

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2004 APR -8 A 11: 01

In the matter of	*	Case No. 03-MED-10-1219
	*	03-MED-10-1220
Conciliation between:	*	
	*	
	*	Conciliator:
Lake Township Trustees	*	
	*	Martin R. Fitts
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	April 6, 2004
	*	
	*	

AWARD OF THE CONCILIATOR

APPEARANCES

For Lake Township (the Employer):

Tom Hays, Attorney
Paul Goldberg, Attorney
Richard Welling, Township Trustee
Ray McLargin, Township Clerk
Shelley Singer, Account Executive, Hylant Group

For OPBA (the Union):

Marilyn Widman, Attorney
Justin Burnard, Attorney
Steve Poiry, Patrolman
Scott Sims, Patrolman
Michael Lutton, Patrolman
Jim Goodenough, Sergeant

PRELIMINARY COMMENTS

The bargaining unit includes all full-time and part-time police officers employed by Lake Township in Wood County, Ohio. A preliminary hearing was held on March 5, 2004. Discussion was held on several of the outstanding issues. The parties reached agreement on several issues prior to the commencement of the conciliation hearing, which was held on March 23, 2004 at the Lake Township offices. Both parties submitted written position statements prior to the hearing. Both parties attended the hearing and elaborated upon their respective positions through the testimony of witnesses and the admission into the record of a number of exhibits. There were three issues at impasse: 1) Article 27, Work Schedules; 2) Article 29, Hourly Pay Rates; and 3) Article 42, Health Insurance. Thus these three issues were submitted for conciliation.

In rendering this conciliation award, the Conciliator 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 4117-9-06 (H), the Conciliator 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 issues submitted to final offer settlement 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 final offer settlement through voluntary collective bargaining mediation, fact-finding or other impasse resolution procedures in the public service or in private employment.

Further, the Conciliator has attempted to strike a fair and balanced award that addresses the concerns of both parties, as well as the interests of the taxpayers of Lake Township.

ISSUE AND AWARD

Issue: Article 27, Work Schedules

Positions of the Parties

The Employer proposed a change in Section 3 of Article 27. The proposal would add the sentence: "Any part-time employee who refuses opportunities to work and as a result fails to work one hundred eighty (180) hours any six month period shall be placed on probation for the subsequent one year period." This proposal was recommended by Fact-finder Dobry in his report issued January 16, 2004.

The Union position is for the retention of current language.

Discussion

As noted above, the Employer's position reflects the Fact-finder's recommendation. The parties acknowledged that the Fact-finder's report was drafted as a potential compromise between the parties during mediation. That being said, the Report itself sheds little light on the rationale for the recommended change of this section of the agreement. From the Employer's testimony at the hearing it is also difficult to find the rationale for the suggested change. No administrative problems were offered as a rationale. There were also no arguments made that the part-time officers that might potentially fall below the Employer's proposed threshold perform at a less than acceptable level.

The part-time officers perform the same duties as the full time officers. They offer the Employer a cheaper alternative than hiring additional full-time officers, as they receive no fringe benefits. Also, the utilization of part-time officers allows the Employer to avoid overtime costs. In short, the part-time officers offer the Employer considerable flexibility.

In short, the Employer's only argument in support of sustaining the Fact-finder's recommendation is that it represents what was an attempt by the parties to craft a settlement of the outstanding issues. This may have made some sense during mediation, as part of the give and take of negotiations. However, as a stand-alone issue, there is simply no compelling evidence to sustain the Employer's position.

Award

The Conciliator finds no compelling reason for a change in Article 27, Section 3.

Therefore, the Conciliator awards the Union's position of current language.

Issue: Article 29, Hourly Pay Rates

Positions of the Parties

The Employer position is that the Fact-finder's recommendations overhauling the existing pay rates found in Article 29 should be adopted. In addition, a provision should be added to the Fact-finder's recommendations to provide as follows: "In the year 2004, if any employee shall make less than fifteen cents (\$0.15) more than his current 2003 hourly rate to include longevity rolled into the base, then that employee's rate shall be fifteen cents (\$0.15) above the 2003 current hourly rate for the year 2004."

The Union position is that the current language of Article 29, Section 1 should be amended to reflect an across the board 3% wage increase effective January 1, 2004, an across the board 3% wage increase effective January 1, 2005, and an across the board 4% wage increase effective January 1, 2006. Further, it proposes the elimination of a separate "Part-Time Patrol" rate found in Article 29, Section 1 except for the period of field training. Thirdly, it proposes that the "Corporal" pay rate in Article 29, Section 1 be established as a step rate titled "Senior Patrol/Corporal Rate" for all full-time patrol officers after their fifth year anniversary as a full-time patrol officer.

Discussion

As noted above, the parties crafted the substantive content of the Fact-finder's recommendations. In regard to Article 29, the Fact-finder's recommendations would dramatically change the compensation system for these employees. The Employer's position includes the Fact-finder's recommendations plus one addition that appears to address one specific issue that was identified following the Fact-finding process in which certain employees would have been treated unfairly.

In fact, the Fact-finder's recommendations do appear to the Conciliator to be an equitable method of providing compensation to the employees, especially with the Employer's additional proposal. In this instance, there is compelling evidence that the substance of

the Fact-finder's report is an improvement to the compensation system that benefits both parties. For example, by essentially eliminating the existing pay differential between senior patrol officers and those in the corporal ranks, a situation both parties see as unfair is addressed. There will simply be more equity under the Employer's proposal than exists in the present system. In addition, the proposed wage increases adequately address the increased health insurance contributions provided for later in this Award.

Award

The Conciliator finds a compelling argument for adopting the Employer's position.

Therefore, the Conciliator awards the Employer's position of adopting the Fact-finder's recommendations with the additional language proposed by the Employer as follows: "In the year 2004, if any employee shall make less than fifteen cents (\$0.15) more than his current 2003 hourly rate to include longevity rolled into the base, then that employee's rate shall be fifteen cents (\$0.15) above the 2003 current hourly rate for the year 2004."

Issue: Article 42, Health Insurance

Positions of the Parties

The Employer position is that Section 1 of Article 42 be amended to provide for the employees to contribute 5% of the monthly premium in 2004, 7% of the monthly premium in 2005, and 9% of the monthly premium in 2006. The Employer also desires to amend this section to provide that if practicable and available, the Employer would provide a health coverage option offering greater benefits, with the employee solely responsible for the full amount of the increased cost over the standard policy. Further, the Employee proposes that, effective January 1, 2005, spouses would be required to enroll in a single plan through their employer regardless of any required premium, with a provision that exceptions can be granted by the Township to those who demonstrate excessive premiums or hardship.

The Union position is that Section 1 of Article 42 be amended to provide for the employees to contribute 3% of the monthly premium in 2004, 5% of the monthly premium in 2005, and 6% of the monthly premium in 2006.

Discussion

The positions of both of the parties deviated from the Fact-finder's Report. The Union's position modifies slightly the percentages recommended by Fact-finder Dobry for the employees' contributions toward the health insurance premium. The Employer's proposal modifies the percentages as well, but also adds additional language mandating that spouses must seek coverage under their respective employers.

Considerable testimony and evidence was presented about the current state of health care coverage, its availability, and the costs and future costs facing the Employer. Really there is no dispute between the parties of the facts facing the Employer and employees with regard to the availability of coverage and the costs of providing it. What is in dispute is how to share in those costs.

As the employees currently share in a minimal amount of the costs, each proposal will represent a fairly significant change for them. Once again, in light of the fact that the parties had considerable input as to the content of the Fact-finder's recommendations, significant weight must be given to those recommendations when determining what is fair and equitable to the employees, the Employer, and the taxpayers of Lake Township. The Union's position more closely mirrors the Fact-finder's recommendations. It must be considered by the Conciliator as having more merit in light of the whole of the agreements reached by the parties during the entire negotiation process prior to conciliation.

Award

The Conciliator finds a compelling argument for adopting the Union's position.

Therefore, the Conciliator awards the Union's proposal for the amendment of the language in Article 42, Section 1, including the provision that the employees shall contribute 3% of the monthly premium in 2004, 5% of the monthly premium in 2005, and 6% of the monthly premium in 2006.

TOTALITY OF THE AWARD

The above represents in total the award of the undersigned Conciliator.

A handwritten signature in black ink, appearing to read "M. R. Fitts", written in a cursive style.

Martin R. Fitts
Conciliator
April 6, 2004