Accordingly, the following items remain in contention: in Article 11, Hours of Work and Overtime, Sections 3, 4, 5, and 6; and in Article 16, Sick Leave, Section 5.

Position of the Parties

a. Section 11.3

The Union proposes language providing for a guarantee of four (4) hours for an employee reporting for scheduled overtime unless the Employer has made a good faith effort to notify the employee that his/her services are no longer needed at least one (1) hour prior to the requested report time. In support of its proposal, the Union notes that when an employee is required to report to work at a time other than a regularly scheduled shift, that employee ought to be compensated for the adjustments and time expended in order to accommodate a need of the employer. In the absence of agreement to its proposal on a seniority adjustment in Section 11.6, the Employer opposes this proposal for the reason that an employee ought not to be paid when services are not performed. Only in the event of FOP agreement on a seniority adjustment for shift scheduling was the Employer willing to guarantee the "scheduled overtime work up to a maximum of four (4) hours, unless a good faith effort is made by the Employer to notify the employee not to report at least one (1) hour prior to the requested report time." In the absence of modification to Section 11.6, the Employer remains opposed to the Union proposal on an overtime guarantee.

b. Section 11.4

The Union proposes increasing the accumulation of compensatory time off provided in Section 11.4 from the current 120 hours to 160 hours and increasing the maximum carryover of compensatory time from one year to the next from 60 hours to 160 hours. In negotiations the Employer opposed the proposal because of the increased financial liability from one fiscal year to the next as well as because of the difficulty with staffing levels and scheduling which the Union proposal would occasion. Nonetheless, as part of its package to resolve Section 11.6 modifications, the Employer had tentatively agreed to increase compensatory time accumulation and carry over to 160 hours. In the absence of a Section 11.6 modification, the Employer proposes current contract language for those Article 11 provisions for which the Union advocated change.

c. Section 11.5

The Union proposes that compensatory time may be substituted for vacation time up to twenty-one days. Unless the Employer achieves agreement on its proposal for Section 11.6, the Employer

remains opposed to this contract modification and seeks current contract language.

d. Section 11.6

In Section 11.6 the procedure for the annual shift assignment by employee seniority is set forth. For the purpose of shift assignments only, the Employer proposes language enabling an adjustment of an employee's seniority date forward in time by the total number of days of a disciplinary suspension received after January 1, 2010. Since the Employer cannot afford the use of days off for disciplinary purposes, it is constrained to use "paper suspensions," that is suspensions without time off or loss of pay. Because such disciplinary action lacks corrective impact, the Employer now seeks a method of achieving notification to an employee that misconduct has a consequence. Opposed to this modification of seniority, the Union seeks current contract language. Of concern to the Union is that the proposal of the Employer constitutes discipline without just cause and has the potential for resulting in disparate discipline of bargaining unit members.

e. Section 16.5

In addition to the modifications proposed for Section 11.6, the Employer seeks language requiring an employee using a sick day to periodically call in to verify unavailability. Because of the small size of the work force of the Employer and the availability of overtime is so limited, the Employer seeks means by which it can curtail unnecessary sick leave and maximize productivity. Accordingly, it seeks to have employees using a sick day to call in periodically throughout the day to confirm continuing unavailability to report to work. Opposing the proposal as unwarranted, intrusive, and onerous, the FOP is also concerned about potential grievances and conflict arising from the ambiguity created in the requirement for a "periodic" call.

Criteria

In making the recommendations which follow, the fact-finder has taken into account those criteria specifically identified in Ohio Revised Code 4117.14(G) (7) and those traditionally relied upon by neutrals when resolving interest disputes.

Discussion

Both parties to this proceeding have expended much time and expressed good faith in endeavoring to reach consensus on the terms and conditions of a successor Collective Bargaining Agreement. Prior to fact-finding the parties reached agreement on nineteen (19) contract modifications. Inability to negotiate a new contract arose not so much from intransigence or intractable positions as from the unit's perception of managerial efforts to meet operational needs as interference with established procedure.

Thus, the bargaining unit opposed the concept of an adjustment to seniority for the purpose of shift selection and it rejected a requirement that an employee call-in throughout the day when using sick leave. While the unit certainly has the prerogative of refusing to ratify a tentative agreement reached by its bargaining committee, it must also recognize that by doing so, it maybe required to concede certain objectives that its committee had achieved on behalf of the unit. Bargaining is a give-and-take process, and the Employer made it very clear that its acquiescence to certain Union demands was the quid pro quo for achieving sick leave and seniority modifications. Without those concessions by the Union, the Employer is not committed to accepting those Union proposals upon which it had previously agreed. Accordingly, items upon which the parties had previously reached agreement are now subject to analysis and review.

Sections 11.6 and Section 16.5

Of the six (6) items left on the table after mediation, only two of those are Employer proposals and these arise principally from scheduling needs. Because of staffing limitations, the Employer uses "paper suspensions" in lieu of time off for employee infractions. In an effort to instill a greater impact upon its disciplinary measures, the Employer has sought an innovative approach whereby for the purpose of shift assignments only, the seniority date of an employee is adjusted by the number of days of a suspension for which the employee has not occasioned a monetary loss. In addition, the Employer has proposed sick leave modifications requiring an employee using a sick day to call in periodically throughout the day to verify continuing unavailability to return to work. Rather than punitive measures, the Employer indicates these proposals are efforts to maximize efficiency.

In the opinion of the fact-finder, the parties would be much better served if the contract changes sought by the Employer were mutually agreed upon. A well-established precept in labor relations is that employee seniority and the rights associated therewith are fundamental in any agreement between parties. Accordingly, modification to seniority rights ought to be the product of discussion and, to the extent possible, the result of negotiation. Moreover, contract adjustments which involve an atypical concept, such as the seniority adjustment herein proposed, are better implemented when mutually accepted rather than unilaterally imposed. Nonetheless, while the fact-finder is adverse to recommending changes to seniority rights without consensus on the part of the Union in these impasse proceedings, she does recognize the operational needs of the Employer and is, therefore, of the opinion that this issue may require subsequent consideration by the parties.

Additionally, as to sick leave requirements, the fact-finder is of the opinion that rather than recommending language which may potentially result in confusion and conflict, the parties should reflect upon the objectives sought by the Employer and how these may be accomplished. Absent an imperative for change, the fact-finder favors current contract language with the provision that the issues raised by the Employer may be addressed in subsequent bargaining. Accordingly, the fact-finder recommends that use of sick leave and effective suspension remain as in current contract language but that Employer proposals on Section 11.6 and Section 16.5 be held in abeyance and be subject to further negotiation upon a contract re-opener.

Remaining proposals are those advocated by the Union including call-in pay, comp time accumulation as well as carry over, and use of comp time for vacation leave. These include Sections 11.3, 11.4. and 11.5.

Section 11.3

The fact-finder concurs with the Union that some guarantee of pay for an employee reporting for call-in duty is both appropriate and consistent with pay provisions in comparable units. Given the fact that some employees must travel considerable distance to report for work and that when called in to work adjustments must be made to their personal schedules, compensation for travel and inconvenience is, indeed, warranted. If, however, the Employer exercises due diligence upon realizing that the services of an employee are no longer required and makes an effort to contact the employee at least one hour prior to the requested report time, then, the need to compensate the employee is, along with the call-in, canceled.

Even so, the Fact-finder is of the opinion that the four hours of pay proposed by the Union is excessive to compensate the employee for either travel or inconvenience. Accordingly, the fact-finder recommends language to the effect that an employee scheduled for overtime who reports for duty on or before the requested time shall be guaranteed the scheduled overtime work up to a maximum of two (2) hours, unless a good faith effort is made by the Employer to notify the employee not to report at least one (1) hour prior to the requested report time.

Section 11.4

The Fact-finder recommends current contract language on compensatory time as set forth in corrected Section 11.4 with the provision that up to eighty (80) hours of compensatory time may be carried over from one calendar year to the next and that any time in excess of eight (80) hours existing at the end of the calendar year shall be paid out as part of the final pay period in which December 31st falls.

Section 11.5

Finally, the fact-finder recommends that Section 11.5 of the Agreement be modified to reflect that compensatory time may be scheduled up to twenty-one (21) days in advance of the time being used. Bargaining history indicates that the Employer had agreed to this provision upon the Union's withdrawal of proposals for vacation modification. Accordingly, the fact-finder is of the opinion that this Union proposal is reasonable and not unduly burdensome upon the Employer.

Section 25.1

Although not brought up as an item in dispute, these recommendations require a modification to Article 25.1 so as to include use of sick leave (Section 16.5) and effective suspensions (Section 11.6).

Recommendations

The fact-finder makes the following recommendations:

Section 11.3:

Current contract language with inclusion of the following:

An employee scheduled for overtime who reports for duty on or before the requested time shall be guaranteed the scheduled overtime work up to a maximum of two (2) hours unless a good faith effort is made by the Employer to notify the employee not to report at least one (1) hour prior to the requested report time.

Section 11.4

Current contract language except for the final two sentences which shall read:

In no event, however, shall more than eighty (80) hours of compensatory time be carried over from one calendar year into the next. Any compensatory time in excess of eighty (80) hours existing at the end of a calendar year shall be paid out as part of the final pay period in which December 31st falls.

Section 11.5

Current contract language except for the following sentence:

Scheduling for the use of compensatory time may be scheduled up to twenty-one (21) days in advance of the time being used.

Section 11.6

Current contract language but negotiations on effective disciplinary suspensions may be subject to a reopener pursuant to Article 25.1 of the Agreement.

Section 11.9

The Memorandum of Agreement executed by the parties on July 7, 2009 shall be incorporated into the Agreement.

Section 16.5

Current contract language is recommended with the provision that negotiations on use of sick leave may be subject to a reopener pursuant to Section 25.1 of the Agreement.

Section 25.1

The fact-finder recommends modifying Section 25.1 to include use of sick leave pursuant to Section 16.5 and effective suspensions in Section 11.6.

Finally, the fact-finder recommends the incorporation within her Report and Recommendations all tentative agreements previously reached by the parties.

Respectfully submitted,


Margaret Nancy Johnson

Service

A copy of the foregoing Report and Recommendations has been served by Express Mail this 4th day of February on Robert L. Goheen, Staff Representative, Fraternal Order of Police, Inc., at 2750 TR 155, Cardington, Ohio 43315; Thomas A. Frericks, Esq., Frericks and Howard, at 152 East Center Street, Marion, Ohio 43302-3978; and by regular mail to J. Russell Keith, General Counsel, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.



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February 4, 2010

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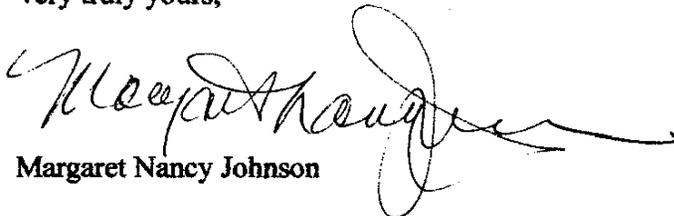
Re: Fraternal Order of Police, Ohio Labor Council, Inc.
and
Multi County Correctional Center
Case No. 09-MED-09-0902

Dear Gentlemen:

Enclosed please find a copy of the Report and Recommendations of the Fact-finder issued this date in the above referenced matter. Also enclosed for the parties is a copy of the bill for services rendered.

Thank you again for the opportunity to be of service to the parties.

Very truly yours,


Margaret Nancy Johnson

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