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IN THE MATTER OF FACT-FINDING

BETWEEN

JACKSON TOWNSHIP

AND

FRATERNAL ORDER OF POLICE/OLC INC.
SERGEANTS

BEFORE: Robert G. Stein

SERB CASE NO. 97-MED-05-0614

PRINCIPAL ADVOCATES FOR THE UNION:

Charles M. Choate, Staff Representative
Jackie Wegman, Staff Representative
FRATERNAL ORDER OF POLICE/OLC, INC.
Canal Place 520 S. Main St. Suite 2541
Akron OH 44331-1010

and

PRINCIPAL ADVOCATE FOR THE TOWNSHIP:

Robert J. Tscholl, Esq.
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INTRODUCTION

The bargaining unit is comprised of five (5) employees holding the classification of Sergeant with the Jackson Township Police Department. The sergeants have had a bargaining relationship with the Township for a number of years, but secured the FOP as a new bargaining representative in recent years. The patrolmen's unit is represented by a different bargaining agent.

On September 9, 1997, a fact-finding hearing was held and the parties presented the Fact-finder with 21 unresolved union issues and 5 unresolved employer issues. During the hearing the parties agreed to and welcomed an effort by the Fact-finder to mediate the dispute. A large block of time was devoted to mediation. Both Advocates represented their respective parties well and actively pursued creative solutions to each issue in dispute. In spite of these vigorous efforts an agreement could not be reached by the parties. The parties submitted post hearing briefs on the twenty-six (26) issues some three weeks following the fact-finding hearing.

In order to expedite the issuance of this report, the Fact-finder shall attempt to combine issues that address the same subject. In addition, because of the number of issues involved in this case, the Fact-finder will not restate the actual text of each parties proposals on each issue. Prior to fact-finding the parties held one negotiations session on July 3, 1997.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

**ISSUES 1 & 2 Article 5 DISCIPLINARY PROCEDURE SECTION 1,
NEW SECTION**

Union's position

Section 1 add: The Union proposes any non-criminal complaint more than thirty (30) calendar days old cannot be accepted, processed, or investigated.

New Section 5: Exhaust CBA grievance procedure, before imposing discipline.

Employer's position

Maintain current language. The Employer argues this is a very unconventional proposal that has little acceptance in labor relations.

Discussion

This issue stems from an incident in which a bargaining unit member was investigated for a matter that took place several months earlier and was not brought to the attention of the Township for a long period of time. The Union contends that this

incident involving a “Coney dog man” was a example of a “stale” issue being raised that resulted in a bargaining unit employee being adversely affected.

Investigations of alleged violations of department rules and regulations should be conducted with expediency, and discipline should be enforced in a timely manner so that it may have its desired corrective effect. However, there are situations when such matters go undetected for long periods of time and still need to be addressed in order to maintain order and bring an organization back into compliance with its own regulations.

The Employer is correct when it makes the point that to prohibit an investigation over such a matter is unconventional in the labor relations context. However, it is not unusual for a labor agreement to call for discipline to be issued in a timely manner once an investigation has been completed. Such matters should not be left in limbo. As a practical matter, in cases where an alleged rule violation(s) has gone undetected for several months, the Employer’s burden in complying with the rigors of due process (as defined in Agreement) is in itself a formidable safeguard against arbitrary acts of discipline.

Recommendation

Maintain current language

ISSUE 3 OBLIGATION TO NEGOTIATE SECTION 2

Union's position

The Union proposes this section be eliminated because it no longer wishes to waive these rights.

Employer's position

The Employer proposes to maintain current language. The Employer argues the Union did not provide any examples where the Employer has abused this provision.

Discussion

The evidence of prior agreements between the parties reveals this provision has existed for several years. This is a common clause in labor agreements, and it is included in Patrol Officer's Agreement. The position of the Union is understandable given the potential for abuse; however, no evidence was presented that validated a pattern of abuse by the Employer, with the single exception of drug testing. The drug testing issue is not a weighty example given the fact that it is one of the issues involved in this fact-finding.

A change of the magnitude being sought by the Union requires sufficient evidence and documentation in order for a fact-finder to undo what the parties have lived with for years.

Recommendation

Maintain current language.

ISSUES 4, 5 & 6 Article 14 OVERTIME SECTIONS 1, 2, & 3

Union's position

The Union desires to add language to this section that would grant members two (2) consecutive days off in a forty (40) hour work week. The Union contends that this is merely a reflection of current practice. The Union proposes to increase the amount of overtime that may be banked from 40hrs to 120 hrs. Additionally, the Union wants to change comp time use from 4 hour blocks to 1 hour increments. Finally, in section 3 the Union proposes to change the current 2 hr minimum for court time to 4 hrs.

Employer's position

Eliminate compensatory time from the Agreement and maintain current language for the remainder of the Article. Compensatory time was eliminated from the patrol contract. Compensatory time has created scheduling problems.

Discussion

The Union's assertion that the language being proposed in Section 1 regarding two (2) consecutive days was not contested by the Employer as being inaccurate. The argument by the Union regarding the need for an increased maximum of compensation time has mixed support based upon the comparables in the SERB Clearinghouse Report. The same can be said for the comparables regarding the Union's proposal to increase the court time from 2hrs to 4hrs. Adequate comparables are not available regarding the

taking of compensation time in increments of 1 hr. It was noted that the Employer did not provide a specific objection to this change based upon operational concerns. The Employer's proposal to eliminate compensation time is supported by the removal of the provision in the Patrol Officer's contract. However, the Employer did not provide convincing examples of problems created by this benefit in the Agreement with the Sergeants.

Recommendation

Section 1: Add the following sentence following the second sentence in the section: *A work week shall be five (5) consecutive days followed by two (2) consecutive days off duty.* Maintain current language for the remainder of the paragraph.

Section 2: Change line 6 and 7 of section as follows: *Compensatory time shall be available for bargaining unit members in one (1) hour blocks and may be taken with a forty-eight(48) hours notice with permission of the Chief or his designee.* Remainder of the paragraph shall be current language.

Section 3: Maintain current language.

ISSUE 7 Article 17 SICK LEAVE SECTION 13

Union's Position

The Union proposes to increase the amount of sick leave cash pay out from ¼ to ½

Employer's position

Maintain current language.

Discussion

The current language of the Agreement that calls for a cash pay out of accumulated sick leave is common in Ohio public sector labor agreements. The Union provided three comparables that support its proposal of moving to a cash pay out of $\frac{1}{2}$; however, other bargaining units in the Township remain at $\frac{1}{4}$ pay out. The Employer argued that a $\frac{1}{4}$ pay out for sick leave remains the dominate formula for the pay out of sick leave in the public sector and represents the established pattern in the Township. This pervasive argument cannot be overcome by the relative few comparables present by the Union.

Recommendation

Maintain current language.

ISSUE 8 Article 18 FUNERAL LEAVE

Union's position

Add "step-children" and "step-grandchildren" to the eligibility list.

Employer's position

Maintain current language

Discussion

The bargain unit is small, yet the addition of this category would impact 2 to 3 bargaining unit members as it relates to "step-children." Divorce, remarriage, adoption, and blended families are very much a reality of the times in which we live, and it is not uncommon for step-children to be placed on par with children in these types of provisions. However, step-grandchildren appear with far less frequency in such provisions.

Recommendation

Add "step-children" to the eligibility list in this Article.

ISSUE 9 Article 19 SICK LEAVE BONUS

Union's position

The Union is proposing that the current sick leave bonus structure be increased at all levels.

Employer's position

Maintain current language

Discussion

There was no evidence presented to demonstrate that there is a problem with excessive use of sick which may in part be due to this bonus plan. As a percentage of salary the value of the incentive plan should at least keep pace with the annual salary adjustments and with inflation. If this is not done, the value of this fixed sum benefit diminishes in value and most likely in efficacy.

Recommendation

Maintain current language, but add \$50.00 to each amount listed.

**ISSUES 10 & 11 Article 20 COMPENSATION SECTIONS 1 & NEW
SECTION 4**

Union's position

The Union is seeking a 2% increase in rank differential between patrolman and sergeant. This would change the percentage from 15% to 17%. Also the Union is seeking a change in the definition of what the economics of rank differential include. The Union in new section 4 is seeking additional 4 hours of pay for working on Sundays.

Employer's position

Maintain current language.

Discussion

The current language calls for a 15% differential between the rank of Patrol officer and Sergeant. In order for a Fact-finder to consider a change in this relationship there must be substantive proof that the differential historically agreed upon by parties is flawed or not reflective of the current situation. The Union spoke of the Sergeant's safety and leadership role within the department in support of its proposal to increase the rank differential by 2%. There is little doubt that this is true; however, there is no evidence that changes have occurred in the duties of Sergeants to render the 15% differential inadequate.

Although the Union raises an interesting point regarding the definition of "base salary" there is a lack of data to support such a change. The request by the Union to add a new section 4 calling for additional compensation for Sunday work also lacks substantial comparable support.

Recommendation

Maintain current language, except change effective date to July 3, 1997.

Union's position

Increase the longevity amounts by 2% after five (5) years and 2% after nine (9) years.

Employer's position

Eliminate longevity for employees who have worked less than nine (9) years.

Discussion

The Employer provided little evidence to substantiate a reduction in the amount of longevity pay after nine (9) years of service. In collective bargaining agreements where longevity exists, it is not uncommon to have more than one tier in a longevity provision. On the other hand, the Union was unable to provide substantial comparable evidence to justify an increase in longevity pay.

Recommendation

Maintain current language.

ISSUE 13 Article 24 UNIFORM ALLOWANCE

Union's position

The Union proposes an increase in the uniform allowance from the existing \$500 to an increase of \$1000. Also, the Union requests a language change to the allow uniform allowance to be carried over regardless of the dollar amount from year to year instead of the current \$150.

Employer's position

Maintain current language.

Discussion

During the mediation portion of the hearing discussions regarding this issue lead to a conceptual understanding regarding the shortcomings in the current system and the cumbersome accounting procedures that must be utilized to manage this benefit. The parties were receptive to a change that would simplify the administration of the uniform allowance.

Recommendation

The current language of Article 24 shall remain in effect until December 31, 1998.

Change Section 1 to read as follows:

Effective January 1, 1998, *all employees shall receive an annual uniform allowance credit (in January of each year) in the amount of one thousand dollars*

(\$1000). The uniform allowance shall take the form of an account to be maintained by the Employer where the employee will make a request to the Employer to purchase uniform clothing. If the Employer approves the request, the employee can purchase the item under a blanket purchase order from any law enforcement supply company. Upon receipt of the invoice, the Employer shall apply the invoice amount to the employee's uniform allowance credit set forth above. Each Employee shall have the option of converting up to \$500 of their credit allowance to cash in December of each year. An employee can also carry forward unused uniform allowance up \$150.00 per year.

ISSUES 14 & 15 Article 26 HEALTH INSURANCE SECTIONS 1 & 2

Union's position

The Union desires to maintain the current health plan, but wishes to increase the life insurance from \$20,000 to \$50,000.

Employer's position

Maintain current language in life insurance, section 2, but put into place a new plan that has been adopted by the patrolmen's unit.

Discussion

This is a contentious issue for the parties. In many public sector jurisdictions, management and labor have taken a cooperative approach in studying and managing this benefit. However, health coverage is a very expensive benefit and it is prudent for employers to seek cost reductions where and whenever possible. The fact that the Patrolmen's Agreement includes a new health care plan is persuasive in this matter as an internal comparable. It is noted that in order to secure this change, the Employer provided each member of the patrol officer's bargaining unit with a lump sum bonus of \$1000. It is reasonable to presume such an offer would be available to the Sergeant's unit providing it is a larger sum that is representative of the 15% higher salary differential paid to Sergeants versus Patrol officers.

The Employer's position regarding life insurance is not reasonable when you take into consideration the substantial difference in salary between a sergeant and a patrol officer. Life insurance exists to help sustain survivors who are affected by the death of wage earner. If one gets paid more, it is reasonable to assume that greater income protection is necessary for one's family.

Recommendation

Section 1: The first sentence shall be changed to read: *The benefits for hospitalization, major medical, dental, vision, and drug insurance coverage will be the same as what is currently in effect (as of the signing of this Agreement) for the Patrol Officer's bargaining unit.* Remainder of the paragraph shall remain the same, *except that*

it shall included a sentence that reads: The Township shall pay all employees in the bargaining unit a \$1150.00 non-reoccurring lump sum payment upon execution of this Agreement, as a result of accepting the insurance changes in the health care plan.

Section 2: Change to read: *The Township shall provide all Employees with a term life insurance policy with a face value of thirty thousand dollars (\$30,000).*

ISSUE 16 ARTICLE 27 EDUCATIONAL AND OTHER PAYS

SECTION 2

Union's position

The Union wishes to modify Section 2 to include overtime pay for assuming responsibility for any higher rank and not just for assuming the duties of Captain.

Employer's position

The Employer wishes to maintain current language.

Discussion

The parties discussed this issue during the mediation phase of fact-finding. There is no disagreement between the parties regarding the concept of paying sergeants for assuming the responsibilities of a higher rank and performing said duties. However, the Employer expressed the need to include language in this provision that clarifies its Employer's rights.

Recommendation

Section 1 current language.

Section 2 shall be modified to read: Higher Rank Pay *Any bargaining unit member who is assigned and performs the responsibilities of any higher rank within the Police Department shall receive overtime pay for each hour or increments thereof worked in the higher rank.*

ISSUE 17 Article 30 SENIORITY DEFINITION SECTIONS 1 & 4

Union's position

The Union proposes language to clarify the language of Section 1 to clarify the definition of seniority (see proposal). In Section 4 the Union requests that the Employer provide updated seniority information.

Employer's position

Maintain current language.

Discussion

The parties discussed this provision during fact-finding and they were not far apart on the need for more clarity regarding the definition of seniority and the importance of communicating such information to the employees of the bargaining unit. Seniority is a

fundamental right in collective bargaining, and employee and employer alike benefit from an unambiguous definition of this right.

Recommendation

Section 1 should be modified to read as follows:

For the purpose of this Agreement, seniority shall be defined as total continuous service in the Jackson Township Police Department. Continuous service shall not be considered broken due to absence caused by military, pregnancy, injury, sick, or any other approved leaves of absence as allowed by this Agreement or as required by law. Disciplinary suspension shall not constitute a break in Service.

Seniority is established first by rank and second by aggregate time served in rank. Where a conflict occurs because of identical service or date of appointment, the member with the highest score on the promotional list from which the appointments were made, is deemed to be senior.

For vacation purposes, seniority shall be determined by the bargaining unit members' date of service as listed in Section 1.

Sections 2 and 3 shall be current language.

New Section 4 shall read as follows: *The Employer shall post a seniority list once per calendar year or as updated.*

Union's position

The Union has proposed language that it asserts is standard language for safety-forces throughout Ohio. The Union states its proposal meets N.I.D.A standards.

Employer's position

The Employer has negotiated a drug testing policy with its other bargaining units and proposes the same language for the sergeant's bargaining unit. The one exception to this policy is the absence of random drug testing that was excluded from the fire-fighter's drug policy due to a conciliator's award.

Discussion

A provision for drug testing is becoming common in public sector collective bargaining agreements. It is difficult to evaluate the relative merits of each comprehensive policy being proposed by the parties. The Employer has several bargaining units and for ease of administration it makes sense to have one policy for all employees. However, this Fact-finder concurs with the reasoning of Conciliator Nelson in his award of March 3, 1997. I find no basis to include random drug testing to be included in the Agreement that covers the Sergeants. A reasonable suspicion approach is more common among public jurisdictions for bargaining units, with the exception of the random drug testing requirements applicable to holders of commercial driver's licenses.

The public interest is a statutory criterion that is important regarding this issue; however, there is no evidence or comparable data to indicate that it cannot be met by a policy of reasonable suspicion. Sergeants, by the very nature of their work must interact with superiors and subordinates on a regular basis. This frequent exposure to other Township employees provides a higher level of awareness of their performance that is less common among employees who work alone.

I find the Union's proposal to be comprehensive and sound; however, this is a relatively small unit and it would be cumbersome to have several sets of policies and procedures for different groups of employees. Each bargaining unit has a right to represent its members and there should be language in such a policy that accommodates the Union in this regard.

Recommendation

The Drug Screening Policy should be the same as the Firefighter's Local 2880, with one exception. The Policy shall include language entitled, UNION REPRESENTATION which reads as follows:

After an employee has been ordered to submit to drug testing for cause, the employee shall be provided an FOP/OLC representative to accompany the employee and the Supervisor to the testing site. The employee may release the FOP/OLC representative if he desires. The Union may designate names of members to be used for the purpose of representation during drug screening. If a designated Union representative cannot be reached or is not available to accompany an employee for such

screening in a reasonable amount of time, the Employer shall not be prevented from requiring an employee to submit to a drug screen in accordance with the policy.

ISSUE 18 PERSONNEL FILE NEW ARTICLE

Union's position

The Union is proposing language that would provide for appropriate administrative and union accessibility to personnel files.

Employer's position

The Employer does not agree that this provision is necessary.

Discussion

The parties discussed the inclusion of this new article and offered modifications to the language proposed by the Union. This discussion provided the basis for the following recommendation.

Recommendation

The following is recommended:

Section 1 *Personnel files are public records as defined in the Ohio Revised Code. Bargaining unit members shall have reasonable access to their records including*

training, attendance, and payroll records as well as those records maintained as personnel file records as permitted by law.

Section 2 Every bargaining unit member shall be allowed to review the contents of his personnel file at all reasonable times upon written request except that any bargaining unit member involved in a grievance or disciplinary matter shall have access at any reasonable time in order to adequately prepare for such process. A bargaining unit member may file a grievance on any discrepancies or inaccuracies in his file.

Section 3 All entries of a disciplinary or adverse nature shall be maintained solely in the personnel file located in the Township. The affected bargaining unit member shall be notified of any such entry and shall be afforded a copy.

Section 4 Records of written warnings and reprimands shall cease to have force and effect twelve (12) months from the date of issuance.

ISSUE 19 PROMOTIONAL EXAMINATIONS

Union's position

The Union is seeking to establish language to provide information and an understanding of what is necessary to apply for promotions.

Employer's position

The Employer argues this is not a mandatory subject of bargaining and that any promotions would be outside of the bargaining unit.

Discussion

Some public sector collective bargaining agreements include procedures for promotions for positions outside of the bargaining unit. However, there was little comparable evidence provided that supports the inclusion of such a provision at this time.

Recommendation

No new language.

ISSUE 20 SHIFT SELECTION NEW ARTICLE

Union's position

The Union is proposing to codify a practice that has historically existed between the parties.

Employer's position

The Employer does not wish to include any new language at this time.

Discussion

During the fact-finding the parties discussed this issue and there some agreement that what the Union was seeking was a reaffirmation of what the parties have historically practiced. It was determined that the days off with each shift shall be determined by the

Chief. However, there was "conceptual agreement" by the parties that the appropriate days off with each shift should be as follows: Days: (Wednesday and Thursday), Afternoons: (Thursday and Friday), Midnight's: (Monday and Tuesday), and Swing: (Saturday and Sunday).

Recommendation

Establish a new Article entitled SHIFT SELECTION to read as follows:

Section 1 *Bargaining unit members shall select their shift (and the Chief shall select the accompanying days off) by rank seniority. The Chief of Police or his designee shall post shift selection schedule on the bulletin board on the first day of each quarter of each calendar year of this Agreement for the purposes of determining availability of shifts for each of the four (4) shifts regularly worked by sergeants which are known as:*

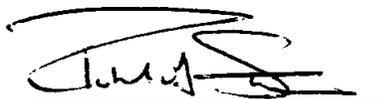
*Day Shift
Fill in to Midnight Shift
Afternoon Shift to Day Shift
Midnight to Afternoon Shift*

Section 2 *The most senior sergeant shall select his preferred shift followed by the next most senior sergeant until all sergeants have selected a shift and days off by rank seniority.*

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 29th day of October, 1997 in Summit County, Ohio.



Robert G. Stein, Fact-finder