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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 10-0908
CORRECTIONS

PRINCIPAL ADVOCATE FOR THE UNION:

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

and

PRINCIPAL ADVOCATE FOR THE SHERIFF:

Ronald Habowski, Esq.
CHRISTY, HERINGTON & PIERCE
215 West Garfield Rd.
Suite 230
Aurora OH 44202

INTRODUCTION

The bargaining unit is comprised of approximately fifty (50) employees holding the classification of Corrections Officer, four (4) Sergeants, and three (3) Corporals who are employed by the Portage County Sheriff's Department. The parties have had a bargaining relationship with the Sheriff's Department since 1986. The Dispatcher's bargaining unit and the Deputy's bargaining unit are also represented by OPBA. Prior to declaring impasse, the parties never held a negotiations session. However, during the fact-finding process the parties successfully resolved several issues. Portage County has a population of some 150,000 people. The parties have historically 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 and forcefully 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 negotiate as 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 forthright 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 articulated under the issue of longevity, the more relevant comparable data that shall be used in this analysis is the data that has been consistently applied by fact-finders, conciliators, and, for the most part, the parties since they first started bargaining in 1986. The data provided by the Union (UX 2), demonstrates that, at the top rate of pay, the bargaining unit is 9th out of the nine comparable counties in northeast Ohio. However, a closer examination of the top rates of pay reveals that Portage County Corrections Officers are within \$94 (3/10th of one percent) of Ashtabula County rates of pay and within \$58 (2/10ths of one percent) of Trumbull County rates of pay. Ashtabula, Trumbull, and Portage Counties statistically, provide a very similar wage for corrections work. In consideration of the minimal differences in top salary, Ashtabula, Trumbull, and Portage Counties represent the lower third of salary ranking for the nine county northeast Ohio area.

During the next two years the Ashtabula and Trumbull Correction Officers shall receive increases of 5% and 4% respectively. The Union presented an average of 3.9% for the year 2000 for 5 of the 9 northeast Ohio counties. In fairness, the Ashtabula 5% increase upwardly skews the average. If you take out the Ashtabula increase and just figure the average on Geauga, Lake, Summit and Trumbull Counties, the average salary increase for the year 2000 drops to 3.63%.

In order for Correction Officers in Portage County to remain within statistical proximity of Ashtabula and Trumbull Counties in the year 2000, the amount of their salary increase needs to be above the 3.35% offered by the Employer. It is unclear what the situation will be in the year 2001 and 2002. The Union could only provide

comparative data for 3 of the 9 northeast Ohio counties for 2001 and there were no comparables for 2002. With marginal above average increases spread over three years, it is likely the Correction Officers bargaining unit can remain competitive with its two closest rival counties. This should be able to be accomplished without putting the strain of a large, short-term, catch-up salary increase on the budget of the Employer.

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 Correction Officers, Corporals, and Sergeants. The remainder of the Article shall be current language.

CORRECTIONS OFFICER	<u>1/1/00</u>	<u>1/1/01</u>	<u>1/1/02</u>
ENTRY	26,820	27,826	28,870
1 YEAR	28,458	29,525	30,632
2 YEARS	29,509	30,615	31,763
3 YEARS	30,567	31,713	32,902
4 YEARS plus	31,607	32,793	34,022
 CORRECTIONS CORPORAL	 <u>1/1/00</u>	 <u>1/1/01</u>	 <u>1/1/02</u>
ENTRY	36,659	38,034	39,460
1 YEAR	37,932	39,354	40,830
 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

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) 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. Comparisons the Union used comprised 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 verses urban factors, counties like Holmes and Harrison appear to be misfits. Obviously, either party can pick and chose 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 its 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 choice 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 less competitive compared to the other nine counties of northeast Ohio, during the earlier years of service. For example, at 5 years of service is 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 it 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 proposed changes

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. And, was language such as this being common in the public or private sector. 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 like the reputation of the provider, the level of coverage and the nature of the benefits (i.e. quality of the product), and the costs is essential to sound decision making. For a similar reason, 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 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 with seriousness. The current language calls for a 90-calendar day period for injury leave. And 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 suffers, from 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 "spouses 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.

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 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 demonstrates 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, but so 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 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.



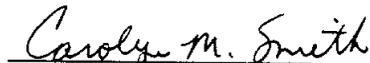
Robert G. Stein, Fact-finder

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