STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-finding Between:

Ohio Patrolmen's Benevolent Association	:	Case No 2014-MED-09-1202
And	:	Recommendations
Great Parks of Hamilton County, Hamilton County, Ohio	:	Margaret Nancy Johnson Fact-finder

Statement of the Case

In compliance with Ohio Revised Code Section 4117.14 (C)(3), the State Employment Relations Board ("SERB") appointed Margaret Nancy Johnson to serve as fact-finder in the above referenced negotiations between Ohio Patrolmen's Benevolent Association, hereinafter "OPBA" or "Union," and Great Parks of Hamilton County, Hamilton County, Ohio, hereinafter "Great Parks" or "Employer." The parties convened on August 31, 2015, in a conference room at Great Parks Headquarters in Cincinnati, Ohio. Jeffrey S. Shoskin and Julie E. Byrne, Attorneys with the law firm of Frost, Brown, Todd, presented the case on behalf of Great Parks. OPBA was represented in these proceedings by its Attorney, Mark J. Volcheck.

A political subdivision of the State of Ohio, Great Parks is a park district designed to protect natural resources and to provide outdoor recreational and educational programs within Hamilton County. Great Parks, including seventeen (17) parks and four (4) natural resource areas, covering over 16,000 acres, is divided into five (5) districts within which the Rangers work. The bargaining unit consists of approximately twenty-three (23) full time park Rangers, with law enforcement and policing responsibilities and capabilities.

This is an initial Agreement between the parties, OPBA having been certified by SERB as the exclusive bargaining representative for full-time Rangers on or about August 14, 2014. Bargaining for this initial Agreement resulted in tentative agreements on all but four items. Prior to the hearing both parties timely submitted position statements for review by the fact-finder on the following four unresolved issues: 1) Article 13, Arbitration Procedure; 2) Article 16, Lay-Off and Recall; 3) Article 17, Hours of Work and Overtime; 4) Article 29, Wages. Pursuant to mediation the parties reached tentative agreement on language for Article 13.

Issues

Issues remaining unresolved are the following: Article 16, Lay-Off and Recall; Article 17, Hours of Work and Overtime; Article 29, Wages.

Criteria

In submitting the recommendations which follow, the fact-finder has taken into consideration those factors traditionally relied upon by neutrals and those specifically enumerated in Ohio Revised Code, Section 4117.14(G)(7).

Position of the Parties

A. Article 16: Lay-off and Recall

1. Great Parks

Great Parks argues that pursuant to ORC 4117.08(C) and analysis of authoritative case law, the issue of lay-off and recall is a permissive subject of bargaining. Thus, the Employer will not bargain away its discretionary right to lay off employees. Moreover, in rejecting an obligation to layoff non-unit employees first, Great Parks contends the Union cannot bargain to impasse on the rights of part time, temporary, and seasonal employees who are outside the bargaining unit and not represented by the Union. Finally, the District rejects the proposal that seniority determine the order of lay-off.

Great Parks proposes retaining sole discretion to lay off employees based upon ability, skill and experience. Along with the right to layoff, the District seeks to retain the right to reduce hours should it determine a lay off is necessary. The layoff proposal of Great Parks is more fiscally responsible in that it enables the District to ensure continued visitor safety at a reasonable cost.

2. OPBA

The Union argues that layoff language is not a permissive subject, but, rather, a mandatory topic for bargaining as determined by the Ohio Ninth Judicial District Court of Appeals in *City of Akron, v. State Employment Relations Board*, (2013 Ohio App. Lexis 1119, 195 LRRM 2582). By authorizing Employer use of part time workers during a layoff, the proposal of Great Lakes undermines the integrity of the bargaining unit and the traditional recognition of seniority in labor contracts. Additionally, enabling the Employer to reduce hours in the event of a layoff severely compromises the bargaining unit.

Consistent with external comparables, OPBA proposes that full time employees not be laid off until all part- time, seasonal, and temporary employees have been laid off. Further, OPBA proposes that seniority govern in the event of a lay off. Lay off language and procedure proposed by the Union is typical of Agreements throughout the state.

B. Article 17: Hours of Work and Overtime

1. Great Parks

Great Parks seeks to include contract language that specifically states the normal forty-hour work week is not a guarantee of hours to be worked. Its proposal provides for a fourteen (14) day work period with an 80 hour overtime threshold. Before any change in the work period the Employer will give at least a thirty (30) calendar day notice. Overtime shall be calculated in accordance with applicable FLSA rules. The Employer further proposes restricting shift trades to five during a calendar year and to have the right to deny time off requests for operational reasons.

The proposal of Great Parks provides operational flexibility and controls overtime costs while establishing reasonable employee trading opportunities. Proposals submitted by the Union effectively thwart the Management Rights provisions to which the parties have tentatively agreed. Absent any evidence of managerial inequity pertaining to scheduling or time off requests, the language proposed by the Employer should be recommended.

2. OPBA

OPBA proposals on Hours of Work basically incorporate existing practices of the parties while accommodating Employer concerns. Currently, some Rangers work a ten hour, four day week with consecutive days off. The proposal of the Union is in response to prior occurrences and to ensure employees will not be required to work different shifts within a work period.

Time off requests have been extensively discussed by the parties. The proposal of the Union is that such requests be made within certain time limits but requests will not be denied if not made in accordance with the time limits. All requests are subject to operational needs of the Employer.

While in the past shift trades have been granted almost without exception, the Employer now seeks to restrict the same. The proposal of the Union is in response to concerns of the Employer and addresses the same.

C. Article 19: Wages

1. OPBA

Accepting the current hourly rate for 2015, the Union proposes a pay scale consisting of six (6) tiers for the final two years of the three year contact. Presently, wages for unit employees range from $43,126 to $62,927, based on 2080 hours at an hourly rate. Among the bargaining unit members there are 19 different rates of pay, resulting in significant wage disparity for experienced full time employees.

OPBA established a wage scale for the unit by taking the highest and lowest wage rates and creating six steps equally spaced within that range. The Union then added a 2.5% increase to those steps for 2016 and for 2017. For each year, two scales are provided, one for employees hired on or after January 1, 2015 and another to transition employees hired prior thereto.

OPBA proposes the elimination of merit pay increases. Merit pay is not supported by comparable data and is arbitrary and inequitable, resulting in disparity and discontent within the unit.

2. Great Parks

The Employer proposes continuing its existing Park District compensation program and ensuring internal parity. All employees receive a 1% base wage increase and the potential to earn an additional 1% through a merit based increase. In 2014, all Rangers received some merit pay, with most receiving the entire 1% increase.

As with its other interest issues discussed herein, the wage proposal of the District is based upon economic uncertainty. Presently, Great Parks is operating under funds from a levy which is to expire the final year of this Agreement. Given fiscal conditions, the Employer argues it cannot incur substantial additional costs and that it would be irresponsible to grant the increases sought by OPBA.

Wages paid to Rangers by Great Parks are entirely comparable to those paid by other Park Districts. Moreover, its proposed increase is consistent with wage settlements reported by SERB for the region and service rendered.

Discussion

Context and Overview

As previously stated, this is the initial labor agreement between Great Parks and its full time Park Rangers. Negotiations between the parties resulted in tentative agreement on all but three (3) Articles: 1) Wages; 2) Hours of Work and Overtime; 3) Lay-Off and Recall. Tentative agreements previously reached are incorporated into these Recommendations as if fully rewritten.

Park Rangers are certified peace officers having law enforcement capabilities. They are also trained in both CPR and first aid. Duties include responding to a variety of situations involving visitors and patrolling the parks by car, boat, ATV, bicycle, and on foot. Job responsibilities distinguish Rangers from other Great Parks employees, both those who, like the Rangers, work "in the field" and those who work in administrative offices.

Among the twenty-three (23) Park Rangers there are nineteen (19) different rates of pay, ranging from $43,126 to $62,927. Moreover, there is a notable wage disparity in the hourly rates, with the pay grade of some less senior employees significantly exceeding that of more experienced Rangers. A merit pay system currently in place annually rewards service with up to a 1% wage increase. In these negotiations, OPBA seeks to establish not only a wage scale and elimination of merit pay, but also contractual provisions pertaining to job security.

In presenting its case, Great Parks has emphasized the difficult economic climate in which these negotiations have occurred and the limited financial resources available for funding its operations. Revenue from a fifteen (15) year 1.0 mill tax levy accounts for approximately 55% of the General Fund with additional revenue coming from fees and charges to users of park facilities. The levy will expire in 2017 during the final year of this three year Collective Bargaining Agreement. A task force is currently reviewing options for renewal, replacement, or a new, larger levy. Evidenced by the close margin in approving the 2002 levy, voter support is uncertain, especially since Cincinnati has a park levy on the ballot this fall.

Like other governmental entities, Great Parks has incurred revenue loss due to on-going restraints imposed by the State Legislature. State budgets have phased out reimbursement for tangible personal property taxes, reduced the local government fund, and eliminated a local property-tax levy subsidy. Impact of these changes is that Great Parks has $1,687,000 less than previously anticipated for the duration of the current levy cycle. To further support its argument for fiscal caution, Great Parks points out that because of its financial forecast in 2011, Great Parks had to implement a Reduction in Force (RIF) and a wage freeze for employees in 2012.

Negotiation for this initial Agreement occurs in the context of economic uncertainty—for both employer *and* employee. While Great Parks seeks to maintain flexibility in its operations and consistency in its wage structure, OPBA seeks greater job stability as well as a more structured salary schedule. Citing a well-funded reserve and an annual carry-over balance, OPBA contends that Great Parks has the ability to finance the adjustments sought by the Union. The Union further notes that Great Parks is conservative in its budgeting. For the year ending December 31, 2014, for example, Great Parks forecast an end of year balance of $4,709,090, whereas the actual balance was $8,442,875.

Yet, conservative financial planning is what is required and constituents expect of public employers. Moreover, financial documentation submitted by the Union, carefully reviewed by

the fact-finder, indicates that fiscal moderation is, in fact, warranted. Data establishes that Great Parks is not immune to the nemesis of most public entities in Ohio—increasing expenditures and decreasing revenues.

The 2014 Comprehensive Annual Financial Report (CAFR) observes that Hamilton County is making "good strides toward recovery," but "growth in the region has not been as fast as the nation overall" (OPBA Tab 21, p. 6). In Financial Highlights for 2014, CAFR notes decreases in "total net position," "general revenues," and "ending fund balances" (*Id*., p. 13). Those findings are also seen in the Amended Certificates of Estimated Resources from 2010 through 2015 (OPBA Tabs 22-27). While the end of year fund balances are certainly up from 2011 and 2012 (the years in which lay-offs and a wage freeze were enacted), the carry over balance on January 1, 2015 was less than in 2014 or 2013. In 2014, "Great Parks total revenue decreased 6%" (CAFR, p. 16).

Proposals submitted by the OPBA and Great Parks for review and recommendation address the economic concerns of the respective parties. The task before the fact-finder is to balance these concerns, endeavoring to accommodate to the extent possible the purpose and intent of the parties, while remaining cognizant of financial limitations.

Article 16: Lay-Off and Recall

An initial issue to *consider* in regard to proposals on Lay-Off and Recall is whether pursuant to Ohio Revised Code Section 4117.08 (C)(5), lay-off is a permissive subject of bargaining. Great Parks argues that since layoff is a permissive subject, it will not bargain to impasse on layoffs and the Union has been so advised. OPBA counters that layoff is a mandatory subject of bargaining and that it "may insist to the point of impasse" on the inclusion of language it has proposed for layoffs. Both parties have cited authorities to sustain respective positions on the issue and the fact-finder has reviewed the case law submitted.

OPBA argues that *City of Akron v. State Employment Relations Board*, 2013-Ohio-1213, 2013 Ohio App. LEXIS 1119, 195 LRRM 2582, is the prevailing law on the issue of layoff as a mandatory subject of bargaining. Having read the decision, the fact-finder concludes that while the Court references "a mandatory subject of bargaining," it does not decisively define layoff as such. Rather, the issue in *Akron v. SERB* was whether the city had bargained in good faith when it proposed an amendment to civil service rules while in negotiations with the union. "So long as it bargains in good faith, the city may lawfully 'just say no' to any proposal from the employee representative *which conflicts with the charter*, be it on a 'mandatory' or 'permissive subject of bargaining'" (HN7, emphasis added). In finding that the city had not bargained in good faith, the Court looked at the "totality of the circumstances," including the city demand that the Union withdraw its layoff proposal and the city approach to the Civil Service Commission without prior notice to the Union.

Similarly to *Akron v. SERB*, case law cited by the Employer does not directly answer whether layoffs are a mandatory or permissive subject of bargaining. *City of Cincinnati v. Ohio Council 8, AFSCME*, 61 Ohio St. 3d. 658, 576 N.E.2nd 745 (1991) addressed whether a collective bargaining agreement prevailed over a conflicting provision of a city home rule charter. The Court held that once the city decides to enter into a collective bargaining agreement, that agreement trumps conflicting charter provisions. Both the Akron and the Cincinnati cases involve the

impact of external rules and regulations on the bargaining process, but neither one holds that layoffs are either a permissive or mandatory subject of bargaining.

The only authority that arguably does so is the Conciliation Award issued by Mitchell Goldberg in *IAFF, Local 4286 v. Deerfield Township*, 2013-MED-10-1321 (May 30, 2014). Therein, Goldberg thoroughly discusses the issue of permissive and mandatory subjects both in the private sector under the National Labor Relations Act and in the public sector pursuant to the Ohio Collective Bargaining Act. He concludes, as Great Parks argues, that ORC Section 4117.08(C)5 "lists what all labor specialists consider to be reserved management rights" and that the section "is operative as being an exclusive management right, not subject to collective bargaining unless the public employer chooses to include that subject in the Collective Bargaining Agreement" (p.6)

But, in his erudite analysis of the issue of promotions as a permissive bargaining subject, Mitchell Goldberg was functioning as a Conciliator, not as a Fact-finder. As a Conciliator, he was confronted with the statutory directive to choose between the Union's proposal on promotions or the "status quo," a Management Rights Clause granting the township exclusive right to promote. Indeed, in his award, Goldberg acknowledged the differing roles of a Fact-finder and a Conciliator, and found that unlike the Fact-finder before him, he was obligated "to analyze and navigate through the submitted authorities to decide which of submitted proposals should be subject to final and binding conciliation" (p. 3).

While she has *considered* the authorities submitted, like Fact-finder Heekin in the case heard by Goldberg, the fact-finder herein is not charged with a mandate to make a legal determination. Her function is to issue recommendations in order to assist in the resolution of this contract labor dispute. And, unlike the employer in the previously cited impasse proceedings, Great Parks *has* proposed language for her consideration.

The fact-finder herein recognizes concerns of the Union over the lay-off language proposed by Great Parks and acknowledges that it contravenes the traditional concept of seniority, potentially diminishing the integrity of the bargaining unit. Other units have seniority-based language on layoff, as well as contractual provisions precluding reduction in hours and requiring part time employees be laid off prior to a full time Ranger. The Fact-finder is also cognizant that the Employer proposal incorporates hours of work. Yet, this is an initial Agreement, subject to future modification addressing an actual, not potential, impact of such language upon the unit. Moreover, exercise of a retained right is subject to challenge should management abuse its discretion.

Collective Bargaining is a process of give and take, making compromises, and reaching consensus. When negotiating successor labor agreements, the parties generally agree to maintain current language unless there is a demonstrated need for change. In the past no full time active Ranger has been laid off, even in 2011, when Great Parks was forced to implement a reduction in force. There is, therefore, no practice requiring remedy in regard to layoffs.

Given the significant modifications that have already been agreed upon and changes that are proposed in this report, the fact-finder recommends Employer language for Article 16, Layoff and Recall. In recommending Employer language, the fact-finder applies a rationale suggested by Great Parks -- that the employer may be anticipated in this first labor agreement to continue to operate its Rangers department with due deference to the concerns of its employees.

The fact-finder recommends the proposal of the Employer for Article 16, Layoff and Recall.

Article 17: Hours of Work and Overtime

Proposed language on Hours of Work and Overtime address several issues: the scheduled work week, time off requests, and shift trades. Before even getting to the operational issues, however, Great Parks submits that the Article on Hours of Work and Overtime must include language that "this section does not constitute a guarantee by Great Parks that such hours or any overtime shall in fact be worked." Rational of the Employer is that language establishing a "standard" or "normal" work week may be construed by an arbitrator as a guarantee of work time, and that exclusion of the language proposed by the Employer would permit the Union "to argue that those phantom guarantees exist."

While this may be true under the terms of some collective bargaining agreements, under language agreed upon and recommended in this report, such a contractual construction would conflict with the express language and be contrary to the Agreement as a whole. As indicated by Great Parks in its Position Statement, in the agreed upon Management Rights Article, Great Parks retains the exclusive right to "schedule Rangers and establish their hours, shifts, location, and days of work" (Statement, p. 24- 25). That right is limited only to the extent agreed upon by the parties. Moreover, language in the Article on Layoffs recommended by the fact-finder includes the right of Great Parks to "reduce the number of hours of work of one or more full-time employee." Given this contractual language it is not necessary to include a disclaimer as to any "guarantee" of work. As the right to change schedules is already within the Agreement, any future argument at arbitration that the employer should be precluded from securing a managerial right which it failed to gain in the course of negotiations would be unsustainable.

Language proposed by OPBA does not "gut" any of the express rights reserved by management. Nor does language proposed by the Union "restrict Great Parks' operational ability," as retained elsewhere in the Agreement. Rather, it sets forth a "standard" work period, standard being defined as usual or customary, but subject to change as provided in the Agreement. Review of comparable labor agreements within park districts indicates similar language pertaining to the work week—"typical," "normal," "regular." Labor Agreements between Rangers and Five Rivers MetroParks as well as Cleveland MetroParks use "standard" when defining the workweek, without any additional clarification. Section 17.1 as proposed by the Union does not request this Employer to do something that "no employer, public or private, could do" (Statement, p. 25).

Since the managerial right in issue is adequately reserved, focus of the fact-finder regarding Article 17 is on setting forth an operational procedure which is consistent and reasonable. In its proposal on hours of work and overtime, Great Parks seeks a fourteen (14) day work period with an 80 hour overtime threshold, with Rangers assigned to ten (10) eight (8) hour work days. Proposed language submitted by OPBA incorporates current practices on hours of work and overtime.

Evidence establishes that presently some unit employees work an eight (8) hour day, others work a ten (10) hour day, and five (5) or (4) day work weeks, respectively. Language proposed by OPBA continues this practice, with provision that schedules may be changed by management. Additionally, the OPBA proposal provides certain employee protections. These include that days off be consecutive and that employees not be required to work more than two different shifts in a work period, excluding overtime. Also, that there be at least twelve hours between scheduled shifts of employees, excluding overtime.

Insofar as Article 17, Section 1 as proposed by OPBA incorporates existing practice while providing reasonable employee protections as well as employer flexibility, the fact-finder recommends OPBA proposal on Section 17.1, with deletion of the word "either" in the first sentence. Both OPBA and Great Parks submit similar language for Sections 17.2 through Sections 17.7, with the only difference being that Great Parks provides for overtime being paid under applicable rules of the Fair Labor Standard Act (FLSA).

Using the statutory criterion of comparability, the fact-finder observes that the OPBA language on overtime is more consistent with similar units performing similar services. Not one comparable agreement cites FLSA, although there are some differences in the submitted agreements in defining "work hours." Even so, "work hours" for overtime calculation does not appear to be in dispute, both OPBA and Great Parks using identical language. Accordingly, the fact-finder recommends OPBA proposals on Sections 17.2 through Section 17.7.

The only difference in proposals for Section 17.8, Time Off Requests, is that OPBA includes language providing that the "failure of an employee to submit a time off request within said time periods shall not automatically result in a denial of the request." The fact-finder is of the opinion that both proposals as now written are a grievance waiting to happen. Clarity in the negotiated language can and should be required.

Both proposals use the words "must be delivered" and "must be submitted" and then imply that even untimely requests may be granted. The ambiguity in such language can be addressed by using the words, "should, if possible," in place of "must." Not only is such language clear, but it is also fair. No one always knows in advance when a personal need is going to arise, requiring an unexpected absence from work, and, perhaps, out- of- state travel. Intent of Section 17.8 is to accommodate these occurrences and to provide the employee with some maneuverability when the unforeseen happens. Accordingly, the fact-finder recommends OPBA language for Section 17.8 with the modification of "must"" to "should, if possible."

Parties are in agreement as to language for Section 17.9. The only other disagreement relating to Hours of Work involves shift trades, Section 17.10. Like time off requests, shift trades provide employees with flexibility. Language proposed by OPBA reflects the current practice of the parties and in addition ensures that trade shifts will not create an overtime liability. Both parties acknowledge that to date the Employer has worked with Rangers to address personal time off situations without issue and that "shift trades have been granted almost without exception." Language proposed by the Employer imposing a limit of five (5) trades per year appears to the fact-finder to be unwarranted. Since trades must be approved by the District Supervisor or Designee, the five (5) trade limit seems unnecessary as well as unduly restrictive. Accordingly, the fact-finder recommends the language of the OPBA in regard to Section 17.10.

Article 29: Wages

The wage issue before the fact-finder involves two (2) components on which the parties disagree, a salary schedule and merit pay. Currently, there are nineteen (19) different rates of pay for twenty-three (23) Rangers, with some more experienced Rangers receiving less than junior employees. Additionally, Great Parks has a merit system whereby employees can earn up to an additional 1% wage increase annually. As the parties have agreed upon current wages for 2015, in dispute are the wage provisions for 2016 and 2017.

OPBA proposes eliminating the merit pay presently in place and instituting a wage scale based on steps, arguing its proposal is consistent with practices in comparable law enforcement units including Park Rangers. An objective of the Union in securing step based wage rates is to remedy a "disorganized pay map that will only get worse with time" (OPBA Position Statement, p. 14).

Great Parks seeks to retain its merit pay system and resists a salary schedule based on steps. The Employer contends that implementing the salary schedule as presented by the Union is fiscally irresponsible and cost prohibitive. In proposing a 1% wage increase and a potential 1% merit pay increase, Great Parks advocates internal comparability.

Citing language in the recommendations issued by Harry Graham in *International Brotherhood of Teamsters and Cuyahoga County Sanitary Engineer* (October 19, 2010), Great Parks contends that internal comparables are a significant factor to be considered. In his Report Graham writes: "A feature of situations characterized by multiple bargaining units is an attempt by the parties to secure standardization of the terms of agreements" (Great Parks Position Statement, p. 12). This fact-finder concurs that, in general, percentage increases should be somewhat uniform among differing bargaining units within the same public entity.

In this case, however, internal comparability should not be the determinative criterion. First, Great Parks does not negotiate with "multiple bargaining units;" and although consistency between non-unit and bargaining unit employees may be considered, it is neither a statutory criterion nor a factor traditionally reviewed by neutrals. Second, internal comparability presumes standardized wage schedules, rates that have been collectively bargained and implemented. When a wage increase and not the rate of pay is the issue in dispute, reliance on internal comparability may be appropriate. Since rates of pay are in contention in this initial agreement, the internal comparability argument carries less weight.

Indeed, the current wage system has created the type of wage disparity which potentially could, as argued by Great Parks, "lead to disharmony and threaten employee morale" (Great Parks Position Statement, p. 12). Not only do some junior employees earn more than senior employees, but there are wage differences between employees having close to the same years of service—in one case, more than a $2.00 per hour difference.

Reviewing external comparability, the fact-finder observes that while Great Parks is comparable in its rate of pay, all Park Districts within Ohio have established steps for Rangers and three provide longevity payments and/or shift differentials (Great Parks Exhibit 20). OPBA proposal for an identifiable wage schedule by which employees progress based on length of service, establishing consistency and equity, is appropriate for this bargaining unit.

Nevertheless, to the extent implementation of the wage schedule as proposed by the Union is excessively costly, the fact-finder agrees with Great Parks. Although Great Parks may have the funds with which to pay for the increase sought by OPBA, rather than ability to pay, the issue is reasonability of the rate increase. An average percentage increase as sought by OPBA is not consistent with public sector employees, with Park Districts, or with law enforcement personnel in Ohio.

Standardization of wages within this unit should be accomplished by the parties—not confrontationally, but collectively and deliberatively-- rather than by a third party having a limited period of time in which to work out details of a significant financial issue. Accordingly, the fact-finder recommends a wage reopener for 2016 with the parties establishing a

committee of six (6) consisting of three (3) members of labor and three (3) of management to propose a new wage schedule for this bargaining unit

Having worked to a considerable extent with the wage data presented for each one of the Rangers, the fact-finder proposes *guidelines* with which the committee may work (or modify) and which are enumerated hereinafter.

1. A wage schedule with Steps should be implemented effective January 1, 2016.
2. Steps should be determined by length of service: starting pay; 1-3 years of service (Step 1); 4-6 years of service (Step 2); 7-9 years of service (Step 3) ; 10-12 years of service (Step 4); 13-14 years of service (Step 5); 15 and above years of service (Step 6).
3. Employees should be placed on a step in accordance with years of service as of 2016.
4. The base rate should be the rate received by the highest paid employee in the Step.
5. Employees in the Step should receive a pay increase to bring him/her to the base.
6. Employees who do not receive a wage increase in 2016 or who receive less than a 3% increase shall receive a lump sum payment equal to what they would have received had they been given a 3% wage increase, or the difference between what received and a 3% increase.

8. Steps with a single employee shall receive a 3% increase for 2016.

The fact-finder has established the steps based upon service years within the bargaining unit as of 2016. Her calculations indicate that the rates of pay suggested above are very similar to those of comparable units. In creating the steps, the lowest paid Rangers receive a substantial increase, but the highest paid in the step will receive only a lump sum for 2016.

Differences in rates of pay are most marked in Steps 2 and 3, with hourly rates of pay ranging from 23.9408 to 24.9067 in Step 2, and from 24.7404 to 25.7341 in Step 3. While the difference is also marked in Step 3, there are only two rates of pay and three Rangers in that Step. In those three steps, an increase of 4% for the lowest paid employees-- four (4) Rangers-- will bring those employee to the newly established base. Employees in between may receive increases up to 3.3%.

In Step 6, rates of pay are rather comparable. An increase of 1.5% for the lowest paid Ranger will bring that employee to the hourly base of 30.2547. Other employees in that Step will receive only fractional increases, but will be eligible for a lump sum payment as suggested above.

Given the significant rate increases and costs involved in implementing the Steps, the fact-finder recommends a 1% increase for the final year of the Agreement, 2017. While there is by necessity some disparity in wage increases for contract year 2016, the intent is to establish a more uniform and consistent pay schedule for the bargaining unit. Although the Union does not achieve all of the objectives, the recommendation puts in place a system which may be subsequently modified as appropriate.

Using the statutory comparability criterion, the fact-finder does not recommend continuing the merit pay system. Only one other Ranger unit in Ohio has merit pay. During the term of this contract, however, a bonus paid as a lump sum in 2016 as recommended above may reduce pay increase inequities resulting from the standardization process.

In summary, the recommendation of the fact-finder is that a committee work out the details of putting a standard wage schedule into effect for 2016, for which she has made suggestions. To accomplish this objective, the Fact-finder recommends a wage reopener for 2016. For contract year 2017, the fact-finder recommends a 1% wage increase.

Recommendations

1. Article 16, Lay-off and Recall: The fact-finder recommends the language proposed by Great Parks (Appendix 1).

2. Article 17, Hours of Work and Overtime: The fact-finder recommends the language proposed by OPBA, deleting the word "either" in Section 17.1 and changing the word "must" in Section 17.8 to "should, if possible" (Appendix 2).

3. Article 29, Wages: As discussed above, the fact-finder recommends a re-opener for 2016 with the establishment of a committee to work out details for a standardized wage schedule based on years of service. She further recommends a 1% wage increase for 2017. The merit pay currently in place should be discontinued for this unit.

4. The Fact-finder recommends inclusion of all tentatively reached agreements.

Respectfully submitted,

Margaret Nancy Johnson

Service

A copy of the foregoing report and recommendations has been issued on September 28, 2015, to: markvolcheck@sbcglobal.net; jshoskin@fbtlaw.com; jebyrne@fbtlaw.com; and upon SERB at MED@serb.state.oh.us.