

STATE EMPLOYMENT RELATIONS BOARD

August 3, 2010

In the Matter of the Fact Finding Hearing Between:

SANDUSKY COUNTY SHERIFF'S OFFICE)	SERB Case No. 10-MED-02-0179 10-MED-02-0180
And)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION)	Patrol Officers, Corrections Officers Communications Officers

APPEARANCES

For the Employer:

Donald J. Binkley	Consultant
Warren Brown	County Administrator
Kyle A. Overmyer	Sheriff
Amy Little	Fiscal Officer
Bruce Hirt	Chief Deputy
Thomas Fligor	Jail Administrator

For the Union:

Joseph M. Hegedus	OPBA Representative
Jameson Rose	Local Director
Janie Shondell	Local Director

Fact-Finder:

Virginia Wallace-Curry

STATE EMPLOYMENT
RELATIONS BOARD
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INTRODUCTION

This matter concerns the fact-finding proceeding between the Sandusky County Sheriff's Office (the "Employer") and the Ohio Patrolmen's Benevolent Association (the "Union" or "OPBA"). There are two bargaining units represented by the OPBA in the Sheriff's Office: 1) Full-time Deputy Sheriffs in the classifications of Patrol Officers, Corrections Officers; and 2) Full-time Jail Nurses. This fact-finding report involves only the Full-time Deputy Sheriffs, of which there are approximately 29. The terms of the parties' existing collective bargaining agreement expired on June 1, 2010.

The parties held several bargaining sessions and were able to reach agreement on some issues but not all. Impasse was declared and the parties proceeded to fact-finding.

Virginia Wallace-Curry was appointed fact-finder in this matter by SERB. A hearing was held on June 17, 2010, at which time the parties accepted the fact-finder's offer to mediate the unresolved issues. The parties reached tentative agreements on several issues. The tentative agreements on all the issues are incorporated by reference in this report and recommended by the fact-finder.

A hearing on the remaining unresolved issues was held, and the parties were given full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

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

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

ISSUES

1. Article 7 – Association Representation
2. Article 14 – Holidays
3. Article 18 – Sick Leave
4. Article 19 – Personal Leave
5. Article 20 – Injury Leave
6. Article 22 – Group Insurance
7. Article 23 – Compensation and PERS Pickup
8. Article 30 – Miscellaneous
9. Article 34 – Duration of the Agreement

ISSUES

1. Article 7 – Association Representation

The Union is proposing an addition to the language of Section 7.4 to allow the authorized Union representative to spend a reasonable amount of on-duty time investigating and writing grievances, with the permission of the supervisor. Currently, the language states that only non-duty time will be used.

The Employer opposes the changes and asserts that current contract language should remain in place. The language has been in the contract since 1986 and there have been no problems. The change is prompted by one recent incident in which a corrections officer was using a corrections telephone while on duty making a call regarding a Union matter, without permission, and he was counseled about not notifying the supervisor. The corrections facility has minimum staff and the positions held by the bargaining unit employees are safety sensitive. Grievances can be investigated during breaks, at lunch, or before/after work.

Recommendation

It is recommended that the parties keep the current contract language. Based on the testimony of the parties, Union representatives have been allowed to investigate and write grievances on duty time when they ask permission and when operations allow. The Union presented no persuasive evidence that there is a problem that needs to be corrected. In addition, the language in the contract is the same as that for sergeants and captains represented by the FOP-OLC.

2. Article 14 – Holidays

The Union proposes that language be added to Section 14.3 allowing employee to choose to receive pay or compensatory time for any Holiday pay due the employee. The Union asserts that this is the current practice in the Sheriff's Office and the Union seeks to memorialize it.

The Employer opposes the additional language. It argues that compensatory time off can be disruptive and can create overtime expenses when essential employees must be replaced. It is currently a practice for the Sheriff to permit compensatory time off in lieu of pay when an employee works on a holiday. However, few employees have utilized this option when offered.

Recommendation

The Union's proposal to memorialize the practice of allowing employees to receive pay or use compensatory time for any holiday pay due to the employee is recommended. The Employer admits that this is the practice currently in use and presented no persuasive evidence on why it could not be memorialized in the parties' contract.

Recommended Contract Language

Section 14.3. An employee who is scheduled to work on one of the holidays listed in Section 14.1. shall receive time and one-half (1-1/2) for all hours worked, plus regular Holiday pay of eight (8) hours. When an employee is required to work at least four (4) hours of double shift on a holiday, the employee shall receive two and one-half (2-1/2) times his base rate of pay for the hours worked on the double shift. If the employee works less than four (4) hours, he shall receive time and one-half (1-1/2) pay for the additional shift hours. **The employee may choose to receive pay or compensatory time for any Holiday pay due to the employee.**

3. **Article 18 – Sick Leave**

The Union proposes to add “siblings” to the definition of an employee’s immediate family, in Section 18.6. Section 18.6 allows employees to use sick leave in the event of serious illness or injury of a member of the employee’s immediate family where attention by the employee is reasonably necessary and is verified. The Union argues that in seven of nine comparable districts siblings are listed among the members of an employee’s immediate family for the purpose of using sick leave in the event of serious illness or injury.

The Employer rejects the Union’s proposal. Siblings are not immediate family. The current definition in Section 18.6 includes spouse, children, children under the employee’s guardianship residing in the household, and employee’s parent. To open up brother and sister for unlimited sick leave useage would place a scheduling and economic burden on the Employer. Siblings are included in immediate family for the purposes of funeral leave, for a maximum of five working days. Siblings are not included for sick leave purposes in the Captains and Sergeants contract.

Recommendation

The Union’s proposal is recommended. The addition of siblings to the list of immediate family members for whom the employee may take sick leave does not present an onerous burden on the employer. The use of sick leave for the care of immediate family members must be reasonably necessary and verified. The Union presented evidence that other comparable jurisdictions have a much wider definition of immediate family than is proposed by the Union in this case.

In comparable jurisdictions, the immediate family includes all the members who would be included in funeral leave in parties' current contract. The Union is only requesting that siblings be added to the discreet list of immediate family members. The proposal is reasonable and no significant burden on the Employer.

Recommended Contract Language

Section 18.6. Sick Leave Uses. Sick leave may be granted to an employee upon approval of the Employer for the following reasons:

2. Serious illness or injury of a member of the employee's immediate family where attention by the employee is reasonably necessary and is verified (immediate family is defined as the employee's spouse, the employee's children, children under the employee's guardianship residing in the household, the employee's parents, **and the employee's siblings**);

4. Article 19 – Personal Leave Attendance Bonus

The Union proposes that employees be allowed to earn one personal leave day for each three month period that the employee does not use sick leave. Currently, employees earn one day per 4 month period. The Union also proposes that employees be permitted to accumulate and carry over unused personal days.

The Employer proposes that the use of qualified family medical leave be removed from eligibility for earning personal days for attendance. Amendments to FMLA in November 2008 allow employers to deny "perfect attendance" awards to employee who do not have perfect attendance because of taking FMLA leave. The reason for the change is the unfairness created by absent employees being

eligible for such awards. The Employer opposes that the unfunded carry-over or accumulation of personal leave days or the cash out.

After further negotiations, the parties agreed 1) to remove Family Medical Leave from Section 19.2; 2) to allow employees to earn a personal day every three months; and 3) to allow employees to cash in unused personal days at the end of the year. The following language is recommended to reflect their agreement.

Recommended Contract Language

Section 19.2. Any employee with at least one (1) year of continuous service who does not utilize any sick leave for the calendar three (3) month period beginning January 1, April 1, July 1 or October 1 of each calendar year, shall be entitled to one (1) paid personal leave day. To be eligible, an employee must not miss work or use sick leave for other than death of a member of the employee's immediate family, approved vacation or holiday leave, or military leave under Article 17 herein.

Section 19.3. Such additional personal leave days may be used at a time suggested by the employee and approved by the supervisor during the year following the date of accrual. These personal leave days cannot be accumulated or carried over. The employee shall receive his regular daily rate of pay for each personal leave day used or the employee may cash in each personal leave day for pay in December of each calendar year.

5. Article 20 – Injury Leave

The Employer proposes adding a provision to the current article to permit the Employer to discontinue injury leave compensation and permit the employee to file for State Worker's Compensation benefits or request sick leave. Currently, employees are eligible for up to three months full pay from the date of the injury and are not eligible for loss of wage benefits/compensation from Worker's Compensation for that period.

BWC has made changes to its reserving system. Beginning January 1, 2011, salary continuation claims with date of injury after January 1, 2011, will result in a claim reserve being established by BWC. The reason the Employer contractually agreed to three months "salary continuation" in the contract was to avoid a reserve for most claims which resulted in a significant savings for the Employer. Effective with the advent of 2011, this advantage no longer will exist. The employer wishes to return such employees to the Workers' Compensation system it funds at the rate of 14% of its payroll.

The Union rejects the Employer's proposal. The Union argues that the genesis of injury leave was to compensate employees in a public safety profession that has more potential for injuries than other professions. Injury leave for law enforcement personnel is almost automatic. Seven out of the nine comparable jurisdictions are paid injury leave without regard to Workers' Compensation. Workers' Compensation increases are not predictable even with the changes to the system.

Recommendation

The Employer's proposal is not recommended. The Employer did not persuade the Fact-Finder that its proposal would adequately compensate employees who are injured on the job. As the Union contends, the employees are in a public safety profession that has a greater possibility of injury than in non-safety force professions. These employees should not be placed at a financial disadvantage for injuries sustained on the job.

The current contract language is recommended.

6. Article 22 – Group Insurance

The Employer is proposing to eliminate the current “capped” 87% Employer health insurance premium and provide that bargaining unit employee will receive the same premium contribution as all other County employees. Currently, the OPBA bargaining unit has the same medical insurance plan as provided to other Sandusky County employees by the Board of Commissioners. The Employer is willing to agree that, if any other County department under the Board of Commissioners’ insurance has a better co-payment structure, it will be extended to his bargaining unit. The language proposed herein currently exists in other County departments with labor agreements, the Department of Job and Family Services/AFSCME and Emergency Medical Services/Teamsters.

The Union opposes the changes proposed by the Employer. The current 87%/13% split in the cost of health care premiums is very comparable to the average percentage contributions reported in the SERB 2008-2009 report on health insurance costs. The Employer’s proposal would put no restrictions on the amount that employees would pay and allows the Board of Commissioners full discretion to set the percentages paid by the Union.

Recommendation

It is recommended that the parties keep the current contract language. The Employer’s proposal gives too much discretion to the Board of Commissioners and results in too much uncertainty for employees. The Union contends that the other County employees contribute the same 13% to premium costs precisely because that percentage cap is stated in this bargaining unit’s

contract. No other County employee has a better percentage contribution rate. If the cap is lifted from this bargaining unit, then the Commissioners have full discretion to charge all employees what they deem is an optimal percentage or amount. There is no cap or check on the amount employees would pay. This Fact-Finder cannot recommend such a proposal.

7. Article 23 – Compensation and PERS Pickup

The Union proposes a wage increase of 3.5% per year for each year of the three year contract and the continuation of the 8.5% PERS pick-up by the Employer. The Union has withdrawn its proposal for an additional \$0.25 per hour shift differential for employees working afternoon or midnight shift. The Union argues that the Employer cannot claim the inability to pay. There was a \$1.75+ million carryover to 2010. Every year the Employer claims that there will be no carryover, and every year there is a carryover. Carryovers of 5-10% are sufficient. For 2010 the Employer had an 11.5% carryover. A 3.5% wage increase is less than \$50,000/year and is affordable by the Employer.

The Employer proposes a 0% wage increase for the life of the contract. It has withdrawn its proposal to eliminate the PERS pick-up. The Employer argues that it does not have the ability to pay any increases at all. The County is experiencing tightly controlled spending. The Sheriff has been forced to cut back services due to pulled funding by the County. Traditional revenue streams have leveled off or declined.

Historically, the Union has received excellent raises. Other County employees have not received wage increases for three years. The Jobs and

Family Services bargaining unit voted to forgo wage increases. Four employees from the OPBA bargaining unit have been laid off for lack of funds. Ten positions have been left vacant for budgetary reasons. The Sheriff is not a funding authority and must live within the budget set by the County. The Sheriff has done everything to live within a reduced budget, while Workers' Compensation costs have increased from \$45,000 in 2009 to \$62,000 in 2010; it is time for new bullet proof vests; and cruisers need turned around.

Recommendation

It is recommended that there be a 0% wage increase for the first year, a 2% wage increase for the second year and a 2.5% increase for the third year of the contract. Although the Sheriff, and the County, claims an inability to fund wage increase, the revenue streams for the County have leveled off and are even higher than was expected for May 2010.¹ In addition, the County is anticipating that a special tax levy will pass this fall and will generate an extra \$1.3 million in 2011. The increase in revenue will not begin right away but will be available to fund wage increases in the second year of the contract.

Currently, the bargaining unit wages are relatively competitive, especially given the 8.5% PERS pick-up by the Employer. Although the bargaining unit has enjoyed 3% to 4% wage increases in the past, these are difficult economic times due to unemployment and the decreases in property values. The 3% wage

¹ The Fact-finder rejects the distinction between the Sheriff's department and the County, in the Employer's argument that the Sheriff is not a funding authority. If this argument is accepted as a limit on funding wage increases, the County Commissioners could artificially keep the budget of the Sheriff's department low to keep the employees from receiving wage increases. The Factfinder must look to the ability of the County to pay, not just the budget the County sets for the Sheriff. Budgets can be increased to accommodate expenses.

increases in other jurisdictions cited by the Union represent the final year end of three year contracts that are expiring. These increases do not appear in newly negotiated contracts.

The small percentage wage increase that is recommended is necessary to keep employees from falling too far behind. The CPI has risen 2.2% in the last year. Employees will need the increase to just stay relatively even.

Recommended Contract Language

Section 23.1. Effective the first full pay period that includes June 1, 2010, the wage rates of all bargaining unit employees shall be increased by **zero percent (0%)**.

Section 23.2. Effective the first full pay period that includes June 1, 2011, the wage rates of all bargaining unit employees shall be increased by **two percent (2%)**.

Section 23.3. Effective the first full pay period that includes June 1, 2012, the wage rates of all bargaining unit employees shall be increased by **two and one-half percent (2.5%)**.

8. Article 30 – Miscellaneous

The Union proposed changes to Sections 30.11, 30.12 and 30.13 regarding assignment of extra details, extra pay or comp time for level 3 snow emergencies, and regarding prisoner transport. Upon advice of the Fact-finder, the Union withdrew these proposals.

9. Article 34 – Duration of Agreement

The parties have agreed to a three year Agreement.

Recommended Contract Language

Section 34.1. This Agreement represents the complete Agreement on all matters subject to bargaining between the Employer and the OPBA and shall be

effective as of June 1, 2010 and shall remain in full force and effect until June 1, 2013 provided, however, it shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice as provided herein.

Section 34.2. If either party desires to modify or amend this Agreement, it shall notify the other in writing of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration date of this Agreement. Such notice of intent shall be given by regular U.S. mail. If the OPBA gives such notice, the OPBA shall simultaneously submit its written proposals for modifying or amending this Agreement.

All tentative agreements previously agreed to by the parties are incorporated into this report and recommended by the Fact-finder.

Respectfully submitted,


Virginia Wallace-Curry, Fact-Finder

August 3, 2010
Cuyahoga County, OH

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact-Finding Report for the Sandusky County Sheriff and the Ohio Patrolmen's Benevolent Association was sent to the parties by email and regular mail and to the State Employment Relations Board by regular U.S. mail on this day, August 3, 2010. The Fact-Finding Report was served upon:

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