

STATE EMPLOYMENT
RELATIONS BOARD

Dec 20 10 18 AM '99

IN THE MATTER OF FACT-FINDING

BETWEEN

PORTAGE COUNTY SHERIFF'S DEPARTMENT

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

BEFORE: Robert G. Stein

SERB CASE NO. 99 MED 10-0906
DEPUTY SHERIFFS, SERGEANTS & LIEUTENANTS

PRINCIPAL ADVOCATE FOR THE UNION:

Nicholas Codrea, Jr.
OPBA
10 Beech St.
Berea OH 44017

and

PRINCIPAL ADVOCATE FOR THE SHERIFF:

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CHRISTY, HERINGTON & PIERCE
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INTRODUCTION

The bargaining unit of the Portage County Sheriff's Department is comprised of approximately forty-nine (49) employees holding the classification of Sheriff Deputy, Sergeant and Lieutenant. The parties have had a bargaining relationship with the Sheriff's Department since 1986. The Dispatcher's unit and the Correction's bargaining unit are also represented by OPBA. Prior to declaring impasse, the parties never held a negotiation session. However, during the fact-finding process the parties successfully resolved several issues. Portage County has a population of some 150,000 people. Historically, the parties have had three separate bargaining units and one Agreement. They requested that the Fact-finder hold separate hearings because they want to establish three separate Agreements, one for each bargaining unit.

On December 7, 8, and 14, three separate fact-finding hearings were held. The parties presented to the Fact-finder nine unresolved issues for each bargaining unit. Both Advocates represented their respective parties well, particularly given the severe time constraints for preparation each had to endure. Fortunately, both Advocates are well-respected seasoned professionals who were up to the task. They clearly articulated the position of their respective clients in a remarkably efficient fashion. In order to expedite the issuance of this report, and with the concurrence of the parties, the Fact-finder shall not restate the actual text of each party's proposals on each issue. Instead, I will summarize each position and reference the respective Position Statements of each party. The Union's Position Statement shall be referred to as "UPS" and the Employer's Position Statement shall be referred to as "EPS."

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:

ISSUE 1 Article 7 EMPLOYEE RIGHTS

Union's position

The Union seeks to relief in the area of having to submit to a polygraph examination, Section 7.08. The key issues that the Union is trying to include are requiring an employee's consent and having 48 hours prior notice. SEE UPS

Employer's position

Maintain current language. See EPS

Discussion

From the evidence and the testimony it appears that this provision was negotiated based upon a proposal by the Employer during the last round of bargaining. The Sheriff convincingly provided dramatic examples of the importance of the polygraph in assuring that his workforce upholds the high standards it espouses. Employees who are subjected to this process are provided Union representation.

The Union also provided its own dramatic piece of evidence in the form of videotape. This tape demonstrates an employee being misled by a polygraph examiner. The Union's point about this evidence is well taken, but it does not change the fact that polygraph examinations were agreed to by the parties as a method of self-policing. The Union also stated it does not condone misconduct on the part of any employee. The

Sheriff provided unrefuted testimony under direct examination that employees in the bargaining unit conducted numerous investigations in which a polygraph was used.

Under direct examination by the Employer's advocate, Sgt. Carrozzi, a bargaining unit Sergeant who has conducted several polygraph examinations, provided testimony regarding the importance of the polygraph in aiding investigations. He also testified to the importance of timing in administering the polygraph. The dependency of employees having to conduct internal investigations strengthens the Employer's position in this matter. The interests and the welfare of the public are integral to this matter. The Union, which embraces the same concern for a corruption free workforce, can only benefit by the self-policing measures it agreed upon during the last round of bargaining.

Recommendation

Maintain current language

ISSUE 2 Article 19 COMPENSATION

Union's position

SEE UPS

Employer's position

The Employer proposes a 3.35% increase across the board for each year of the Agreement. SEE EPS.

Discussion

For reasons discussed in the Fact-finding Reports for Dispatchers and Correction Officers and in the Longevity issue of this Report, the comparable data that will be evaluated involve the nine counties of northeast Ohio. The bargaining history of the parties was most influential in arriving at this decision. The Employer's comparable data has no historical grounding and contains counties very different in nature to that of Portage County. For example, the populations of Harrison and Holmes counties have relatively few people and are very rural in nature. They do not compare with counties in northeastern Ohio.

The Deputies' bargaining, as compared to other similar units in northeast Ohio, place the unit 7th out of 9 counties in terms of top salary. Portage county Deputies, at the top salary level, make some \$1100 more than Deputies in Mahoning and Stark County. Portage, Stark, and Mahoning Counties form the bottom 1/3 of the counties in northeast Ohio. The county next closest to Portage County is Trumbull County, which is some \$760 above the top salary from among Portage Deputies.

The average salary among reporting counties (6 out of 9) for year 2000 is 4.08%. However, these averages are skewed by some 5% increases in Ashtabula and Cuyahoga Counties. If discounted for being unusually high, the average salary increase for the remaining counties is around 3.63%. A fiscally responsible salary offer, that is slightly higher than 3.63%, will allow the bargaining unit to maintain its ranking among comparable counties. Portage County ranks far lower in the area of rank differential (6%) for the position of Lieutenant. Comparable data regarding rank differentiation for Lieutenant (ranging from 10 to 17%) support a fiscally responsible adjustment.

Recommendation

Article 19 shall be changed to reflect a 3.75% (1/1/2000), 3.75%, (1/1/2001), and 3.75% (1/1/2002) increase in pay for Deputies, Sergeants, and Lieutenants. The rank differential for Lieutenants is adjusted to 7% (1/01) and 8% (1/02). The remainder of the Article shall be current language.

DEPUTY	<u>1/1/00</u>	<u>1/1/01</u>	<u>1/1/02</u>
ENTRY	28,543	29,613	30,723
1 YEAR	31,044	32,208	33,416
2 YEARS	32,649	33,873	35,144
3 YEARS	34,299	35,585	36,919
4 YEARS plus	35,916	37,263	38,660
SERGEANT	<u>1/1/00</u>	<u>1/1/01</u>	<u>1/1/02</u>
ENTRY	38,849	40,306	41,818
1 YEAR	40,208	41,716	43,280
LIEUTENANT	<u>1/1/00</u>	<u>1/1/01</u>	<u>1/1/02</u>
ENTRY	41,208	42,754	44,357
1 YEAR	42,623	44,636	46,742

ISSUE 3 Article 23 LONGEVITY

Union's position

The Union is seeking an increase in longevity from the present rate of three dollars (\$3) per year per month to four dollars (\$4) during the first year of the Agreement and five dollars (\$5) the second year of the Agreement. SEE UPS.

Employer's position

The Employer proposes maintaining current language, SEE EPS.

Discussion

Union Exhibit 6 demonstrates that Portage County is below average in providing longevity to its Deputies. The comparisons the Union used were comprised of counties in northeast Ohio. The Employer used comparable (E 9) that were comprised of counties in the "Akron-Canton Region, as configured by SERB a few years ago. I find the Union's argument regarding the history of bargaining between the parties to be persuasive. Although the Union has tried different combinations of comparable data to "sell" certain positions over the years, the fact-finders and conciliators appear to have consistently used the nine counties of northeast Ohio as comparables in rendering awards.

The fact that the parties did not engage in any formal negotiations lends further support to the Union's claim that the bargaining history of the parties, using the nine counties of northeast Ohio, should be the benchmark. There was no dialogue or discussion between the parties to at least examine the merits of using different comparable counties. Whether they would have agreed is uncertain, but at least they would have had a chance to defend, as well as self examine their own logic.

The Employer presented no evidence that prior to instant impasse, the Employer objected to the use of the nine counties of northeast Ohio as comparables. I can't fault the Employer from using these new comparables, but coming so late in the negotiation process considerably diminishes their applicability in light of nine years of bargaining history. The fact that SERB has reconfigured Portage County with other counties cannot

be ignored, but there is no information available as to why SERB used these comparable counties. If one uses population and rural versus urban factors, counties like Holmes and Harrison appear to be misfits. Obviously, either party can pick and choose counties to “make” their case. However, greater weight must be applied to the actions of the parties and to several neutrals who have consistently applied the same comparable data. A sudden and dramatic shift in reasoning by a party to a collective bargaining agreement is seldom well received as a “last minute” move in negotiations, and it is even harder to sell to a Fact-finder.

Therefore, based upon the history of the parties’ bargaining and the geographic position of Portage County, I find that the Union’s comparable data should be given greater weight. For purposes of analysis, it appears reasonable to choose benchmark years of service. Changing the amount of longevity from \$3 to \$4 would increase a 5-year employee from \$180 annually to \$240. It would increase a 10-year employee from \$360 to \$480 and a 15-year employee from \$540 to \$720. It appears that Portage County is less competitive compared to the other nine counties of northeast Ohio during the earlier years of service. For example, at 5 years of service its current longevity is 45% of the average. At 10 years of service its longevity is 58% of the average, and at 15 years of service its longevity is 61% of the average.

An improvement is warranted. However, it must be gradual given the realism of sound fiscal management that every public sector employer must practice. It took years for this situation to develop and it will take a long incremental approach to rectify it. An increase of \$4 dollars will increase the position of the bargaining unit employees relative to the average for 1999. No data beyond 1999 was available.

Recommendation

ARTICLE 23

Change as follows, effective January 1, 2000:

**23.01 Each full-time employee shall be entitled to a longevity benefit upon
Completion of five (5) years of continuous service. The longevity
benefit shall be computed at the rate of four (4) dollars per year, per
month.**

ISSUE 4 ARTICLE 25 INSURANCE

Employer's position

Add new language, a new Section 25.02, that will encompass all county employees and require the bargaining unit to pay the contribution if and when established.

SEE EPS

Union's position

Opposed to Employer's language. Union does not want to agree to something that is unknown such as employee' contributions to a health plan they did not negotiate. SEE

UPS

Discussion

The Employer's proposal is not unheard of in the realm of public sector bargaining in Ohio; however, it is highly unusual for a bargaining unit to agree to a level

of healthcare benefits and its associated costs in a vacuum. The Employer made an effective argument for its position, but it was unable to offer any external comparable data in support of its position. The Employer provided internal comparables in support of its position, but in light of the importance of this type of issue, internal comparables are not enough.

Healthcare is a core benefit. It is only second to wages in most negotiations, and in several cases it has been more difficult to settle than wages. This benefit is ever present on the national agenda and it is no different at the local bargaining table. The Union's reluctance to "buy a pig in a poke" is well understood and is not an unreasonable position as a party to a contract. For example, it is unlikely that any well-managed employer would ever agree to pay a healthcare premium without being able to ascertain a reasonable amount of information. Information such as the reputation of the provider, the level of coverage, the nature of the benefits (i.e. quality of the product), and the costs is essential to sound decision making. For similar reasons, the Union, as an equal partner to the Agreement, insists it must have more information before it can agree to a different healthcare benefit.

Within the confines of the language contained in Article 44 and 45, the Employer is not precluded from approaching the Union during the term of this Agreement with an offer to improve the healthcare benefit.

Recommendation

Maintain current language

ISSUE 5 Article 29 SICK LEAVE

Union's position

The Union is seeking to change the sick leave payment upon retirement formula in the following manner: the Union proposes to modify Section 29.10 to provide payment for sick hours that exceed the current threshold of 960 hours. The Union is proposing a 50% reimbursement for all accrued hours over 960. SEE UPS.

Employer's position

The Employer proposes to maintain current language, SEE EPS.

Discussion

The data presented by the Union in this matter demonstrates that a majority of the nine comparable counties in northeast Ohio have recognized the value of providing greater than 25% of 960 hours for purposes of sick leave retirement. As was presented in the hearing, there are employees who have had "Cal Ripkin" like attendance over the years and who have well above 960 hours of accumulated sick leave. Sergeant Carrozzi's attendance record is an example of consistent performance. This consistency of performance represents a modeling of loyalty to the job that every employer desires. Recognizing there is a certain degree of luck and good genes involved in consistent attendance, there is nevertheless a "work ethic" that underlines this type of record.

Recommendation

Article 29.10 should be modified as follows:

Upon the retirement or disability of an employee who has not less than ten (10) years of continuous employment with the Employer and who has qualified from a State of Ohio Public Employee Retirement System, such employee shall be entitled to receive a cash payment equal to the following formula:

Payment plan A. is in effective for the first year of the Agreement. Beginning with the second year of the Agreement, payment plan A. and B. are in effect. Beginning with the third year of the Agreement, payment plan A. and C. are in effect.

A. (1/4) of the first 960 hours of unused sick hours earned by the employee.

B. Effective 1/1/2001, (27.5%) of all hours in excess of 960 hours of unused sick hours earned by an employee.

C. Effective 1/1/2002, (30%) of all hours in excess of 960 hours of unused sick hours earned by an employee.

All hours must be certified by the Sheriff's Department. For purposes of this section only, sick leave credits earned prior to employment with the Portage County Sheriff's Department shall not be includable. This payment can be collected only once by eligible employees.

ISSUE 6 Article 30 INJURY LEAVE

Employer's position

The Employer proposes maintaining current language. SEE EPS.

Union's position

The Union proposes two separate concepts. The first concept is to extend the period of injury leave from the current 90 calendar days to 150-calendar days (30.01). The second concept is to have the Employer join the Union in assisting employees in the process to secure temporary total disability payments (new 30.03). SEE UPS.

Discussion

The subject of on-the-job injury is a very personal one and one in which employee and employer alike approach seriously. The current language calls for a 90-calendar day period for injury leave. The testimony of the witnesses at the hearing has demonstrated that the Sheriff has only turned down one employee who sought an extension of 30 days. The Sheriff, for good reason, appears to be willing to provide an extension of injury leave. However, the causes and duration of injuries are anything but predictable. The Union's proposal is not unreasonable in light of such unpredictability.

The Union's second proposal in this area appears to be an administrative change and not one that involves a direct cost to the Employer. However, other than making the assertion that Summit County provides assistance to its employees, it is impossible to determine if Portage County is administratively arranged to assist employees in filing temporary disability payments in this manner. This proposal suffered, there was not sufficient time to discuss and explore its viability within the context of the current administrative design of the Employer. The Sheriff appears to have control over certain administrative functions and the County Administration has responsibility over others. Given the information at hand, it is impossible for this Fact-finder to determine whether

the proposed Union changes in Article 30.03 can be accomplished. In addition, with only one comparable, there is not much evidence to suggest that it's commonly practiced.

Recommendation

Article 30

Change the first sentence of Article 30.01 to read:

When an employee is injured while actually working for the Employer, he shall be eligible for a paid leave not to exceed one hundred and twenty (120) calendar days. There will be a five (5) working day waiting period before this provision applies, in which the employee may use sick leave. If the employee received Worker's Compensation Benefits during the period of injury the waiting period shall be returned to the employee to the percentage that Worker's Compensation reimbursed the Employer.

Article 30.02 and 30.03 Current language

ISSUE 7 ARTICLE 32 FUNERAL LEAVE

Union's position

The Union proposes language to add "spouse's grandparents" to the definition of immediate family. SEE UPS.

Employer's position

The Employer proposes to maintain current language. SEE EPS.

Discussion

The current definition of "immediate family" for funeral leave appears to include a normal inclusion of close relatives. The inclusion of spouse's parents, sought by the

Union, represents an expansion in the definition of immediate family that was not supported by comparable data. However, the reality is that if your spouse's mother or father dies there is a commensurate need for that employee to provide emotional support to his/her spouse, particularly on the day of the funeral.

Recommendation

Article 32, change as follows:

An employee shall be granted time off with pay (not deducted from the employee's sick leave) for the purposes of attending the funeral of a member of the family. The employee shall be entitled to a maximum of three (3) workdays for each death in this immediate family (as defined in 29.09 above), one of which must be the day of the funeral. In the case of a death of a spouse's mother or father, an employee may receive one (1) day with pay for purposes of attending the funeral.

ISSUE 8 Article 36 HEALTH AND SAFETY

Employer's position

The Employer proposes to maintain current language. SEE EPS.

Union's position

The Union seeks four changes: (1) 36.01, to allow employees to be able to smoke in designated areas; (2) 36.02 requires the Employer to correct unsafe or unhealthy conditions, (3) 36.03 requires the Employer to monitor in-facility air quality and to

correct problems, 36.04, the Employer will not assign individual bargaining unit members to perform multi-prisoner transports. SEE UPS.

Discussion

The evidence and testimony support the Union's contention that employees in the bargaining unit who smoke are treated differently than non-sheriff based employees who work in the same facility. If the building and grounds are smoke free, it would seem logical that no one could smoke. However, the evidence and testimony demonstrate that in practice the grounds are only smoke free for employees of the bargaining unit. The Union argues this is a matter of human dignity and respect.

The Employer's position in this matter is understandable when an employee is "on the clock." If an employee is on his own time, why can't he operate under the same rules as other people in and around the employee grounds? Jacob's field, an open-air facility, is a smoke free facility that prohibits anyone from smoking. If an off duty employee attends a game he is expected not to smoke, as is every else. Either a facility is smoke free or it isn't. The rules should apply equally to bargaining unit employees off the clock as it does to other people in the building who are not on the Sheriff's payroll.

The second and third issues raised by the Union address unsafe working conditions and air quality. The problem with these proposals is their lack of specificity. The Employer raised the question. What is an unsafe working condition? This is a legitimate question that goes to the heart of the Union's proposal. The answer to that question depends on the source. The same thing can be said for the following question: What is substandard air quality? If you are a smoker, your answer might be quite

different than if you are asthmatic. During the hearing, Major Charles Graver provided convincing testimony and evidence (JX 3) that the Employer was making a concerted effort to address health concerns in the buildings.

The changes sought by the Union in 36.04 deal with the transport of prisoners. The Employer provided a copy of Minimum Standards for Jails. The Sheriff provided unrefuted testimony that these standards are being followed and that the Employer is in compliance. In addition, the Sheriff testified that he and his management staff carefully evaluate prison transport assignments and caution against putting any bargaining member at risk. This testimony was also unrefuted. If the Employer is meeting state standards for prison transport and if there is no disagreement that management is doing a good job of evaluating every transport based upon necessary manpower I find insufficient evidence to suggest any change in current practice.

Recommendation

Article 36, change as follows:

36.01 The Employer agrees to furnish and to maintain, in safe working condition, all tools, facilities, vehicles, supplies, and equipment required to safely carry out the duties of each employee. Employees are responsible for immediately reporting unsafe conditions or practices, and for properly using and caring for all tools and equipment furnished by the Employer. Building and grounds to be smoke free and employees not entitled to smoke breaks while on paid-time. While on unpaid-time, an employee on the property of the Employer shall conform to the same smoking policy in place for all personnel in the building and on the grounds of the Employer. For example, if the Employer allows people to smoke in a particular

area on the grounds, bargaining unit employees, in an unpaid status, shall be able to smoke in the same area.

ISSUE 9 Article 46 DURATION

Employer's position

The Employer proposes a three-year agreement, SEE EPS.

Union's position

The Union proposes a three-year agreement, SEE EPS.

Discussion

The parties are in agreement on this issue.

Recommendation

It is recommended that the Agreement be for three years, commencing January 1, 2000 through December 31, 2002.

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 17th day of December 1999 in Summit County, Ohio.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of loops and a long horizontal stroke extending to the right.

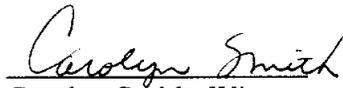
Robert G. Stein, Fact-finder

CERTIFICATE OF SERVICE

I certify that on this 17th day of December, 1999 a duly executed copy of this Fact-finding Award was mailed to Employer Representative, Ronald J. Habowski, Esq, 215 West Garfield Rd., Suite 230, Aurora, OH, 44202 and to Union Representative, Nicholas Codrea, Jr., OPBA 10 Beech St. Berea OH 44017. A copy was also mailed to George Albu, Administrator, Bureau of Mediation, SERB, 65 East State St., 12th Floor, Columbus OH 43215-4213.



Robert G. Stein, Fact-finder



Carolyn Smith, Witness