

arbit:TrumbullSheriff.OPBA.FactFindingJailLts

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

December 1, 2017

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

CASE # 2016-MED-10-1205

and

TRUMBULL COUNTY SHERIFF

REPORT & AWARD OF
FACT FINDER

APPEARANCES

For the Union

George E. Gerken, Attorney
Lt. Eric Shay, Committee Member
Lt. Dan Lester, Committee Member

For the City

Curtis J. Ambrosy, Attorney
Paula Maas, Personnel Director
Major Jeff Palmer
Major Daniel Mason
Rich Jackson, H.R.
Sheriff Paul Monroe

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Introduction

The Collective Bargaining Agreement (“CBA”) between the Trumbull County Sheriff, (the “Sheriff”) and the Ohio Patrolmen’s Benevolent Association (the “OPBA” or the “Union”) in this Fact Finding involves a bargaining unit described as:

A. Unit Four shall be composed of all Assistant Wardens and Jail Lieutenants; this unit shall exclude the Jail Administrator, all Corrections Officers, all Jail Sergeants and all Commissioned Road Deputies, Sergeants and Lieutenants, all clerical employees and all other employees of the Sheriff’s Office.

This CBA between the OPBA and the Sheriff expired December 31, 2016. Through negotiations prior to Fact Finding the parties had resolved all but three issues, Vacation, Hazardous Duty Pay and Compensation. The undersigned was duly appointed Fact Finder. A hearing was set by agreement of the parties for November 7, 2017, and was heard in a conference room of the Sheriff’s Office in Warren, Ohio.

Both sides presented such evidence as they desired. No transcript was taken. All documents were received without objection from the other party. This includes the position statements, Union Exhibits 1-13, Sheriff’s Exhibits 1-18, the verbal statements made at the hearing by their respective attorneys, the testimony of Major Jeff Palmer, the officer responsible for operations other than the jail, Sheriff Paul Monroe, and Rich Jackson, Human Resources Director, on behalf of the Sheriff, and Lieutenant Eric Shay on behalf of the Union.

The Fact Finder thanks both parties for their professionalism and courtesy.

In reaching the recommendations made in this report, the Fact Finder considered the criteria set forth in Ohio Administrative Code Rule 4117-9-05 which are:

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

Facts

The CBA covering the Jail Lieutenants was for the period from when it was signed, which was July 15, 2015, to December 31, 2016. It is stipulated that any adjustments in the unresolved issues will be retroactive to January 1, 2017.

The background of Trumbull County and the history of the bargaining between these parties are summarized succinctly in the Fact Finding Report issued August 24, 2017 by Carol Bader in 2016-MED-10-1245 and 1246 (Union Exhibit 6) which involved two units of the Sheriff's Department: the Road Lieutenants (Unit 1) and the Road Patrol Deputies (Unit 2). Without repeating the entire summary, it is noted that the evidence presented in this fact finding clearly

supports what was said by Ms. Bader, that Trumbull County suffered huge losses, economically and in jobs, in the 2008-09 Great Recession and that it is only now coming back.

Further, I refer to the Fact Finding Report issued May 26, 2017 by Richard Gortz in 16-MED-10-1112 which covered the Corrections Officers (the “COs”) and the Conciliation Decision issued August 17, 2017 by Nels Nelson in that case, both the Fact Finding Report and the Conciliation Decision being found in Sheriff’s Ex 17. Both the Fact Finder and the Conciliator, dealing with the same facts that were presented in the current matter, found that Trumbull County is not in fiscal emergency or watch and that the County has conservatively budgeted and, in the Conciliator’s Decision, that the County’s general fund balance is adequate, particularly when adding the balances in the sales tax and casino fund reserves.

Further, the evidence supports the fact that the health care and workers compensation funds were over funded to the point that the state auditor had recommended that these surpluses be reduced and the excesses be added to the general fund (Union Ex 9). The County had begun reducing these over funded reserves by foregoing additional payments into those funds by the various departments.

In short, as acknowledged by the Sheriff, inability to pay is not an issue in this matter.

At hearing, the issue regarding Article 22 - Vacation, was resolved and both parties signed the contract language. That left two issues: Article 32.05 - Hazardous Duty Pay and Article 32.01 - .04 - Compensation.

Issues

Issue 1. Article 32.05 - Hazardous Duty Pay.

Union Position

The current Hazardous Duty Pay of 30 cents per hour should be raised to 40 cents per hour.

This would bring the jail lieutenants to parity with the Deputy Sheriffs. Working in the jail is just as hazardous as working on the road. Employees are exposed to danger in breaking up fights, in examining prisoners at intake and in dealing with prisoners who may have acquired weapons while in jail whether smuggled in or made in the jail.

Sheriff's Position

Jail Lieutenants were formerly Assistant Wardens. The change in title brought them in line with practice around the state. However, the job is the same. There no longer are Assistant Wardens in Trumbull County. There are five jail lieutenants. There are two road lieutenants. The jobs they perform are different

The COs receive 30 cents per hour for Hazardous Duty Pay and they are on the floor of the jail continuously. For internal consistency, the Hazardous Duty Pay should remain at 30 cents per hour.

Discussion

It was conceded at hearing that Hazardous Duty Pay for the Jail Lieutenants was a substitute for a pay raise. While strongly denied by the Union, it does appear that the real reason for any increase in Hazardous Duty Pay is to bring the Jail Lieutenants pay equal to that of the Road Lieutenants.

There are valid reasons why the Road Lieutenants and the Deputy Sheriffs should receive greater Hazardous Duty Pay. The area covered by the sheriff's department is 678 square miles. Lieutenants often respond when no deputy is available and they respond to the same calls any police officer responds to which range from traffic accidents to domestic disturbances to possibly serious crimes. Jail Lieutenants do not respond to incidents outside the jail. The two jobs are different.

Recommendation

No change to current language.

Issue 2. Article 32.01-.04 - Compensation

Union Position

The Union seeks a wage increase that would make the pay of the Jail Lieutenants equal to that of the Road Lieutenants. The Union passionately asserts that the jail job is just as involved, demanding and dangerous as the road job and that therefore the pay should be equal.

Looking at wages paid in counties adjacent to Trumbull, all pay higher wages except for Mahoning County.

Sheriff's Position

The Sheriff proposes base wages be increased the same as for the COs; 35 cents per hour retroactive to January 1, 2017 for 2017, 30 cents effective January 1, 2018 for 2018 and 30 cents effective January 1, 2019 for 2019.

What the Union is arguing is that the road and jail positions are comparable and therefore should be paid the same. This simply is not the case. The road and jail positions are different in scope and quite different in the qualifications required for the job.

Prior to being given the title of Lieutenant, the Jail Lieutenants were Assistant Wardens. When the Assistant Wardens were given the title of lieutenant, they were also given a very substantial pay raise. That pay raise has caused much dissension among other employees of the

Sheriff's department. Internal consistency demands the jail lieutenants be treated the same as other jail personnel.

Discussion

Major Palmer, the supervisor in charge of all the sheriff's department's operations other than the jail (effectively, the sheriff's chief operating officer), testified at length about the duties and responsibilities of the road lieutenants and the qualifications necessary for the job. To be eligible for the position of road lieutenant one must be a sworn police officer, have completed at least 20 hours of training vs eight hours for jail lieutenant, have served for four years as a deputy and four years as a sergeant. Further while road lieutenants can be assigned to jail duty, jail lieutenants cannot be assigned to the duties of a deputy sheriff.

While the job of Jail Lieutenant is demanding and stressful, it is clear that the jobs of Road Lieutenant and Jail Lieutenant are quite different.

The Fact Finding Report in SERB Case #2016-MED-10-1245 and 1246 issued August 24, 2017 by Carol Bader recommended a flat 55 cent per hour increase which, for a road lieutenant, is a 2.4% increase. That will bring the road lieutenants hourly wage to \$29.04 for 2017. Jail Lieutenants are being paid \$26.88 per hour. A 2.4% increases for the jail lieutenants would be a 65 cent per hour increase.

SERB's Statewide Wage Settlement Report (Union Ex 12 and Sheriff's Ex 10) for 2016 shows an average statewide wage settlement for police of 2.36% but that same report shows the average wage settlement for the Warren/Youngstown region of only 1.61% which, based on \$26.88 per hour would equate to a raise of 43 cents per hour.

Both parties point to the decisions regarding wages for the COs. Those decisions were

complicated by the fact that, in an earlier settlement with the COs when the COs were represented by a different union, a two tier compensation arrangement was put in place that did not provide for a PERS pick up of the employee's share for new employees. Fact Finder Richard Gortz, in SERB #16-MED-10-1112 in the report issued May 26, 2017, resolved the PERS pick up issue by reducing the employee's share of the PERS contribution for 2018 and eliminating the contribution for the newer employees entirely in 2019. As to wages, Fact Finder Gortz recommended an increase of 35 cents per hour for 2017 and 30 cents per hour for each of 2018 and 2019 saying:

Neither party submitted a weighted average hourly rate, however it appears that this increase is approximately 1.8% in the first year and 1.5% in each of the second and third years. I believe such a wage increase is sustainable based upon the evidence provided by the financial expert.

The Fact Finder's Report was rejected by the County Commissioners so the matter proceeded to Conciliation. In that proceeding, the Union adopted the Fact Finder's recommendation as its final position. Conciliator Nels Nelson, in his decision issued August 17, when dealing with the wages of the COs, likewise adopted Fact Finder Gortz's recommendation as to wages saying:

While the Conciliator might have recommended a higher or lower wage increase or structured the increase differently, the Factfinder is an experienced neutral and his recommendations cannot be ignored by the Conciliator.

As to the amount of wages, the Union proposes that the Jail Lieutenants pay be increased to equal the pay of the Road Lieutenants. The Road Lieutenants wage for 2017 is \$29.04 per hour. The Jail Lieutenants wage for 2016 is \$26.88 per hour. To increase the Jail Lieutenants to parity with the Road Lieutenants would be an increase of \$2.16 per hour or slightly more than 8% for 2017. The Road Lieutenants will receive an additional 55 cents per hour for 2018 and 40 cents for 2019 which are 2.4%, 2.4% and 1.7% respectively. If those increases were granted, the Jail Lieutenants would

be receiving a 12.1% increase for the three year period. Such an increase is not supported by the evidence as the job of Jail Lieutenant and Road Lieutenant are sufficiently different so that they are in fact two different jobs justifying different pay. Further, such an increase would be out of line with increases granted to the COs.

The Sheriff's position that the wages for the Jail Lieutenants should be increased by the same dollar amount as the COs would give the Jail Lieutenants an increase of 35 cents for 2017 which would be 1.3%, and 30 cents for each of 2018 and 2019 which would be 1.1% and 1.08% respectively. Applying the same dollar amounts without regard to the percentage increases is not maintaining internal consistency.

While determining wage increases by using a flat dollar amount obviously fails to give employees with greater seniority the same percentage raise as it does for those in the first year of employment, the use of a flat dollar amount is the custom in Trumbull County so, to maintain internal consistency with the other units whose wages have already been settled, the flat dollar amount will be retained in this recommendation.

Further to maintain internal consistency with the unit most closely associated with the Jail Lieutenants and to maintain the current difference in pay with the COs, adopting the same percentage increases as recommended by Fact Finder Gortz and confirmed by Conciliator Nelson appears to be appropriate.

Recommendation

Jail Lieutenants should receive an increase in their wages for 2017 retroactive to January 1, 2017 of 48 cents per hour which is 1.8%, an increase of 41 cents per hour for 2018 which is 1.5%,

and an increase of 41.5 cents per hour for 2019 which is 1.5%.

It is noted that there no longer are any Assistant Wardens. The language of Article XXXII should be appropriately reworded.

Recommended Contract Language

Article XXXII Compensation - Jail Lieutenants

32.01 Effective January 1, 2017 Jail Lieutenants shall be paid at the rate of \$27.36 per hour.

32.02 Effective January 1, 2018 Jail Lieutenants shall be paid at the rate of \$27.77 per hour.

32.03 Effective January 1, 2019 Jail Lieutenants shall be paid at the rate of 28.185 per hour.

32.04 Jail Lieutenants shall receive hazardous duty pay of \$0.30 per hour.

Robert M. Lustig

Robert M. Lustig,
Fact Finder
Cleveland, Ohio
December 1, 2017

A copy of this Fact Finding was emailed to the parties representatives and to SERB this date.