

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact-finding between:

Office of the Sheriff : Case No. 2017 MED 10-1227
Portage County Commissioners :

and : Report and Recommendations

Ohio Patrolmen's Benevolent Association : Margaret Nancy Johnson
Corrections Officers Unit : Fact-finder

Statement of the Case

Ohio Patrolmen's Benevolent Association, hereinafter "Union" or "OPBA," is the bargaining representative for approximately fifty-five (55) full-time Corrections Officers employed by the Portage County Sheriff, hereinafter "Sheriff." Having a mature and respectful bargaining relationship, these parties are signatories to a Collective Bargaining Agreement which expired on December 31, 2017. While able to reach tentative Agreement on a number of provisions, the parties remain at impasse on five (5) remaining issues. Tentative Agreements made by the parties are incorporated herein as if fully rewritten.

On April 6, 2018, the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as fact-finder in an effort to resolve the bargaining impasse. The parties and the fact-finder convened on May 23, 2018 and engaged in mediation followed by fact-finding. OPBA was represented by its counsel, George E. Gerken, Also in attendance on behalf of the Union were Bill Burns and Sonny Jones. The Office of the Sheriff was represented by Ron Habowski, Attorney at Law. Also present were Sheriff Dave Doak and Human Resources Director Janet Kovick.

Position statements issued by each party were timely received for review by the fact-finder. In addition, the parties had the opportunity to present testimony and documentary evidence supportive of their respective positions. The discussion and recommendations which follow are issued in compliance with the procedural requirements of SERB.

Criteria

In submitting these recommendations for resolution of the bargaining impasse, the fact-finder has taken into consideration the statutory guidelines enumerated in Ohio Revised Code Section 4117.14(c)(4), to-wit:

1. Past Collectively bargained agreements, if any, between the parties;
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 particular to the area and classification involved;
3. The interest and welfare of the public, 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;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in the private employment.

Issues

The following are the issues upon which the parties have not reached agreement:

1. ARTICLE 7 Employee Rights;
2. ARTICLE 19 Wages;
3. ARTICLE 22 Overtime Pay and Court Time;
4. ARTICLE 24 Clothing and Equipment Allowance;
5. ARTICLE 26 Vacations.

Position of the Parties

1. *Article 7 - Employee Rights*

The OPBA proposes new language whereby if a Corrections representative is not available, then any OPBA representative from a different unit may be able to represent the employee wishing representation. Since the second shift does not have a Corrections representative, the ability to call in another OPBA representative would avoid delay. Arguing that employees may be intimidated by meeting with management without representation, using another OPBA representative is expeditious. Moreover, the Union argues the language would be consistent with the Deputy contract.

Absent any need for this modification, the Sheriff seeks current contract language.

2. Article 19 – Wages

The OPBA proposes a 3% increase for each year of the three year contract. Citing comparable jurisdictions, the OPBA maintains that wages paid to Corrections Officers in Portage County are less than the average wage for Corrections Officers in those counties. The County has the ability to pay the proposed increase and the proposal is consistent with economic factors in the area.

The Sheriff proposes a 1.5% increase effective January 1, 2018; a 2.0% increase effective January 1, 2019; and a 2.0% increase effective January 1, 2020. An appropriate comparison should be with the nine counties in northeast Ohio. In looking at these counties as comparables, Portage Corrections Officers have consistently ranked in the middle in terms of wages. Considering demographics and other socio-economic factors, Portage County is similarly “the median county.” The wage rate the County proposes maintains that ranking.

3. Article 22 - Overtime Pay and Court Time

The Union proposes increasing the maximum accumulation of comp time from 40 to 100 hours. In addition, the Union seeks a new benefit entitling its members to receive comp time whenever non-union employees receive time off, such as for inclement weather. Because Corrections Officers are essential employees and must report to work, providing them with comp time would compensate for work performed when the rest of the County employees are excused from work

The Sheriff seeks current contract language. Comp time was reduced in prior negotiations because of scheduling problems as well as the need for fiscal constraint. There is no justification for increasing comp time in these negotiations, especially when the contract already provides sufficient time off for members of the bargaining unit.

4. Article 24 – Clothing Allowance

The parties have reached agreement upon increasing the clothing allowance to an annual \$1,000 cash clothing allowance. Unresolved is language addressing monies received from the County in excess of employee expenditures for purchased articles of clothing required for the job.

5. Article 26 – Vacations

Because of changes in PERS retirement calculations requiring employees to work thirty (32) years before full retirement, the OPBA seeks a modification in the vacation accrual. Moreover, the OPBA seeks the unrestricted right for employees to “sell back” a week of vacation per year.

The Sheriff argues that the amount of vacation time should be consistent among unionized public employees within the County. Unionized employees in Portage County receive increased vacation time based on years of service. Employees in this unit, however, receive their increases sooner than other non-OPBA units. Thus, the Sheriff seeks current contract language on vacations.

Discussion

Economic Overview

Located in northeast Ohio, approximately 30 miles south of metropolitan Cleveland, Portage County had a 2016 population of 161,419 (OPBA Exhibit 6). With 77.6% of its real property taxed as residential or agricultural, Portage County is not highly industrialized. Principal employers are Kent State University and UH Robinson Memorial Hospital. Step II Corporation and East Manufacturing Corporation account for slightly over 1% of total County employment (*Id.*). The County has been described as enjoying “the benefits of urbanization while also offering a rural atmosphere...” (*Id.*)

Unlike some of the more industrialized areas of northeast Ohio, the County has experienced an increase in its revenue sources, “indicating signs of a slow but steady rebound in the local economy” (*Id.*). A January 2018 Report prepared for the OPBA (OPBA Exhibit 5) reviewed the financial condition of the County. Citing the 2016 CAFR issued in June, 2017, the report quotes the County Auditor noting “economic improvement County-wide.” At the end of 2017, the General Fund balance, or carry-over, was \$9,582,000 representing a 23% reserve, more than the minimum carryover balance recommended by the Government Finance Officers Association.

While its revenues have increased, the County has been able to contain expenditures. Indeed, from 2013 to 2016, total fund expenditures declined (See OPBA 6). Financial stability of the County has been attributed not only to a consistent revenue stream, but also to the “conservative spending of the 18 Elected Officials” (*Id.*).

In these proceedings, the ability of the County to pay increases in wages and benefits is not in dispute. Rather, the parties differ as to modifications to contract provisions including reasonable increases in wages and benefits. Referencing statutory criteria, the recommendations which follow seek to assist the parties in resolving their bargaining impasse.

Article 7 – Employee Rights

Proposing a non-economic issue, the OPBA seeks to change Article 7 so that an OPBA representative from outside the bargaining unit may be present at a disciplinary interview. As the proponent of this change in current contract language, the Union has the burden of justifying its proposed modification. Since the second shift does not presently have a unit representative, the Union argues it is expeditious to be able to use a

representative from outside the unit. The Union also maintains that disciplinary interviews have the potential for being disconcerting for employees.

Yet, the language is clear that the employee has the right to representation-- and employees must be deemed to know their statutory and contractual rights. On the second shift, it may be expeditious to call in a representative from another unit, but it is not necessary. There is no evidence of undue delay or denial of representation on the second shift or on any other shift. Absent a justification for this proposed change, modification to language which the parties have previously negotiated and agreed upon is not recommended.

The fact-finder recommends current contract language.

Article 19 – Wages

While the Sheriff proposes a 1.5%, 2% and 2% increase for each year of the three year Agreement, OPBA seeks 3% for each of those years. The parties have stipulated the wage increase be retroactive to January 1, 2018.

In terms of comparability, the parties are relatively consistent in citing nine (9) jurisdictions including Portage County for wage data. Unlike discussions preceding the 2015 Fact-finding Award of Virgil Arrington, Jr., (County Exhibit E), the “most spirited discussion” in the matter now pending did not concern the “choice of jurisdictions with which to compare this bargaining unit.” On the contrary, both parties uniformly cite six (6) counties in their documentation: Ashtabula, Cuyahoga, Geauga, Lake, Stark, and Trumbull (County Exhibits A and B; OPBA Exhibit 8). A difference is that the Sheriff includes Mahoning and Summit Counties while OPBA uses Lorain and Medina Counties.

The other more significant difference, however, is how the parties use the cited comparables. In analyzing its data on demographics and wage rates, the Sheriff argues that Portage County is mid-range (County Exhibits A and B), ranking fourth (4th) for starting wage and fifth (5th) for the top wage rate. This is relatively reflective of Portage County ranking fifth (5th) in terms of per capita income and third (3rd) in terms of median household income, in between comparable jurisdictions.

OPBA, on the other hand, uses the comparables to establish averages, arguing the top wage rate and total pay for this unit is below the average of its counterparts. A problem with OPBA analysis, though, is that using more affluent counties, such as Geauga, to establish an average tends to distort the figures.

Ranking, as used by the County, is the result of years of bargaining based on the finances of the particular jurisdiction as well as factors unique to the area, socio-economic and demographic statistics. Positioning of a political entity relative to other entities reflects income levels and sources of revenue. Thus, ranking is a useful criterion in bargaining wage increases

Negotiations for successor contracts *generally (but not always)* seek to maintain the established position or ranking of a jurisdiction among comparables. Accordingly, percentage increases and a comparison of those percentages has become a standard tool in negotiations and in fact-finding in the Ohio. Indeed, the Annual Wage Settlement Report issued by SERB (County Exhibit F and OPBA Exhibit 9) provide negotiated annual percentage wage increases by region, jurisdiction and unit type.

The OPBA has provided some of the percentage increases negotiated by comparable jurisdictions for 2018. These range from 3% (Geauga County) to 1.5% (Mahoning County). As referenced above, both parties cite the SERB Benchmark Report which indicates that for 2017 the average wage increase in the Akron-Canton region was 2.31%; the increase for counties was 2.26% ; and the increase for Police units was 2.2%.

In looking at internal wage increases for County employees, current increases range from 1.5% to 2.5%. Not all units within the County have the same bargaining objectives and not all have received the same percentage increases. But, the range of percentage increases provide some guidance for the negotiations involving this unit.

Finally, the fact-finder notes that the Consumer Price Index is above 2%. The Economics Daily reports the “CPI rose 2.5% over the 12 months ending January 2017 (OPBA Exhibit 10).

Given the parameters of the percentage increases both internally and externally, as well as the relative financial well-being of the County as previously discussed, the fact -finder recommends: **2% retroactive to January 1, 2018; 2.25% effective January 1, 2019; and 2.25% effective January 1, 2020.**

Article 22 – Overtime Pay and Court Time

In addition to increasing the maximum accumulation of compensatory hours, the OPBA seeks comp time whenever non-essential employees are released from work due to external factors such as inclement weather. In reviewing this OPBA proposal, the neutral finds it is not sustained by statutory criteria.

Overtime and compensatory time are costly to public employers, and to curtail these expenditures the OPBA and the Sheriff had previously negotiated a reduction in comp time. Since the parties have bargained the issue in the past, a subsequent increase in the agreed upon comp time would have to be justified by supportive evidence. There is, however no evidence to sustain the OPBA proposal on increasing comp time. Past collectively bargained language should, therefore, be retained.

Similarly, additional comp time for hours during which OPBA Corrections Officers are required to work when non-essential employees may be off due to an emergency closure of offices is not warranted. There is no evidence of any other comparable jurisdiction providing such a benefit.

Significantly, wage rates paid to safety services and negotiated perquisites for such units are reflective of the essential services rendered, including non-traditional around the clock hours worked by such units. SERB data indicates that wage increases for safety units consistently exceed those for other units (See OPBA Exhibit 9). This trend or tendency is also reflected in the internal wage data submitted by the Sheriff. In these negotiations, the fact-finder is recommending percentage increases that recognize the essential service rendered. Since the unit is already compensated for its around the clock safety service, there is little justification for the additional comp time sought by the OPBA for emergency or calamity closures during which the unit must work while other employees may be released from work.

The fact-finder recommends current contract language.

Article 24 – Clothing Allowance

The parties have stipulated their agreement to increase the clothing allowance to an annual cash payment of \$1,000.00. They have also agreed that any allowance in excess of actual expenditures is taxable income. The issue relative to the clothing allowance is language pertaining to an accountable plan that is consistent with Internal Revenue Service requirements. Although the OPBA proposes language that it has received from the Sheriff, the County Auditor has expressed concern about IRS compliance.

Since wage and income recommendations should be consistent with tax requirements and should not precipitate a future grievance, the fact-finder recommends that the language regarding the clothing allowance be mutually worked out in a Memorandum of Understanding. While this fact-finder simply does not have the tax expertise needed to recommend language which is compliant with tax regulations, she recognizes that the proposed language does not properly account for the tax consequences of an allowance in excess of uniform expenditures. This is a detail that must be worked out by the parties and explained in the Memorandum. The Memorandum must specify that the difference between the uniform allowance and actual employee expenditure is taxable income for the employee subject to withholding.

There may be other IRS requirements in IRS Publication 17, such a time constraints, which should be included within the memorandum. Accordingly, the fact-finder recommends a Memorandum of Understanding be entered into by the parties providing a clothing allowance compatible with the IRS concepts of an “accountable plan” with the excess of monies received subject to tax and withholding.

The fact-finder recommends the clothing allowance be an annual cash payment of \$1,000.00. It is further recommended that the parties enter into a Memorandum of Understanding regarding the clothing allowance including tax consequences of expenditures less than the allowance, exclusive use of the clothing for work, time requirements in purchasing and reporting/documenting of

purchases, and any other IRS requirement pertaining to clothing allowances and accountable plans as set forth in IRS Publication 17.

Article 26 – Vacations

The OPBA seeks modifying vacation accrual language to provide an additional step in earned vacation time. Rationale for this contract modification is a change in the statutory age for retirement for Corrections Officers. The retirement change, *per se* however, does not justify the additional vacation time sought by the Union. Other comparable units in the state are affected by this change, but there is no evidence that any other jurisdiction has extended vacation time because of this statutory development.

Moreover, the fact-finder has recommended income adjustments in these negotiations which extend uniformly across the unit rather than to the benefit of a limited number of bargaining unit members. Contract changes having an impact on individual employees are not now recommended.

The OPBA also seeks to modify the vacation sell-back language. The fact-finder does not recommend this proposal as it not only removes managerial control but it imposes potential costs on the employer at a time when the County is endeavoring to maintain a balance between revenue and expenditure.

The fact-finder recommends current contract language.

Summary

1. Article 7 – Employee Rights: The fact-finder recommends current contract language.
2. Article 19 – Wages: The fact-finder recommends a 2% increase effective January 1, 2018; a 2.25% increase effective January 1, 2019; a 2.25% increase effective January 1, 2012.
3. Article 22 – Overtime Pay and Court Time: The fact-finder recommends current contract language;
4. Article 24 – Clothing Allowance – The fact finder recommends increasing the uniform allowance to an annual cash allowance of \$1,000.00 subject to the terms of a Memorandum of Understanding setting forth compliance of the allowance plan with IRS regulations.
5. Article 26 – Vacation Time – The fact-finder recommends current contract language.
6. The fact-finder recommends inclusion of all tentative agreements as if fully rewritten herein.

Respectfully submitted,

Margaret Nancy Johnson
Fact-finder

Service

- A copy of the foregoing recommendations has been served electronically this 6th day of June, 2018, on the Office of the Sheriff through Ronald J. Habowski, Esq. at ronbasswood@mail.com; on the Union through George E. Gerken, at gerkenlaw@gmail.com; and on SERB at MED@serb.state.oh.us.