

STATE EMPLOYMENT RELATIONS BOARD
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OHIO PATROLMEN'S BENEVOLENT) FACT-FINDING REPORT
ASSOCIATION,)
) STANLEY B. WIENER,
UNION,) FACT FINDER
)
AND)
)
THE CITY OF TWINSBURG,)
) FEBRUARY 22, 1996
EMPLOYER)
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A fact-finding hearing was held on February 13, 1996 at the City Of Twinsburg City Hall, 10075 Ravenna Road, Twinsburg, Ohio, before STANLEY B. WIENER, Fact Finder.

Representing the OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, ("Union") was KEVIN POWERS, Esq. Also appearing and testifying on behalf of the Union were Sergeant, ROBERT PAPES and Sergeant RICHARD H. DEAL. The bargaining unit consists of four (4) sergeants.

Representing the CITY OF TWINSBURG, ("Employer") was CHARLES K. WEBSTER, Esq., Law Director.

I. PAST NEGOTIATIONS

This is the first contract between the Sergeants and the Employer. The parties have negotiated since the fall of 1995. They have agreed upon the entire contract, except for one (1) issue which is the subject matter of this hearing.

II. MEDIATION

Mediation was attempted but was not successful.

III. ISSUES AT IMPASSE

RIGHT TO APPEAL DISCIPLINARY ACTION RESULTING IN ANY LOSS OF PAY OR BENEFITS THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURE

UNION: An employee should have the right to appeal any form of discipline resulting in loss of pay or benefits through the regular grievance and arbitration procedure.

EMPLOYER: The present contract between the City and the Patrolmen provides for the right to appeal any suspension of more than three (3) days, demotion or removal through the grievance and arbitration procedure. Suspensions of one, two or three days should not be appealable through the grievance procedure.

IV. POSITIONS

UNION POSITION: Under current City policy there is no right to appeal suspensions of three (3) days or less. The Police Chief has the final say. The only resort is to the Mayor. To date, however, no suspension initiated by the Chief has been changed by the Mayor.

It would be invaluable for the morale of the unit if there was a right to appeal suspension of one, two or three days to a neutral. Someone outside of the City authority who upon request would review the facts, determine if the suspension was for just cause and review the severity of the penalty .

Without the use of a neutral the current process is subject to abuse, and, in fact, has been abused. For example, supposedly there is a City policy for progressive discipline such

as oral reprimands, conferences and written reprimands. However, the City has a history of disregarding this policy with respect to the police, going directly to the one, two or three day suspension.

From November, 1992, to June, 1995 there have been ten (10) instances of suspension of three (3) days or less. The number of suspensions far exceeds suspensions in any other department of the City. The Union believes that the right to appeal to a neutral, while not always utilized, would lead to an improvement in labor/management relations.

The Union requests that the following language be added to the contract:

"An employee shall have the right to appeal any form of discipline which results in loss of pay or benefits through the grievance and arbitration procedures contained herein."

EMPLOYER POSITION: The present contract between the City and its patrolmen provides: "A non-probationary employee shall have the right to appeal any suspension of more than three (3) days, demotions or removal through the grievance and Arbitration process..." (Article X, Section 3).

This provision is in accord with the Employer's Civil Service Rules, and has been in effect for a long time. It is fair and has not been exercised in an arbitrary or abusive manner.

The Union proposal would seriously interfere with the management rights provisions of the contract and with the Employer's right and ability to discipline. To have every minor suspension subject to arbitration would be expensive and time consuming, and bad for morale.

The contract further provides that any discipline imposed shall be for just cause. The issue of just cause can always be the

subject of a grievance. Those who feel aggrieved can utilize the Mayor's open door policy.

The number of suspensions referred to in the Union's Position is not excessive for a police department. It is not right to compare the number of suspensions for a police department with the number of suspensions of any other city department such as finance or water. Violation of police department procedures can have more serious consequences than violations of other city department procedures.

V. FINDINGS AND RECOMMENDATION

I am required as a Fact-Finder to take note of those relevant factors referred to in the Ohio Revised Code, Section (G) (7) (a) through (f). I have done this for the issue discussed below:

I find considerable merit with the arguments of both sides. The Employer and the Union are earnestly seeking a solution to this impasse.

From the hearing I was able to observe one important fact which I believe is the key to this issue. That is the strong disagreement between the parties as to the justification of the past one, two or three day suspensions. There is no question that this disagreement will continue to grow and fester, and adversely effect the morale of the unit unless something is done.

It is impossible for me to judge the merits or justification of the past suspensions. The Union says that the suspensions were not justified, and the Employer contends that they were justified.

Such dispute will continue until some authority outside of the Employer determines whether there is just cause and reviews the severity of the discipline imposed.

I believe that one, two or three day suspensions are serious matters and should not be determined unilaterally by the Employer. The grievance procedure and a neutral should be utilized.

In reviewing the grievance and arbitration provisions of the current contract between the City and the patrolmen I find that three excellent and prominent neutrals are listed as permanent arbitrators. An opinion from any one of them should dispel any suspicions resulting from the suspensions. Just having these men available to rule, should there be a dispute as to whether an officer was suspended for just cause, would go a long way to solve this problem.

Going through the grievance procedure to arbitration is not an easy matter and will only be utilized if both honestly believe there is merit on its side. A neutral in such case would be invaluable.

RECOMMENDATION

I recommend that the following language proposed by the Union be incorporated into the contract in lieu of Section 3 of Article X:

"AN EMPLOYEE SHALL HAVE THE RIGHT TO APPEAL

ANY FORM OF DISCIPLINE WHICH RESULTS IN LOSS
OF PAY OR BENEFITS THROUGH THE GRIEVANCE AND
ARBITRATION PROCEDURES CONTAINED HEREIN."

Respectfully submitted,

DATED:

2/22/96



STANLEY B. WIENER
Fact Finder

SERVICE

True copies of the foregoing Report were sent this 22nd day of February, 1996, to each of the following by hand delivery:

KEVIN POWERS, Esq.
Ninth Floor-Halle Building
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and

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STANLEY B. WIENER, Fact-Finder