STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	12-MED-05-0534
	*	
Fact-finding between:	*	
	*	Martin R. Fitts
The Putnam County Sheriff's Office	*	Fact-finder
	*	
and	*	
	*	
The Ohio Patrolman's Benevolent Association	*	April 24, 2013
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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

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APPEARANCES

For the Putnam County Sheriff's Office (the Employer):

Fred Lord, Account Manager, Clemans, Nelson & Associates
Wendy Schimmoeller, Consultant, Clemans, Nelson & Associates
Brad Brubaker, 911 Coordinator
Laura Huff, Administrative Assistant
Melinda Kesler, Accounting Clerk

For the Ohio Patrolman's Benevolent Association (the Union):

Michelle T. Sullivan, Allotta | Farley Co. LPA, Special Counsel, OPBA
Jon Winters, Allotta | Farley Co. LPA, Special Counsel, OPBA
Nark Brecht, Deputy Sheriff

PRELIMINARY COMMENTS

The bargaining unit has approximately seventeen (17) members and consists of all employees in the classification of Road Patrol Deputy.

The current collective bargaining agreement expired on December 31, 2012. The parties began bargaining and reached tentative agreements on numerous articles. However, the parties were unable to come to agreement on five articles, specifically: Article 20 – Life and Medical Insurance; Article 24 – Overtime; Article 53 – Holidays; Article 57 – Wages; and Article 58 – Retirement.

This Fact-finder was appointed by SERB on November 29, 2012 and a Fact-finding Hearing was held on March 26, 2013. There remained at impasse the five issues specified in the above paragraph. Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective 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 March 26, 2013 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Article 20 – Life and Medical Insurance

Section A

Positions of the Parties

The Employer proposed that Section A be amended as to the time required for the Employer to "meet and discuss" any changes to the Plan. It proposed to replace the 45-day requirement with "as soon as is practicable." The Employer also proposed that the provision stating that the employee contributions "will not increase more than 20% over the life of the collective bargaining agreement" be modified to provide that the 80/20 split of the premium cost is retained regardless of how great a premium increases may be.

The Union proposed that the current language of Section A of this article be retained.

Discussion

Amending the language, as proposed by the Employer, would fix the split at 80/20 and remove any cap on increases for the employee contributions. The Employer argued that all other county employees pay the 80/20 split with no cap and believes that this bargaining unit should be treated accordingly. It also argued that the cap was placed in the last agreement as a "one-time only" deal was not intended to remain. Further it argued that removal of the cap would result in the Employer and the employees sharing fully any future premium increases, thus giving both parties incentive to continue to pursue cost savings.

The Union countered that the 20% split paid by the employees doesn't capture the entire amount of the cost share shift that has affected employees, as increased co-pays and deductibles for employees has been one method utilized to reduce premium costs. It argued that the current cap on premium increases protects the bargaining unit members from bearing an even more disproportionate amount of future increases in health insurance costs. Additionally, the Union argued that quite possibly the cap may never be reached, mitigating the effect of the removal of the cap from the collective bargaining agreement. Lastly, the Union argued that as the cap was first agreed-upon and placed in the agreement in the last round of negotiations, there does not appear to be a compelling reason now to remove it.

Clearly both parties have been collaboratively engaged in efforts to manage health care costs. The bargaining unit's absorption of higher co-pays and deductibles has resulted in the employees bearing additional increases in money out of their pockets for health insurance beyond simply increases resulting from the 80/20 split in premium costs. However compelling this argument might be on the surface, the fact remains that all county employees pay the 80/20 split with no cap on increases, and also have absorbed higher co-pays and deductibles. Internal comparables relative to health care plans and premium costs are of high relevancy when considering any health insurance related issue in Fact-finding proceedings. Commonality in plan design and cost structure results in employers and all their bargaining and non-bargaining unit employees working together more closely and with greater purpose to achieve health care cost containment. Bringing the bargaining unit back into this commonality makes for a compelling reason to recommend the Employer's proposal for the elimination of the cap.

As to the Employer's proposal to change the notification requirement of discussing with the Union any Plan changes 45 days prior to implementation to "as soon as practicable" there was no discussion by either party as to their respective rationales. Absent any rationale for changing this provision, the Fact-finder is left with no compelling reason to recommend the Employer's proposal to change the time period from 45 days to "as soon as practicable."

Findings and Recommendation

Regarding Section A, the Fact-finder finds the Union's argument for retention of the current 45-day notification provision and the Employer's argument for removing the 20% cap to be compelling.

Therefore the Fact-finder recommends that Section A of Article 20 reads as follows:

A. During the term of the agreement, the Employer agrees to provide health care to the employees with the premium costs to be split 80% Employer and 20% employee. Employees shall receive the same level of benefits as other county employees under the Putnam County Commissioners Insurance Plan although the Employer will meet with the Union to discuss any changes to the Plan at least forty-five (45) days prior to proposed implementation. The employee's contributions for insurance coverage will not increase more than the 80%/20% split referenced above over the life of the collective bargaining agreement.

Section C

Positions of the Parties

The Employer proposed that the reference to a 45-day time frame for the "meet and discuss" provision be deleted, and that the reference to the CEBCO plan be removed and be replaced with a reference to the Putnam County Commissioners Insurance Plan.

The Union proposed that the reference to the 45-day time frame be retained and that the CEBCO plan reference be retained and that the language "or substantially similar coverage' be added.

Discussion

The retention of the 45-day requirement will keep this Section consistent with the Recommendation made above, and thus makes sense.

As to the Employer's proposal to change the reference from the current CEBCO plan to the Putnam County Commissioners Plan, the Union argued that it knows what the CEBCO plan is, but does not know what any new Putnam County Commissioners Plan would be. The testimony and evidence offered showed that the bargaining unit employees currently enjoy the same health insurance coverage under the CEBCO plan as other county employees, and that the intent of the Employer is for this coverage under the CEBCO plan to continue.

Two things are clear to the Fact-finder. First, including references to specific health insurance plans can prove problematic. While the Employer stated that it has no plans to change from the CEBCO plan, its proposal to include the more generic "Putnam County Commissioners Plan" language into this provision demonstrates that it recognizes that even if it desires to continue to provide the CEBCO plan to its employees, there is no guarantee that the CEBCO plan will continue to exist throughout the duration of the new agreement, just as there is no guarantee that any health insurance company or specific plan would continue to exist. This is precisely why the health insurance articles of many collective bargaining agreements provide that the employer will continue to provide the current plan or a "substantially similar" plan for the duration of agreements. In fact, combining elements of both the Employer and Union proposals makes the most sense.

Findings and Recommendation

Regarding Section C, the Fact-finder finds that changing the health insurance plan reference to "Putnam County Commissioners Insurance Plan(s)" and adding the provision "or substantially similar coverage" is fair and reasonable to both parties.

Therefore the Fact-finder recommends that Section C of Article 20 read as follows:

> C. Should the coverage provided to other county employees, by and through the Putnam County Commissioners Office, be changed or altered, such changes shall be applicable to the coverage herein provided following notice and meeting with the Union at least forty-five (45) days prior. The Employer will provide medical insurance coverage under the Putnam County Commissioners Insurance Plan(s), or other substantially similar coverage, during the life of this agreement.

Section D

Positions of the Parties

The Union proposed that Section D have the reference "Effective for the 2011" (sic) removed as a housekeeping matter as this provision carries into the new agreement, while the Employer proposed the retention of current language. It argued that this language was relevant in the 2010-

2012 agreement, but that the option of the two insurance plans is now fully in place and this language is now extraneous.

The Employer proposed the retention of current contract language, but made no argument against the Union's proposal.

Findings and Recommendation

Regarding Section D, the Fact-finder finds that the Union's proposal is, in fact, simply a housekeeping matter and the removal of the words "effective for the 2011" from the current contract language will have no change in the effect or meaning of the provisions Section D.

Therefore the Fact-finder recommends the Union's proposal that the words "Effective for the 2011" be struck from the first sentence of Section D.

Section F

Positions of the Parties

The Union proposed language continuing the "opt out" provision in the current collective bargaining agreement, specifically that it would be available in calendar years 2013, 2014, and 2015.

The Employer proposed the retention of the current language, which specifies that the "opt out" is available for the calendar years 2011 and 2012 only.

Discussion

The Employer argued that the "opt out" language in the current agreement was intended as a "one time" deal and not intended to carry over into future agreements. Further, the Employer argued that no one took the "opt out" when it became available. The Union countered that paying an employee $1,000 to opt out of health insurance coverage would save the county considerable

money, and questioned why the Employer would now feel it necessary to remove this newly bargained provision.

Findings and Recommendation

Regarding Section F, the Fact-finder finds the continuation of the "opt out" provision in the agreement to be a plus for both parties. If, as happened in the prior agreement, no one requests to opt out of county health insurance coverage, there is no disadvantage or additional cost to the Employer. If during the life of the new agreement employees do, in fact, opt out of coverage, the Employer will save far more than the cost of the opt out payment.

Therefore the Fact-finder recommends that Section F of Article 20 read as follows:

F. Insurance Opt out. Any employee who has been covered under the County's Health Insurance and who has insurance available to them through their spouse or other family member may elect to "opt out" of the County Sponsored health insurance. In lieu of the employee taking the county sponsored health insurance, the Employer shall pay $1000 per year on the first pay period in January for the Calendar years 2013, 2014. 2015.

If the employee must sign up for the County's health insurance for some unforeseen reason, any prepaid stipend for the calendar year will be pro-rated by the Putnam County Commissioner's Office a repaid to the Employer by the employee through payroll deduction.

Employees eligible for the "opt out" payment set forth above include the following employees: (1) Employees eligible for the "opt out" payment under the prior collective bargaining agreement; and (2) current employees who have been covered by the county's health insurance for an uninterrupted two-year period as of the date the employee requests to "opt out" of the county's health insurance. Any new employees or employees new to the county's health insurance policy must carry the county' s health insurance policy for a period of two (2) years uninterrupted before being considered for the "opt out" benefit.

Issue: Article 24 – Overtime

Positions of the Parties

The Employer proposed that the provisions of Article 24, Section H be changed by specifically providing that Sick Leave and Compensatory Leave shall not be counted as hours worked for the purposes of Article 24 only. The current agreement specifically provides that Sick Leave and Compensatory Leave *are* to be counted as hours worked for the purposes of Article 24.

The Union proposed the retention of current contract language for Article 24, Section H.

Discussion

The Employer argued that its overall budget reductions necessitate controlling overtime costs when and where possible. It noted that removing these two items from the definition of active pay status would save the Employer $6, 217 per year from the nearly $25,000 in annual overtime costs for road patrol.

The Union correctly argued that the burden of proof lies with the Employer to show that the removal of each of these two items from active pay status is necessary and compelling. The Employer did demonstrate both declining revenue from grants and overall budget cuts imposed by the county commissioners. However, there are significant differences between compensatory leave and sick leave that need to be considered.

Compensatory Leave is earned as compensation for overtime hours actually worked by employees. Article 23, Section B states "An employee must submit a written request on the Office standardized form and receive written approval from his Immediate Supervisor before using Compensatory Leave." Further, Article 23 Section D of the collective bargaining agreement mandates that employees cannot accrue more than 160 hours of comp time, at which time the Sheriff "shall have the right to place the employee on Compensatory Leave for that period of time the Sheriff considers appropriate and necessary." Clearly the Employer already has considerable ability to control when compensatory leave is taken. If the Employer's goal is to reduce overtime triggered by the use of compensatory time, it can and should exercise greater control of when it grant the use of such leave. Compensatory time, by its very nature, must be

taken during the employee's regular work-week. If the Employer anticipates that an employee will be working overtime on a particular workweek, it has the ability to deny the use of compensatory time to that employee for that particular week. The Fact-finder does not consider this to be an unmanageable administrative task for the Employer, especially in light of the provisions of Sections B and D of Article 23 in the current contract.

Sick leave, however, is by its very nature designed to cover instances of employee leave that are outside the control of the Sheriff. In reality, an employee on sick leave is not actually working these hours, as opposed to compensatory leave which is payment for hours actually worked. The Employer has no ability deny granting sick leave because of overtime costs, nor can it manage its scheduling to avoid such costs. In this case, it is reasonable to grant the Employer relief.

Findings and Recommendation

The Fact-finder finds the Employers proposal to exclude sick leave from being considered as hours worked for the purposes of Article 24 to be reasonable and compelling. However, the Fact-finder finds the Union's proposal to maintain compensatory leave as considered hours worked for the purposes of Article 24 to be reasonable and compelling. The recommendation below will allow the Sheriff to reduce some overtime costs while remaining fair to the employees when they are being compensated for performing actual work.

Therefore the Fact-finder recommends that Section H of Article 24 read as follows:

H. Hours actually worked in excess of eighty (80) hours in the fourteen (14) consecutive calendar day work period will be considered as being overtime. For purposes of this article, hours actually worked shall include time compensated for holiday pay, Compensatory Leave, and vacation leave. Hours actually worked shall exclude overtime hours worked, sick leave, time spent in unpaid status, and any hours worked for which the employee is credited with compensatory leave, such as, but not limited to, hours worked on a holiday observation.

Issue: Article 53 - Holidays

Positions of the Parties

The Employer proposed that Section E be amended to provide that if an employee's birthday falls on a holiday, instead of simply a scheduled day off, the remaining provisions of Section E would apply. In return for this increased benefit, the Employer also proposed the deletion of Section H, which provides that employees who work on Easter Sunday are to be paid time and a half their regular rate of pay for those hours worked.

The Union proposed that the retention of current contract language.

Discussion

The Union argued that the overtime pay for Easter provision was bargaining into the agreement in the last round of negotiations in return for the Union giving up other benefits. It contended that to remove it now, without reinstating what was given up, would be unfair. There was disagreement on exactly what was given up in return for the Easter premium pay clause. The fact remains, however, that the parties saw fit to place this premium pay provision into the last agreement without any expiration date. As with all things contained in a labor agreement, the contract provisions are the result of the normal "give and take" of the negotiating process. The cost of this provision is easily calculated, and thus the budgetary implications of this would have been clearly known by the Employer when it was included in the previous agreement. Further, it must be considerably easier to administer than the scheduling issues that would arise under the Employer's proposal.

Findings and Recommendation

The Fact-finder does not find there to be a compelling reason to change either Section E or H of the current agreement.

Therefore the Fact-finder recommends the retention of current contract language for Sections E and Section H of Article 53.

Issue: Article 57 – Wages

Positions of the Parties

The Union proposed that all the employees receive a 5% wage increase effective January 1, 2013, a second 5% wage increase effective January 1, 2014, and a third 5% wage increase effective January 1, 2015.

The Employer proposed that the employees leaving the steps or out of steps receive a 1% wage increase effective the first pay period following the effective date of the new agreement, a 1.0% wage increase effective January 1, 2014, and a 1.5% wage increase effective January 1, 2015.

Discussion

The Union's proposal for a wage increase includes all member of the bargaining unit, regardless of whether or not they are still progressing through steps. It argued that it is generally customary for all employees within a bargaining unit to receive similar wage increases, not just those who have maxed out the progression through the steps provided for newer employees.

The Employer argued that it has no choice but to live within the budget provided to the Sheriff for operation of the Sheriff's Office. It further argued that many grants that have provided additional funds for the Sheriff during the last several years have expired and many are no longer available. It also noted that the department does not have a problem retaining deputies, which is why bargaining unit members have maxed out their steps. Further, it noted that it is not arguing that it has no funds for any raises, but it cannot afford the Union's proposed 5%/5%/5% wage increases.

The Union offered as comparables the entry-level and top-level road deputy wages for surrounding counties of similar size in northwest Ohio. While other forms of compensation exist in varying degrees in these other collective bargaining agreements, wages are always the primary method of compensating employees and this county's road patrol deputies are at the bottom of the scale and would remain at the lower end regardless of any other compensation that may exist elsewhere

Certainly Ohio law provides restrictions on county sheriffs relative to budgetary issues, as they have no control over their total annual budgets, which are set by their respective county boards of commissioners. Putnam County is no exception. The statutory authority to set the Sheriff's budget does not rest with this Employer; the ability to set budgetary priorities properly rests with those elected by the taxpayers to do so.

The Employer noted that it does not have a retention issue within this bargaining unit. That alone, however, does not mean that the road deputies covered under this agreement are not entitled to a fair wage increase. In fact the Employer proposal would provide a very modest wage increase to these employees. Certainly, no matter how underpaid the members of this bargaining unit may be relative to surrounding comparable counties, the Union's proposal for a 5% wage increase in each of the three years of the agreement is unreasonable, even if the employees may bear greater burden for health care costs in the future.

What remains is to fashion a recommendation that recognizes the work performed by the members of this bargaining unit, considers the relative wage rates they receive, yet respects the budgetary authority that rests with the Putnam County Commission as the fiscal representatives of county taxpayers.

The Union's argument that any wage increases should be implemented across the board rather than only for those who have maxed out their steps is compelling. By doing so all members of the bargaining unit will be treated fairly, and those at the early stage of their careers will not lose ground to more senior employees. The reality is that steps in compensation are intended to create pay scales that reflect the fact that as a road deputies gain experience they become more valuable to the Employer. That relative value difference should remain constant, and when senior employees receive increases so should those in the steps, just as they also gain all the other benefits provided for in the agreement.

Further, as new employees are hired, the reality is that they will be filling vacancies created by more senior (and more highly paid) employees leaving. The result will a cost-savings to the Employer regardless of "across the board" nature of this recommendation. In recognition of this major change, however, it is fair and reasonable that the Employer's proposal that the first year increase be effective as of the first pay period following the execution of this agreement be recommended.

As to the wage increases in 2014 and 2015 wage increases, modest increases that reflect both the anticipated economic condition of the county and the fact that this bargaining unit is comparatively underpaid for comparable work in the surrounding comparable counties are in order.

Findings and Recommendation

The Fact-finder finds that it is fair and reasonable that all wage increases provided in this Recommendation be "across the board" increases including the wage steps. The Fact-finder further finds that it is fair and reasonable that the 2013 wage increase be effective with the first pay period after the effective date of the new agreement.

The Fact-finder finds that it is fair and reasonable that the "across the board" increase for 2013 be 1.5% effective the first pay period after the effective date of the new agreement. The Fact-finder finds that it is fair and reasonable that the "across the board" increase for 2014 be 1.5% effective the first pay period after the effective January 1, 2014. The Fact-finder finds that it is fair and reasonable that the "across the board" increase for 2015 be 2.0% effective January 1, 2015.

Therefore the Fact-finder recommends that Section B of Article 57 read as follows:

A. Employees in their first 5 years of service will receive a step increase in accordance with the following: Employees who are hired in the months of January through June will receive their first step increase in the January immediately following their date of hire. Employees who are hired in July through December will receive their first step increase in the January immediately following their first anniversary date. After the initial step increase, employees in grades 2 through 5 will receive their step increase each year in accordance with Section C of this Article. All employees will receive annual across-the-board percentage increases as follows: effective upon the first pay period after the effective date of this agreement a one and one half percent (1.5%) increase; effective January I, 2014 a one and one half percent (1.5%) increase; effective January I, 2015 a two percent (2%) increase.

The Fact-finder also recommends that any and all appendices reflecting wages and/or steps be amended to reflect the wage increases recommended above.

Issue: Article 58 – Retirement

Positions of the Parties

The Employer proposed new contract provisions that would require advance notice to the Sheriff of retirement. Under its proposal failure to provide the notice would carry the penalty of forfeiting 10% of the employee's severance pay.

The Union proposed the retention of current contract language.

Discussion

The Employer argued that this change would enable the Sheriff to plan accordingly when employees are going to retire, and ensure that vacancies can be timely filled and minimize scheduling disruptions and the use of overtime. The proposed changes allow for employees to change their minds if they should desire without penalty, but does provide for a modest penalty should an employee fail to provide the required notice. The Union objected to the notification requirement, but provided no solid argument as to any harm that the bargaining unit employees would suffer from providing such notice, except its claim that there is a punitive aspect should an employee fail to provide the required notice.

In fact, the notification requirement is not unduly restrictive, and will minimally affect each employee. Further, employees retain the ability to change their minds should their retirement plans change. As to the punitive aspect, it is certainly not draconian. It does seem fair that, just as employers face penalties and costs when they fail to follow provisions of collective bargaining agreements, the bargaining unit employees who enjoy such protection will also at times bear some responsibility and risk for following the contract's provisions.

Findings and Recommendation

The Fact-finder finds the Employer's proposal to be reasonable, fair and compelling.

Therefore the Fact-finder recommends that Sections B, C and D be added to Article 58 and read as follows:

B. When an employee has made the decision to retire, upon giving notice to OPERS, but no later than thirty calendar days prior to the date of retirement, the employee will notify the Sheriff in writing of his/her intent to retire and the effective date.

C. If the employee fails to provide notice to the Sheriff, in writing, of his/her intent to retire in accordance with the time frame above the employee will forfeit 10% of the severance pay the employee would have otherwise been entitled to under Article 15, Severance Pay.

D. If an employee formally rescinds his or her retirement application from OPERS the employee may also rescind their notice of retirement to the Sheriff provided that the date of retirement has not already passed.

The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.

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Martin R. Fitts
Fact-finder
April 24, 2013

Certificate of Service

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: Michelle Sullivan, Allotta | Farley Co. LPA (representing the OPBA); Fred Lord, Clemans, Nelson & Associates (representing the Putnam County Sheriff's Office); and Mary Laurent (Bureau of Mediation, State Employment Relations Board).

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Martin R. Fitts
Fact-finder
April 24, 2013