

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of * 10-MED-10-1389
*
Fact-finding between: *
*
City of Napoleon * Martin R. Fitts
* Fact-finder
*
and *
*
IUPA Local 240 * December 1, 2011
*
*

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of Napoleon (the Employer):

John A. Bisher, City Manager
Bob Weitzel, Chief of Police
Mary Thomas, Senior Account Clerk

For IUPA Local 240 (the Union):

John Roca, Attorney for the Union
Jeff Nicely, IUPA Local 240 President
Mike Foreman, IUPA Local 240 Vice President

PRELIMINARY COMMENTS

The bargaining unit has approximately sixteen (16) members and consists of the employees in the Patrol Officer (Probationary), Patrol Officer, Patrol Officer – Detective, Dispatcher (Probationary) and Dispatcher classifications in the City of Napoleon Police Department.

The parties engaged in negotiations for a successor agreement, and reached tentative agreements on numerous items. By oral agreement of the parties the undersigned was appointed to serve as Fact-finder. A hearing was held on November 14, 2011 at the administrative offices of the City of Napoleon at 255 West Riverview Avenue in Napoleon, Ohio. There were three issues at impasse: Article 34.1 (Scheduling Time Off); Article 26.3 (Call-in Procedure); and a new article (Guaranteed Time Off.) Both parties attended the hearing and presented evidence and testimony in support of their positions.

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 to the Fact-finder at the November 14, 2011 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 26.3 (Call-in Procedure)

Positions of the Parties

The Union is proposing the addition of the phrase “in that classification” to the third paragraph in Section 26.3, such that the first sentence in that paragraph would read as follows: *In the event the time remains unfilled, the time will be assigned by seniority (lowest **in that classification**) to those on the shifts adjacent to each four hours.*

The Employer proposed that the phrase not be incorporated into the new agreement and that the current language be retained.

Discussion

The Union stated that currently if one of the Lieutenants (who are not part of this or any other bargaining unit) calls off for some reason, the vacant 8-hour shift is normally broken in two, with one of the off-going shift personnel and one of the on-coming shift

personnel asked to take four of the hours. If no one voluntarily takes the half-shift, the City can force the least senior person to take it. This proposal is designed to eliminate the City's ability to force a Patrolman to take a Lieutenant's shift, but would continue to allow the City to force the least senior Patrolman to take a Patrolman's vacant half-shift.

The City noted that this is a small department with only four Lieutenants, and that the Lieutenants are considered a part of the road patrol. The Chief stated that this happens infrequently, and is not an issue in Dispatch as there is no command officer that works Dispatch. The Chief testified that he believes it necessary for the City to retain its prerogative to determine if it needs to replace the Lieutenant position on a shift. He noted that when a Patrolman is working as an "acting" Lieutenant, he receives "acting" pay. He testified further that this scenario occurs infrequently, possibly a dozen times a year.

Two elements are critical here. First is the small size of the entire Police Department, which greatly impacts the flexibility of the City. The Chief testified that he tries to maintain a staffing level on shifts that is safe for the residents of the City as well as safe for the officers on duty. This is both a laudable and reasonable position.

Secondly, there was no rebuttal to the Chief's testimony that this occurs infrequently, perhaps a dozen times a year. Assuming that over the course of a year those 12 occurrences would be distributed equally throughout all of the three shifts, and further assuming that the least senior officer on each shift was the same Patrolmen each time, it would impact each of the least senior Patrolman on average only four times per year. Given that the least senior Patrolman on each shift may vary due to their own vacations, sick leave, or other leave, the impact on individual bargaining unit members is further reduced as the mandatory call-in for the half shift is likely distributed among more than just among the same three Patrolmen.

The Fact-finder finds it reasonable that the least senior Patrolmen on each shift might be required to work four hours of forced overtime at a premium ("acting") wage rate a

handful of times a year. The adoption of this proposal would create more manpower scheduling difficulties for a Department that is already inherently inflexible due to its small size, or possibly place bargaining unit members at risk if shifts were left short-staffed.

Findings and Recommendation

The Fact-finder finds that the City's position is reasonable, and in the best interests of the public, the City, and the members of the bargaining unit.

Therefore the Fact-finder recommends the City's proposal for the retention of current contract language in Article 26.3

Issue: Article 34.1 (Scheduling Time Off)

Positions of the Parties

The Union proposed the addition of two sentences to the last paragraph of Section 34.1, to read at the end: *When another employee is off for four (4) hours or less, that employee will not be counted as a person off. In the event that a bargaining unit member's regularly scheduled day off has been changed for whatever reason, said member's adjusted days off will not be counted as a person on discretionary leave.*

The Employer proposed that the phrase not be incorporated into the new agreement and that the current language be retained.

Discussion

Currently when a shift is down one person, no one else is allowed to be off. The Union's proposal here addresses two different scenarios. The first would not count as "off" a person whose time off would be only half or less than half of that shift. The second would not count someone as "off" if the vacancy is because the individual's regularly scheduled day off has been moved involuntarily.

Both of these situations, however, cause the same problem for the City. As noted above, this is a small department, which limits the City's ability to be as flexible in scheduling as desired by the bargaining unit and still achieve satisfactory staffing levels on each shift. Additionally, the Chief noted that under the first part of the Union's proposal he would not have the ability to restrict *every* employee on a particular shift from taking up to 4 hours off. He could then be faced with requiring Patrolmen to work up to an additional 16 straight hours to cover partial vacancies, or work parts of a shift with reduced manpower. Neither of these options would be very palatable to the City, and likely would not be very palatable to the bargaining unit members either.

In the second part of the proposal the City would be faced with the same situation as with the first part of the proposal, except it would always affect an entire 8-hour shift and not just a partial shift. Again, given the size of the bargaining unit, and the entire Police Department, this is simply not reasonable. Officer Nicely acknowledged in his testimony that this situation does not frequently occur. Considering that, it is clear that the negative impact of the status quo on the bargaining unit members minimal. The Chief, however, testified that the inability to cancel discretionary leave time would severely hamper his ability to schedule training time for all the Department employees as well as schedule off time for the Lieutenants.

Applicable to both parts of this proposal was the Chief's testimony that he has granted special time off when requested by members of this bargaining unit, when this was

possible and did not jeopardize the safety of the community or the officers on duty. This was un-rebutted with any testimony to the contrary.

Findings and Recommendation

The Fact-finder finds that the City's position is reasonable, and in the best interests of the public, the City, and the members of the bargaining unit.

Therefore the Fact-finder recommends the City's proposal for the retention of current contract language in Article 34.1.

Issue: New article (Guaranteed Time Off)

Positions of the Parties

The Union proposed a new article that would read as follows:

Guaranteed Time Off

Except in cases of bona fide emergency, bargaining unit members shall be granted appropriate paid time off i.e. vacation, compensatory time, personal time, banked holiday time, when an application is submitted to the employer based on the following guidelines:

1.) Two (2) patrolmen shall be granted paid time off on any day. In the event that a third patrolman request a paid day/s off, and granting this request will not create the need for overtime, the third patrolman shall be granted the day off.

This article shall be enforced on all calendar days except the following:

1.) N.P.O.A. observed holidays

2.) Rib Fest

3.) Three (3) additional discretionary days per calendar year where time off may be restricted at the discretion of the Chief of Police or his designee for the purposes

of providing adequate police protection for the City of Napoleon. In the case of a bona fide emergency, those days shall not be counted against the above noted discretionary days.

The Employer proposed that the phrase not be incorporated into the new agreement and that the current language be retained.

Discussion

Once again the Union proposal would result in a greater ability for the bargaining unit members to schedule leave. As noted above, the size of the Police Department makes it inherently difficult under the current contract provisions for the Chief to ensure that he has an adequate number of police officers on patrol. The Union proposal does acknowledge that there are times during the year that would need to be exempt from its proposal. However, from a practical standpoint, even with the exemptions, the proposal would still greatly inhibit the City's ability to ensure that a safe manning level is maintained.

In addition, the Fact-finder again notes the Chief's un-rebutted testimony relative to his having granted "special" time off when possible. Further, the Fact-finder again notes the lack of any specific evidence or testimony of any undue burdens the lack of a such a contract provision has caused the members of this bargaining unit.

Findings and Recommendation

The Fact-finder finds that the City's position is reasonable, and in the best interests of the public, the City, and the members of the bargaining unit.

Therefore the Fact-finder recommends the City's proposal that the proposed new Article for Guaranteed Time Off *not* be included in the collective bargaining agreement.

Additional recommendations of the Fact-finder

The parties expressed to the Fact-finder that they had reached agreement on a number of other issues during their negotiations, which are attached and considered a part of this Report.

The Fact-finder has reviewed all the agreements reached by the parties during their negotiations, and finds them reasonable and fair to both of the parties and to the public.

Therefore, the Fact-finder recommends all agreements reached by the parties during their negotiations.



Martin R. Fitts
Fact-finder
December 1, 2011

Certificate of Service

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to John Roca (IUPA Attorney), Jon Bisher (Napoleon City Manager), and Mary Laurent (State Employment Relations Board).



Martin R. Fitts
Fact-finder
December 1, 2011