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STATE OF OHIO
STATE EMPLOYEE RELATIONS BOARD

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IN THE MATTER OF THE FACT-FINDING)	BEFORE FACT-FINDER:
)	JAMES E. RIMMEL
Between)	
)	SERB CASE: 2013-MED-07-0846 &
THE FRATERNAL ORDER OF POLICE)	2013-MED-07-0845
LODGE 186)	
)	HEARD: 24 FEBRUARY 2014
And)	WEST CHESTER, OHIO
)	
WEST CHESTER TOWNSHIP)	ISSUED: 7 APRIL 2014
)	
)	FILE NO.: 14.02115

APPEARANCES

FOR THE FOP:
Susan D. Jansen
Doll, Jansen, Ford & Rakay

FOR THE CITY:
Donald L. Crain
Alexander L. Ewing
Frost Brown Todd, LLC

BACKGROUND

The Township of West Chester, Butler County, Ohio is located in the South Western part of the State between the cities of Cincinnati and Dayton, just off I-75. This Township consists of 35 square miles and has been one of the fastest growing communities in the region. Its 60,958 population makes it the largest township in the State of Ohio although recent business growth has slowed somewhat. This community is made up of residential neighborhoods, parks as well as commercial and industrial enterprises.

At the time of this proceeding, FOP Lodge 186 was certified collective bargaining representative for two (2) police officer units; the first consisting of all full-time police officers below the rank of Sergeant with the second covering all full-time employees at the rank of sergeant and lieutenant. Presently, there are 62 and 18 members within the respective units. In

any event, the record indicates the parties have unsuccessfully attempted to negotiate successor Agreements for their former CBAs, CBAs having terms of 1 October 2010 through 30 September 2013 or three (3) years. The record also reflects that these parties met on seven (7) occasions in their negotiating efforts, i.e., 20, 23 and 30 September; 7, 31 October; 4 & 20 November 2013; and, 13 January 2014; the latter two (2) sessions with the assistance of a mediator. While it appears the parties were able to resolve a number of issues, five (5) articles remain unresolved, matters that are presently before me for consideration/recommendation.

It was under letter dated 12 December 2013 that the undersigned was appointed Fact-Finder in this matter by the Ohio State Employment Relations Board (SERB). And, while the parties agreed, under O.R.C. Section 4117.17 (G)(11), to waive the time lines for hearing and issuance of the Fact Finder's report, so as to allow further opportunity for negotiations, those additional efforts failed to resolve all issues at impasse. In any event, the parties come to Fact-Finding with unresolved proposals submitted by one or both for contract language changes/additions in the following Articles:

Article 14 – Vacations

Article 15 – Holidays

Article 17 – Insurance

Article 19 - Wages

Article 27- Duration

With agreement of counsel, a hearing was set down in these matters for 24 February 2014 to be held at the Township's Offices in West Chester, Ohio to commence at 9:00 a.m. Prior to hearing, both parties provided the undersigned and opposing counsel with their pre-hearing statements as required by Ohio Administrative Code 4117-9.05(F) and Ohio Revised Code, Section 4117.14(C)(3)(a). At hearing, both parties were provided the opportunity to proffer argument, oral and written evidence, with both availing themselves to this opportunity, including providing a significant amount of written data.

Before addressing the unresolved issues, a few general observations appear to be in order. First, West Chester Township has experienced considerable growth over the last two and one-half decades, rising to the largest Township population wise in the State of Ohio - 60,958. Second, while these bargaining units date back to 1984, this is only the second fact-finding over some three (3) decades, the parties enjoying a very amicable relationship. Third, the West

Chester Township Police Department is comprised of professional officers at all levels who have provided quality service to the Township's citizens. Fourth, the Township is one (1) of the highest taxed communities within Butler County where anti-tax sentiment is quite strong and active. Fifth, the current Township five (5) year tax levy, which provides most of the revenue necessary to run the Police Department, was passed in 2010. Sixth, there have been a number of changes made recently at the state level that have lessen/eliminated sources of revenue for municipalities and townships.¹

Turning to the unresolved matters, the Union proposes an increase in the vacation schedule set forth in Article 14, Section 1 in seeking the addition of a fifth benefit level after 25 years of service. Specifically, it proposes the following:

- (e) After completion of twenty-five (25) years full time service with the Employer two hundred Forty (240) hours.

In other words, it seeks an additional 40 hours of "vacation time" for those employees with more than "[twenty-five (25) years' full time [credited] service" with the Township. It contends such an adjustment is clearly supported by both external and internal comparables² and is appropriate given recent pension mandates requiring officers to work longer before being eligible for retirement. Likewise, it contends since officers are not usually replaced by others on overtime³, there is little to no added costs for the Township in making this requested vacation schedule change. It contends, moreover, that the very nature of a police officer's profession is quite stressful, mandating a reasonable amount of downtime.

In turn, the Township argues that the current schedule providing a maximum of five (5) weeks of paid vacation time is more than reasonable and quite comparable to other relevant jurisdictions of record. While it acknowledges Township Firefighters currently receive six (6) weeks of vacation under their CBA with the Township, employees within AFSCME and FOP

¹ The Township claims that overall revenue sharing changes enacted by the state has impacted local government bodies by approximately \$1 billion. It notes these changes have adversely impacted the Township in such areas as estate taxes, tangible personal property taxes, kilowatt taxes, etc.

² Comparable data were offered by both parties in support of their respective positions on the unresolved issues, data that was considered by me in arriving at my recommendations herein.

³ The FOP notes that Township firefighters presently receive six (6) of vacation after 27 years of credited service.

Dispatcher units receive a maximum of five (5) weeks. It contends the Township Police units are the principle bargaining units within the Township and any change of this nature would be likely carried over to the other agreements, increasing employee costs even further, including cash out costs. Likewise, it contends that local governmental bodies cannot be reasonably expected to have benefit programs that far exceed that being provided in the private sector, especially where, as here, the governmental employees are also highly paid.

RECOMMENDATION/ANALYSIS

The vacation schedule set out in Article 14, Section 1 of the parties' former Agreements (1 October 2010 through 30 September 2013) should be carried over unchanged in their successor Agreements

While the Union's proposal here is somewhat rooted in the State of Ohio's changing of pension eligibility requirements for police officers, changes that have resulted in officers potentially working longer before retirement, this record is simply insufficient to warrant the requested increase in the existing vacation schedule. And, while there are some agreements providing for six (6) weeks of vacation, e.g., the Township's own firefighters, the vast majority of agreements in the public and private sectors do not provide this level of vacation benefit. The reality, moreover, is that these types of benefit changes only serve as further ammunition for the anti-tax levy crowd that has successfully resisted levy increases, time and time again, for the local school district and who have reportedly set their sights on the Township and its police officers.

The reality here is that changes of this nature not only widen the gap presently existing between private and public sector employees, it serves to further embolden the anti-tax crowd. This is even more so when other paid benefits are considered in conjunction with existing vacation provided these officers. For those who are at the top level of the vacation eligibility schedule, that represents a little less than 10% of the work year.

ARTICLE 15-HOLIDAYS

Now, the Township seeks to modify that found at Article 15, Section 3 relative to the payment of compensatory time. Specifically, it seeks to modify the provisions for "cash outs" as

well as establish certain forfeiture criteria for unused accrued hours. It claims that while these changes represent minor financial costs to individual employees, they would save the Township significant monies over time. It contends these hours have been used by Township officers as a year-end “piggy bank,” even though they could have taken the time off during the year. It contends, moreover, this use of this program is not what was intended by the parties when these provisions were initially negotiated. Put simply, it contends that the parties simply intended to give officers who worked a holiday time off at a later date during a calendar year. In any event, it contends the cost to the Township in providing this cash out benefit for employees outweighs any benefit to employees.

The Union, in turn, strongly argues that the proposed changes offered by the Township are simply part of an on-going effort to take away from its members various benefits that have been negotiated by the parties over the years in give and take bargaining. It contends these changes would result in a 5.77% pay reduction in an officer’s annual pay for those who cash out 120 hours of holiday compensatory time at year’s end. It contends that the Township’s attempt to take away one of the few miscellaneous forms of compensation received by its members is not only unconscionable but clearly unjustified on this record.

RECOMMENDATION/ANALYSIS

It is recommended that the current provisions of Article 15, Section 3 under the former agreements (1 October 2010 through 30 September 2013) between the parties be carried over unchanged in their successor Agreements.

While I realize the Township wishes to take all steps necessary now to avoid possible future fiscal crisis, especially if its current police levy is not renewed by the voters, the changes being sought here are arguably premature in this instance. These proposed changes adversely impact officers, officers the Township is also seeking to accept a three (3) year wage freeze. And, while this program may have generated certain costs not anticipated by the Township, the language/benefit is what the parties negotiated. Dissatisfaction with a negotiated benefit does not, *per se*, warrant my recommending its modification, especially against the backdrop of that being sought here by the Township in other areas. The reality is that the Township’s current financial condition does not justify my recommending a change in these provisions. I do not

mean to suggest that Township Administrators should not be proactive in seeking out/implementing costs savings, only that proposed changes, in this particular format, i.e., fact-finding, cannot be considered in a vacuum. In any event, the Township has not shown on this record a cogent reason to modify this negotiated benefit.

ARTICLE 17-INSURANCE

Now, the Township proposes to increase the percentage of health insurance premiums paid by bargaining unit employees. Specifically, it proposes over the course of the new three (3) year agreements that bargaining unit employees pay 14% in 2014, 15% in 2015 and 16% in 2016. It emphasizes that all other bargaining units within the Township have agreed to increase the premiums paid by their members in recognition of the ever increasing costs of these benefits. Likewise, it contends its proffered comparable data support the reasonableness of these proposals. Additionally, it seeks to add certain “buy-up” pay provisions requiring bargaining unit members to bear the premium cost difference between the basic plan offered by the Township and a more expensive broader benefit plan that has been opted for by some employees. It contends while the Township is willing to seek out various types of plans for its employees, it does not believe it should bear the higher costs associated with premium plans. It contends the basic plan provided by the Township offers reasonable health insurance coverage for employees and their families.

Likewise, the Township seeks to make clear in the parties’ Agreements its inherent right to become “self-insured” in the future should conditions warrant, especially from a cost standpoint. Lastly, the Township seeks to incorporate a new grandfather provision into the parties’ Agreements relative to spouse insurance benefits. Specifically, it seeks to incorporate into the Agreements language requiring new employees to provide Administrators with “certification that the Employee’s spouse is not eligible for insurance coverage from the spouse’s employer, pension or Medicare.” In any event, it claims the current 13% premium participation rate of West Chester officers is less than average of their peers in other relevant jurisdictions.

The Union, in turn, contends that against the backdrop to the Township’s proposing of a wage freeze over the terms of the successor agreements, it finds these insurance proposals unconscionable and unacceptable. It contends its members already pay a significant amount toward the costs of their health insurance. The Union requests that no changes be paid in the

provisions of Article 17 and that its members be required to pay no more than the current 13% premium costs for the terms of the new agreements between the parties. It suggests that while the Township seeks added employee costs for those who wish to be covered by the "Elective Plan," it offers nothing in return. It notes that many jurisdictions who wish to encourage their employees to sign up for higher deductible plans typically bear more premium costs in order to promote employee sign up. In any event, it suggests if I were to adopt the Township's premium increase proposal, its members would have to bear additional annual wage reductions ranging between .48% and 1.9%. Likewise, it notes while Township insurance costs may have continued to increase in recent years, the actual percentage increase for its members have been even higher - 13.9% versus 17.5%. In addition, it contends relevant comparable data show its members currently pay higher monthly premiums than their peers.

RECOMMENDATIONS ANALYSIS

Amend the provisions of Article 17, Section 2(a) to read as follows: "Basic Plan: Effective the month after this Agreement is ratified/approved Employees shall pay an amount equal to 14.5% of the premiums during the life of this Agreement and premium equivalents including but not limited to any applicable HRA reimbursements or fees owned by the Township to participate in the program, rounded to the nearest tenth of a dollar."

Amend the provisions of Article 17, Section 2(b) to read as provided under paragraph (a) above and adding the following clause: "To the extent this percentage calculation yields less than one-half of the difference in premium costs between the Basic Plan and the Elective Plan any employee who opts for the Elective Plan will be assessed such costs. At no time is the Employee's portion of these costs for this benefit (Elective Plan) to exceed one-half of the overall cost of the added premium between the Basic Plan and the Elective Plan."

Add a new provision to Article 17 to read: "Effective 1 April 2014, health insurance coverage for spouses of new employees will be provided upon certification by the Employee that the Employee's spouse is not eligible for insurance coverage from the spouse's employer, pension, or Medicare."

This matter, cost of health insurance, has been for more than a decade now the primary issue in negotiating collective bargaining agreements, especially where health insurance had

been previously provided by the employer at no or little cost to employees. The reality is that governmental employers have concluded they can no longer bear the ever increasing costs of these benefits alone. There simply are no easy answers here for the parties, employees or tax payers. And, while this employer, like most others, has no present sound bases for knowing the future effects of the "Affordable Care Act" (ACA), it claims to be only seeking here a reasonable cost sharing formula with Township employees on what is presently known/provided. What is reasonable, however, is like beauty being solely in the eyes of the beholder. In other words, both parties are simply seeking to pay less of the overall premium costs for employee health insurance coverage. The likelihood of this happening in the near future in the current market place or under the ACA is remote at best.

Now, the problem with the comparative data proffered by the parties in support of their respective positions is that such do not allow for a true and precise comparison of offered programs. For example, while FOP data indicate the family plan monthly premium for West Chester Township of \$1,805.30 is the highest among cited jurisdictions, I have no way of knowing what features, if any, within their plan served to establish the cost difference. It is one thing to pay more for the same program and quite another to pay more for a broader, more comprehensive program. Likewise, I simply do not know what, if anything, was given in exchange for the current health insurance program. In any event, resolution of this difficult issue involves more than a simple mathematical analysis. In any event, I believe the data of record supports the modest increase being recommended in employee premium costs, an increase not significantly changing their comparative percentage status amount their peers.

As for the Township's "buy-up" request, it must be remembered that the "Elective Plan" was part of the prior agreements between these parties where employees only paid, like the Basic Plan, an agreed-to percentage toward premium costs. And, while this figure apparently yielded higher costs to the employee given the overall higher premium costs for the Elective Plan, the Township paid most of the difference in the premiums between the two (2) plans, approximately \$1,200.00. The reality here is that this so-called "Cadillac" plan is optional for employees who may wish to secure added health insurance protection. As such, it is not unreasonable to require those employees who opt for this more comprehensive plan to pay half of the additional premium costs. It is likewise reasonable for the Township to pay the other half of this additional premium, having agreeing in the past to provide this benefit, subject only to the agreed-to

percentage paid by employees who opt for the Elective Plan.

As for the Township's requested contractual language relative to spouse insurance coverage, language applicable to only new hires, such appears quite reasonable in this age of husband/wife employment. And, while the FOP is not in favor of this requested addition, it offers little cogent reason why it should not be recommended.

Lastly, while the Township seeks language explicitly recognizing its right to become self-insured via a "comparable insurance plan" to that currently provided by an insurance carrier(s), that which is currently set forth at Article 17, Section 1 seems to do just what it is seeking here. The current language found in this initial paragraph of Article 17 succinctly states that the Township has the right to provide employee health insurance "from a carrier of its choice or on a self-insured basis."

ARTICLE 27-DURATION

While the parties failed to consummate a tentative agreement on the Duration Article of their successor agreements, both clearly desire a three (3) year agreement, as has been their history. This failure/strategy was apparently rooted in concerns about what wage adjustments, if any, would be incorporated into their successor agreements, whether some sort of reopener would be recommended and/or be part of a package settlement agreement. In any event, this issue being at fact-finding must be dealt with at this time. The reality is at this point, there is no reason for the parties not to adopt a three (3) year term for their new agreements irrespective of what is to be recommended under the wage and insurance articles.

RECOMMENDATION

Article 27-Duration of the parties' successor agreements should read as follows "This Agreement shall become effective as of October 1, 2013 and shall continue until September 30, 2016. Thereafter, it shall continue in force from year to year unless either party hereto notifies the other in writing at least sixty (60) days prior to the expiration of the term or extended term of this Agreement, of any intention to make changes in or terminate the Agreement."

ARTICLE 19-WAGES

The Township opines that the parties must approach these negotiations from a different viewpoint given the on-going effects of the “Great Recession,” material reductions in state funding to local governments, local tax payer frustration over ever increasing tax rates/public employee wages, decreases in the number of local businesses, especially larger employers, etc. It claims the parties must be willing to acknowledge they are working in a “new normal” environment where every effort/agreement must be vetted for its financial impact on the Township, including consideration/effects of long term employment costs. It emphasizes the majority of police department revenue currently comes from a five (5) year tax levy that was narrowly enacted by the voters in 2010. It contends local Trustees are truly concerned that tax payer sentiment will make reenactment of this levy quite difficult. This is especially true, according to the Township, if a proposed levy(ies) involves additional mileage to address added operating expenses.

Given these realities, it strongly urges that a wage freeze be adopted for the entire terms of the parties’ successor collective bargaining agreements. It does proffer conditional lump sum payments that it suggests are more than reasonable in these uncertain times. It iterates its claim that the Trustees will quite possibly encounter difficult times in securing renewal of the current police levy for the Township. In any event, it proffers the following wage proposal:

Effective upon the execution of this Agreement, members of the bargaining unit shall receive a one-time lump sum payment of \$750.00 less lawful deductions. If the Police Department’s revenues for 2014 exceed \$12,924,744.00, the members of the bargaining unit shall receive a one-time lump sum payment of \$1,000.00, less lawful deductions, payable in February 2015. If the Police Department’s revenues for 2015 exceed \$12,552,232.00, the members of the bargaining unit shall receive a one-time lump sum payment of \$1,000, less lawful deductions, payable in February 2016.

The Township strongly argues that its officers are presently well compensated in comparison to their peers in other relevant jurisdictions and would remain so even if subject to a wage freeze over the terms of successor agreements. It iterates that the parties must act even more fiscally responsible in both the short and long term so West Chester can remain a viable

community. It claims the “new normal” environment mandates compensation adjustments for police officers at rates far less than historical figures, i.e., 2.5 to 3% annually. It claims given available current/future revenues available to the Township, local taxpayers will not support former levels of wage increases.

In turn, the FOP claims that its request for annual wage increases of 3% over the terms of the successor agreements is not only consistent with historical wage adjustments and that granted other employees in the Township, but clearly within this Township’s ability to pay. While it acknowledges that Township Administrators have proffered dire warnings/forecasts to its bargaining team during recent negotiating sessions, it claims Township positions have not been supported by their ever-changing numbers, including estimated carryovers from year to year. It argues that absent a clear showing of precise data from the Township, I cannot rightly rely upon their dire claims/forecasts in dealing with this article. It thus requests that all bargaining units’ members be granted annual wage adjustments of 3% over the terms of the successor agreements.

The differences here are quite evident, the FOP seeking historical wage adjustments of 3% annually, with the Township offering, for the most part, conditional lump sum payments and a wage rate freeze. Neither seems appropriate under the record before me. While the overall environment surrounding the so-called “Great Recession” strongly suggests that this is other than business as usual, the ever-changing financial forecasts offered by the Township in support of its “sky may fall” scenario do not serve to support its request for a wage freeze and conditional lump sum payments.

Finally, the Union seeks certain changes to current shift differential provisions set out under the provisions of Article 19, Section 5. Specifically, it seeks for those officers “whose assigned shift includes any time between the hours of 1700 and 0700 shift differential pay, instead of rotating shift pay, at the rate of an additional \$.40 per hour for such scheduled hours.” It suggests that current schedules have brought this issue to the fore where so-called day officers are required to regularly work beyond normal day shift hours. In turn, the Township contends that which is currently provided in the way of shift differential is more than adequate. It strongly opposes added any additional employment costs at this time.

RECOMMENDATIONS/ANALYSIS

Amend Article 19-Wages to provide no schedule wage increases

over the terms of the successor agreements. The successor agreements under Article 19, Section 1 shall set forth those rates which were in existence as of 30 September 2013 as the agreed-to rates of pay for the terms of the successor agreements. Additionally, a new Section 12 should be added to this Article captioned "Annual Lump Sum Payments." This new Section should read: "Each police officer [Sergeant/Lieutenant] in the employ of the Township on 30 September of 2014, 2015 and 2016 will be paid a lump sum equivalent to one and one-half percentage (1.5%) of his/her annual base rate of pay, as set under Section 1 above."⁴

The parties should carry over the existing provisions of Article 19, Section 5 without change in their successor agreements.

In arriving at the afore Article 19 recommendations, that of record most compelling is SERB's Annual Wage Settlement Report, a report showing that wage settlements for police units have averaged 1.15% over the last three (3) years reported. These data cogently show that the historical percentages employed in West Chester are no longer supportable. One likewise cannot summarily ignore the significant reduction in state revenues for local governments, the anti-tax sentiment in this community, loss of several large employers,⁵ and Township's current limited sources of revenue. The reality, however, is that the situation concerning the uncertainty of the Township's police levy in the future will be a recurring theme unless new sources of revenue become available. In other words, even if the Trustees are able to get the current levy renewed, the claimed fragile situation will, in all likelihood, continue to exist. In any event, that being recommended here in the form of lump sum payments will be of little significance if the police levy is not renewed. And, this form of compensation does not serve as readily as fodder for the anti-tax crowd.

As for the FOP's requested change to the shift differential provisions, the absence of potential cost's numbers and scope of coverage is troubling. In most agreements, shift differential payments are paid to those employees who work the majority of their shift between

⁴ The respective structure rate adjustments called for in the Gold Contract covering Police Sergeants and Lieutenants would need to be added to these payments.

⁵ At hearing, the Union argued that new employers are still coming to this community, thus continuing its growth. The Township, however, while not disputing this Union claim, observed that the new employers have been much smaller than those who have left or reduced their local operations resulting in a net reduction in available jobs.

specific hours, not to those whose work hours partially overlap those hours.

This fact-finding Report and Recommendations issued this 7th day of April, 2014 at North Canton, Ohio.



JAMES E. RIMMEL, FACTFINDER

Date