

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

FEB 18 8 57 AM '97

In the matter of

Case Nos. 96-MED-09-0703

Fact-finding between:

Fraternal Order of Police
Ohio Labor Council, Inc.

Fact-finder:

and

Martin R. Fitts

Lorain County Sheriff's Office

February 13, 1997

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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

Appearances

For the Fraternal Order of Police, Ohio Labor Council:

Hugh Bennett, Staff Representative
Tom Tomasheski, Department Rep
Gary Abicht, Department Rep

For the Lorain County Sheriff's Office:

Howard Heffelfinger, Consultant
Captain Phil R. Stammitti

PRELIMINARY COMMENTS

The bargaining unit consists of all patrol Lieutenants and Sergeants. There are approximately 10 employees in the bargaining unit.

The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on November 21, 1996. The Fact-finder mediated at a meeting of the parties on December 20, 1996.

A fact-finding hearing was held on January 22, 1997 in the offices of the Lorain County Sheriff. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were 8 issues at impasse: Sick Leave; Health Care Benefits; Longevity; Hours of Work and Overtime; Uniforms; Rank Differential; Injury Leave; and a new proposal, Commitment of the Employer.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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 standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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 in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as submitted in writing to the Fact-Finder at the January 22, 1997 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Sick Leave

Positions of the Parties

During negotiations the Parties agreed to delete Section 2 of Article 25 Sick Leave, with both sides agreeing that this was covered in Section 1.A. of the current Agreement. Thus in the new Agreement Section 3 becomes Section 2; Section 4 becomes Section 3; Section 5 becomes Section 4; Section 6 becomes Section 5; Section 7 becomes Section 6; Section 8 becomes Section 7; Section 9 becomes Section 8; and Section 10. Sick Leave Conversion becomes Section 9.

The Union proposes changing sick leave conversion rates in the new Agreement, calling for bargaining unit employees who retire to be eligible to convert accumulated sick leave into pay as follows: with 20 - 25 years of service, 50% of sick leave not to exceed 960 hours; with 26 and over years of service 50% of sick leave not to exceed 1440 hours. The Union argued that this change will benefit the employer, as it provides an incentive for the experienced employees to remain with the department rather than to leave for departments that pay higher wages.

The Employer cited as comparables the county's other collective bargaining units, and noted that this bargaining unit already enjoys sick leave conversion

benefits equal to or better than the other units. For this reason it proposes no change to this section.

Findings and Recommendation

The Union argument is persuasive. Lorain County is surrounded by some large urban political subdivisions that offer higher wages to experienced law enforcement personnel. This bargaining unit is small, thus the overall impact will be negligible and, of course, only a one-time pay-out. But the net effect will be to entice the experienced command officers in the department to remain, reducing the need and expense of training new command officers, and providing the department with experienced leadership. The Fact-finder recommends that Article 25, Section 9 read as follows:

Section 9. Sick Leave Conversion. Upon formal retirement under the Public Employees Retirement System (PERS), bargaining unit employees shall be eligible to convert accumulated sick leave into pay, in accordance with the following table:

YEARS OF SERVICE	PERCENT RECEIVED	NOT TO EXCEED
twenty (20) to twenty-five (25)	50%	960 hours
twenty-six (26) to indefinite	50%	1440 hours

Payments shall be made as soon as practicable upon receipt of a formal written application by the retiring employee.

Issue: Health Care Benefits

Positions of the Parties

The Union proposes changing the Agreement to have the Employer pay 100% of the cost of health care benefits. It argued that this would protect the members of the bargaining unit from an unknown future. It noted that health care premiums have not been rising lately, but who knows where they might go during the life of this agreement. Employees now contribute \$34/month, which represents a 50/50 split with the Employer of all costs over \$400/month.

The Employer noted that there are 17 bargaining units in the county, and all but one of them are included in a single plan which encompasses this bargaining unit as well. It believes that the plan is effective and noted that premiums have been stable. Internal equity is very important to the county on this issue, and it proposes no change from the current Agreement.

Findings and Recommendation

The Employer's argument for internal equity with the health plan is very convincing, particularly given the plan's recent premium history. The present amount the employees in this bargaining unit are paying is modest, and the Employer shares equally any premium increases from the present rate. The Union presented no conclusive evidence that its members are facing serious financial risks under the present arrangement, and thus no convincing reasons exist for a change. The Fact-finder recommends that the existing Article 27 of the Agreement remain unchanged.

Issue: Longevity

Positions of the Parties

The Union proposes changes in Article 31 Longevity, Section 1, specifically calling for increases in the rates for longevity pay in each of the three contract years. Also, the Union proposes some language be added in Section 2 of the same article,

calling for longevity to be paid regardless of the time of year upon receipt of an employee's written application for retirement. The current agreement calls for \$86 per year of service, regardless of the number of years of service. The Union proposes increasing the rates in contract year 1 to \$86 per year for employees that have completed three - fifteen years of service; \$88 per year for employees having completed sixteen to twenty years; and \$90 per year for employees between twenty-one years and thirty years of service. In contract year 2 the amounts per year of service would be \$86, \$90, and \$94 respectively; and in contract year 3 the amounts would be \$88; \$92; and \$98 respectively. The Union noted that the SERB comparables are all over the board. It argued that the proposed changes will reward the bargaining unit employees for their service experience, and yet not be a great monetary cost to the employer due to the small size of the unit.

The Employer proposes no change from the current agreement, noting that the rates are already higher than other bargaining units in the county. It believes that the rates in the present agreement are adequate.

Findings and Recommendation

Once again the Union's argument that its proposal will serve as an incentive for employees to stay with the Lorain County Sheriff is persuasive, although the

increases it proposes are too steep. The fact-finder recommends a more modest increase. The recommendation is that Article 31 Longevity Section 1 and Section 2 read as follows:

Section 1. All full-time regular employees shall be eligible for an annual longevity payment in accordance with the following schedule:

Contract Year 1	
YEARS OF COMPLETED SERVICE	AMOUNT PER YEAR
three (3) through fifteen (15)	\$86
sixteen (16) through twenty (20)	\$88
twenty-one (21) through thirty (30)	\$90

Contract Year 2	
three (3) through fifteen (15)	\$86
sixteen (16) through twenty (20)	\$88
twenty-one (21) through thirty (30)	\$92

Contract Year 3	
three (3) through fifteen (15)	\$86
sixteen (16) through twenty (20)	\$88
twenty-one (21) through thirty (30)	\$92

SECTION 2. Said payments shall be subject to all applicable deductions as required by law and shall be payable no later than July 30th of each year. The checks shall be separate from any other payment made by the Employer. Exception: The longevity payment will be made by the Employer, regardless of the time of the year, upon receiving the employee's formal written application for retirement.

Issue: Hours of Work and Overtime

Positions of the Parties

The Union had proposed three modifications to the existing Agreement. Two changes it proposes are to Section 4 and Section 5 relative to call-in pay, and the third change is to Section 9 relative to "on call" pay for department business, court appearances, emergencies, special events, and required schooling.

The Union proposes changing Sections 4 and 5 to increase the minimum amount of call-in pay from three hours at one and one-half (1 & 1/2) the base rate in the existing contract to four hours at one and one-half (1 & 1/2) the base rate. The Union stated that the amount of time spent in preparation and travel for the person called in is not compensated, yet it does take time to get ready and drive to court, for instance. Also, three hours has been the standard for a number of years in this bargaining unit, and the Union feels that it is now time to increase it. Its comparables showed that call-in pay ranges from two to four hours.

The Employer argued that comparables are all over the board, but noted that the Lorain County Deputies receive the same three hours for call-in pay. It argued in favor of retaining the current language in Sections 4 and 5.

Section 9 in the current Agreement calls for the Sheriff's Office to compensate the employees in the bargaining unit \$50 in consideration for the inconvenience of being in an "on call" status. At the hearing the Union modified its final written proposal for increasing the compensation. It's final proposal after the modification was for four hours of straight time compensation, with the hours not to be credited toward overtime. The Union argued that being "on call" presents a restriction on the employee's freedom, even though he is not actually on duty.

The Employer presented comparables that showed that "on call" provisions were not addressed in those agreements. It proposed retaining the current language found in Section 9.

Findings and Recommendation

Given that the current language calling for three hours minimum of call-in pay is in line with the Deputies' bargaining agreement and falls in step with many other comparables, and the lack of any compelling reason to change other than the Union's argument that "its time", the Fact-finder recommends the current language in Sections 4 and 5 be retained.

Regarding Section 9, the Fact-finder recommends that the compensation for being in the "on call" status should be increased to the Union's final proposal of four hours straight time pay equivalent. This more fairly compensates an employee who, though not at work, has restrictions on what he may do and where he may go during the 7-day period he is "on call." The Fact-finder recommends that Article 32, Section 9 read as follows:

Section 9. Employees who are designated by the Sheriff to be in an "on call" status shall receive a supplement of four (4) hours straight time in consideration for the inconvenience associated with this "on call" status. These four hours will not be credited as hours worked toward overtime. Employees shall be required to be in an "on call" status for seven (7) day periods which will coincide with the pay period. Employees who may be unable to fulfill their "on call" obligations as scheduled shall be obligated to arrange for coverage by a qualified employee. In the event that an employee fails to ensure coverage by a qualified employee for any period of time, said employee may be subjected to disciplinary action.

Issue: Uniforms

Positions of the Parties

The Union proposes changing Section 2 of Article 33 to increase the amount of the uniform allowance. The present contract calls for a uniform allowance of \$600 per year. The Union proposes increasing this to \$700 in the first year of the new Agreement, with increases to \$800 in the second year and \$900 in the third year. The Union also seeks a language that makes it clear that this is considered a reimbursement for uniforms and equipment and not a part of an employees compensation.

The Employer seeks to retain the current language and amounts. During negotiations the Employer had suggested going to a voucher system, but developing an implementation procedure for this had not been able to be worked out.

Findings and Recommendations

The Union proposed language change calling for taxes and PERS not to be deducted from this payment. Determining whether or not this payment is taxable income is not an issue which can be decided by the Fact-finder. Certainly the Fact-finder cannot recommend language changes for the Agreement that could Possibly conflict with state and federal tax laws. Whether going to a voucher system would alleviate this issue is not clear, but certainly this issue is worthy of continued discussion. For this reason the Fact-finder recommends that the Parties enter into a side letter agreeing to explore going to a voucher system, with any change to require the mutual agreement of the Parties.

While there is no question that uniforms and equipment costs rise every year, the increases proposed by the Union are not reasonable given what inflation

has been over the last few years. A more modest increase is called for. Given that the current Agreement increased the uniform allowance by \$100, the Fact-finder recommends remaining at \$600 in the first year, with an increase to \$650 in the second, and to \$700 in the third. The Fact-finder recommends that Section 2 of Article 33, Uniforms, read as follows:

SECTION 2. Employees shall be provided with an annual uniform allowance as follows:

YEAR	AMOUNT OF UNIFORM ALLOWANCE
1997	\$600
1998	\$650
1999	\$700

Payment for such uniform allowance shall be made to each employee who is in active pay status no later than May 1st of each year.

Issue: Injury Leave

Positions of the Parties

At the hearing the Employer withdrew its proposal to change this section of the Agreement, and agreed with the Union to retain current language.

Findings and Recommendation

At the request of the Parties, the Fact-finder recommends that the Parties enter into a side letter stating their agreement to continue to discuss this issue during the life of this Agreement, with the understanding that the Parties may mutually agree to modify this section.

Issue: Rank Differential

Positions of the Parties

The Union is seeking an increase in the current 14% rank differential rates for Sergeants and Lieutenants to a 15% rate in the first two years of the new Agreement and to 16% in the third year for each of them. The Union comparables showed that about half of the counties used had greater differentials, and half smaller.

The Employer is proposing no change from the differential rates in the current Agreement. Its comparables also showed a wide range, although most of the bargaining agreements used did not specifically use a rank differential to set the Sergeants' and Lieutenants' wages.

Findings and Recommendation

The current Agreement contained some growth in the rank differential, and it seems appropriate that this one does as well. In light of the improvements in longevity, it would seem that modest growth is called for. The Fact-finder recommends an increase in the rank differential rates for both Sergeants and Lieutenants to 15% for the life of this Agreement. This will provide an adequate wage increase for the members of this unit regardless of the final settlement reached by the deputies' bargaining unit. Thus the Fact-finder recommends that Article 38 Rank Differential read:

Section 1. The rank differential for Sergeants shall be 15% for the life of this agreement (calculated from the highest existing Deputy rate.)

Section 2. The rank differential for Lieutenants shall be 15% for the life of this agreement (calculated from the highest existing Sergeant rate.)

Issue: Commitment of Employer

Positions of the Parties

The Union is proposing a new section for the Agreement entitled "Commitment of the Employer" that would provide that during the term of the Agreement any economic benefit awarded to any other bargaining unit within the Sheriff's Office would be awarded to members of this bargaining unit. The Union stated that this language would mirror the language and intent of language recently negotiated and executed with the correctional officers in the Sheriff's Office, and also in place for the promoted corrections staff bargaining unit. It believes that if "me too" clauses are granted to one bargaining unit, then they should also be part of the agreements for all the bargaining units in the Sheriff's Office.

The Employer argues that the intent of the language in the agreements with the correctional employees is to do the same as the rank differential clause in this bargaining unit's Agreement. It also noted that there are seventeen bargaining units in the county, and that collective bargaining is going on with one of these units at least two out of every three years. Given this, if all the units had "me too" clauses, it would be a nightmare for the county to administer, and result in units receiving gains for which they had not bargained.

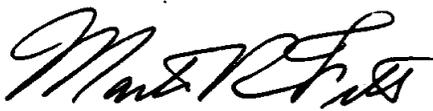
Findings and Recommendation

The Fact-finder is satisfied that the rank differential clause in the current Agreement and as recommended for the new Agreement adequately protects this bargaining unit's wages relative to the deputies' bargaining unit, which is the one this unit works the most closely with. The Fact-finder can see no compelling reason

to add additional language into this Agreement, and agrees with the Employer's position. The Fact-finder does not recommend the inclusion of the Union's proposed Article "Commitment of the Employer" into this Agreement.

Other Tentative Agreements reached by the Parties

The Fact-finder also recommends the tentative agreements as agreed upon by the Parties during the course of their negotiations.



Martin R. Fitts 1/13/97
Fact-finder