

CONCILIATION DECISION

2009 JUL -1 P 12: 06

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

June 29, 2009

In the Matter of:

Jackson Township)	
)	
and)	Case No. 08-MED-08-0758
)	Patrol Officers
Fraternal Order of Police,)	
Ohio Labor Council, Inc.)	

APPEARANCES

For the Township:

Leslie Kuntz, Attorney
Harley Neftzer, Police Chief
Marilyn Lyon, Township Administrator

For the Union:

Chuck Wilson, Fraternal Order of Police, Ohio Labor Council, Inc.
Todd D. Morris, President
Danny A. Sturia, Vice President
Kim Haines, Secretary

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves Jackson Township and the Fraternal Order of Police, Ohio Labor Council, Incorporated. The township encompasses 36 square miles in Stark County and has a population of approximately 42,000. The union represents four bargaining units consisting of patrol officers, sergeants, lieutenants, and clerical employees in the police and other departments.

The instant dispute involves the township and the patrol officers' unit. In October of 2008, the parties began negotiations for a successor agreement to the one due to expire on December 31, 2008. When no agreement was reached, a Factfinder was appointed. He held a hearing on March 31, 2009, and issued his report on April 22, 2009.

When the Factfinder's report was rejected, the dispute proceeded to conciliation. The Conciliator was notified of his appointment on May 13, 2009, and a hearing was held on June 23, 2009. When attempts to reach a mediated settlement failed, this decision was prepared.

The Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the 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;
- (c) 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;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, 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.

ISSUES

The parties submitted four issues to the Conciliator. For each issue the Conciliator will state the positions of the parties, summarize the arguments and evidence they offered in support of their positions, present a discussion of the issue, and provide his award.

1) Article 16 - Overtime, Section 5 - Compensatory Time - The current contract has no provision relating to compensatory time; rather, it is governed by a township resolution that limits the accumulation of comp time to 20 hours and allows the township to unilaterally modify or eliminate the benefit. The union proposes that a provision be added to Article 16 governing comp time and that the maximum accumulation be increased to 40 hours. The township offers to add a provision to the contract creating a 40-hour comp time bank but insists that the contract give it the right to unilaterally modify or eliminate the comp time.

Union Position - The union argues that its demand should be granted. It points out that the contract included a comp time provision until 1996 when it was eliminated in bargaining. The union notes that the township subsequently adopted a resolution that allowed comp time but complains that the resolution gives the township the ability to unilaterally eliminate it.

The union contends that comp time belongs in the contract. It indicates that comp time clearly deals with a term and condition of employment and is a mandatory subject for bargaining.

The union complains that the language recommended by the Factfinder is defective. It observes that the language allows the township to unilaterally eliminate comp time. The union charges that this is inconsistent with the fact that comp time is a mandatory subject for bargaining and is contrary to Chapter 4117 of the Ohio Revised Code.

Township Position - The township argues that its final offer should be selected. It states that in 1996 it paid employees \$2000 to “buy back” the comp time benefit in the contract. The township acknowledges that in 1998 it passed a resolution creating comp time due to concerns about overtime costs. The township stresses that it specifically included its ability to unilaterally eliminate the benefit.

The township maintains that a comparison to other bargaining units in the township supports its position. It reports that none of the other units have comp time. The township asserts that the amount of time granted was limited to insure that it would not create overtime.

The township states that there is no evidence that it intends to do away with comp time. It emphasizes, however, that it needs the ability to eliminate it if and when it creates overtime or operational problems.

Analysis - The Conciliator must select the union’s final offer. Comp time provisions are standard fare in police collective bargaining agreements. The provision sought by the union involves a modest amount of time compared to those found in many

other contracts. There is no indication that the agreed-upon increase in the maximum accumulation from 20 to 40 hours will create a problem.

The Conciliator must reject the township's demand that it have the right to unilaterally eliminate comp time. First, such an arrangement would be unusual in Ohio public sector bargaining. Second, as suggested above, there is no reason to believe that a 40-hour comp time bank will create any problems. Third, if problems do arise, the township can discuss them with the union or, at worse, bargain any necessary changes during negotiations for subsequent collective bargaining agreements.

Award - The Conciliator selects the union's final offer. It is as follows:

1. Any member of the Bargaining Unit entitled to overtime may waive the right to overtime and receive, in lieu thereof, compensatory hours for each hour worked in excess of his regularly scheduled hours of employment. Officers will be permitted to accumulate up to 40 hours of compensatory time. Compensatory time, like all overtime, will be approved at the time it is earned by a supervisor.
2. An employee who has accrued compensatory time and requests use of the time may be permitted to use the time off within a reasonable period after making the request. Generally, the employee must submit a written request at least two (2) days in advance before using compensatory time. The use of compensatory time will be granted so long as it does not unduly disrupt the operation of the department.
3. A supervisor will be appointed as the manager of compensatory time.
4. Monthly, the supervisor in charge of compensatory time shall submit to the Chief of Police a report detailing the use of compensatory time during the previous month. The report will display the officers who used compensatory time, their shift, the part-time officer who covered for the absence, if applicable, and an approximate amount of costs saved by utilizing compensatory time rather than overtime.
5. Overtime and compensatory time disputes shall be resolved by the appointing authority. Overtime and compensatory time entitlements shall be approved by the appointing authority and should be properly recorded as to when it was earned and when it is used on a bi-weekly

basis when the payroll is submitted. The records on file in the Auditor's Office will be final, unless clearly demonstrated to be in error.

2) Article 22- Compensation - The current contract establishes a starting salary of \$30,959.54, a salary of \$43,933.88 after one year, and a top salary of \$48,449.88 after five years. It also requires the township to pay employees' 9% pension contribution. The union seeks 3% wage increases effective January 1 of 2009, 2010, and 2011. The township offers 3% wage increases on the same dates plus a \$1000 bonus payable on the signing of the agreement with the stipulation that the pension pick-up is to be eliminated for employees hired after December 31, 2008.

Union Position - The union argues that its offer is more reasonable than the township's offer. It acknowledges that the Factfinder recommended 3% wage increases effective on January 1 of 2009, 2010, and 2011 and the discontinuation of the pension pick-up for new employees but complains that this was not "one of the cited options." The union observes that the township offered 3% increases plus a \$1000 bonus but the Factfinder eliminated the \$1000 bonus, ignoring the fact that the firefighters received 3% wage increases plus a \$1000 bonus.

The union contends that its position is consistent with parity within the police department. It points out that when the pension pick-up was eliminated for sergeants and lieutenants, they received 9% wage increases in addition to the yearly wage increases. The union charges that the Factfinder ignored the department comparables and instead focused on the firefighters.

The union maintains that it properly rejected the Factfinder's report. It claims that the pension pick-up for new employees is "problematic" because in the future, the wages of similarly situated employees would be 9% different. The union claims that this could

create morale problems and force it to attempt to correct the situation at every round of bargaining.

Township Position - The township argues that its final offer is strongly supported by the agreement it reached with the firefighters. It points out that they accepted the same offer as it has made to the patrol officers. The township claims that since parity between the patrol officers and the firefighters was ordered in 1987, the parties have consistently adhered to this principle.

The township contends that its proposal to end the pension pick-up for new employees is justified. It states that the rollback of the personal property tax resulted in a loss of \$838,569; funding for Local Government Assistance has dropped by approximately \$30,000 over the past several years; and that projections indicate that real estate valuations will drop by 5% to 8%. The township adds that the 4.5 mill levy that supports the police department expires in 2010.

The township rejects the union's claim that the elimination of the pension pick-up for new employees will lead to problems by creating wage differences. It points out that employees already receive different wages due to the wage schedule and longevity payments as well as overtime and extra duty assignments. The township asserts that the elimination of the benefit will have no impact on hiring police officers.

The township maintains that its proposal is supported by external comparisons. It states that in Stark County, contracts between the County 911 and the FOP, the Sanitary Engineer and AFSCME, the Job and Family Services and United Steelworkers, the Building Department and AFSCME, the Dog Warden and Teamsters, and the Engineer and AFSCME eliminated the pension pick-up for new employees. The township reports

that among nearby police departments, Canton and FOP, Canton and Canton Police Patrolmen's Association, Alliance and OPBA, Canal Fulton and FOP, Lake Township and OPBA, Lawrence Township and FOP, Massillon and Massillon Police Officers Association, Perry Township and FOP, and Stark County Sheriff and Stark County Deputy Association do not have pension pick-ups.

Analysis - The Conciliator believes that the township's final offer is more reasonable than the union's offer. First, the financial situation facing the township suggests that it needs to carefully monitor its future costs. While the township appears to be in good financial health and did not claim an inability to pay the union's demands, the outlook for the township and for public employers in general is not entirely clear. One way to control future costs is to end the pension pick-up for new hires.

Second, the township's offer is strongly supported by internal comparisons. In December of 2008, the firefighters agreed to end the pension pick-up for new employees. This benefit ended a number of years ago for police sergeants and lieutenants, leaving no other employees in the township with it.

Third, external comparisons also support the township's position. A number of recent Stark County negotiations resulted in the end of pension pick-ups for new employees. In addition, many nearby police departments have done the same thing.

Finally, while the Conciliator shares the union's concern about the problems associated with two-tier pay systems, ending the pension pick-up for all employees would create its own set of problems. At the factfinding hearing, the township offered to retain the pick-up for new hires but only if the second and third year wage increases were reduced from 3% to 2% and 1% but this proposal was rejected by the union and no offer

was made by the union that would have preserved the pension pick-up for new employees.

Award - The Conciliator selects the township's final offer. It is as follows:

Section 1. Effective the first pay period that ends in January 2009, each Employee of the bargaining unit shall receive an annual base salary increase in the amount of three percent. As follows:

Starting salary for patrol officer - \$31,888.33
After one year of employment for patrol officer - \$45,251.90
After five years of employment for patrol officer - \$49,903.38

Section 2. Effective the first pay period that ends in January 2010, each Employee of the bargaining unit shall receive an annual base salary increase in the amount of three percent. As follows:

Starting salary for patrol officer - \$32,844.98
After one year of employment for patrol officer - \$46,609.46
After five years of employment for patrol officer - \$51,400.48

Section 3. Effective the first pay period that ends in January 2011, each Employee of the bargaining unit shall receive an annual base salary increase in the amount of three percent. As follows:

Starting salary for patrol officer - \$33,830.33
After one year of employment for patrol officer - \$48,007.74
After five years of employment for patrol officer - \$52,942.49

Section 4. Pay period shall be bi-weekly.

Section 5. Field training officers as designated by management shall be entitled to additional compensation in the amount of \$.25 per hour worked.

Section 6. For bargaining unit members as of December 31, 2008, the Township shall pay nine percent (9%) of the Employee's required contribution to the PERS Fund with the express understanding between the parties to this Agreement that any increase in the Required Employee's contribution percentage to the PERS Fund shall be paid by the Employee and further that the Employees shall not make any claims for lost compensation should the present required 9% Employee contribution rate be reduced. Employees hired after December 31, 2008, shall be solely responsible for payment of the Employee's required contribution to the PERS Fund.

Section 7. In consideration of the parties' agreement to eliminate the 9% pick-up of employee contribution to PERS/LE for all new hires of the Police Department, the Township agrees to pay a one-time payment of One Thousand Dollars (\$1,000) to all bargaining unit members at the signing of the Agreement.

3) Article 24, Section 1 - Injury Leave - The current contract has a wage continuation program where an employee who is injured or suffers an occupational disease in the line of duty is paid his or her wage for 520 hours providing he or she is granted workers' compensation and turns it over to the township. The township wishes to replace the current program with injury leave for 120 days from the date of the injury and proposes to pay an employee his or her regular pay provided the employee signs over his temporary total disability to it. The union seeks to retain the wage continuation program.

Township Position - The township argues that its offer should be selected. It points out that prior to the current agreement, the contract contained an injury leave provision. The township states that it was replaced with the current wage continuation language because its workers' compensation consultant reported that replacing the injury leave program with a wage continuation provision would allow it to avoid creating a reserve for each claim. It indicates that in March of 2008 it learned that the Bureau of Workers' Compensation had changed its position so that a reserve was required even under a wage continuation provision, which eliminated the benefit of such a provision.

The township contends that the parties should return to the previous provision. It states that the requirement for a reserve eliminates any advantage of a wage continuation program. The township notes that the firefighters accepted its proposal.

Union Position - The union argues that the current contract language ought to be retained. It claims that despite the Factfinder's statement indicating that it accepted the township's proposal for injury leave, it did not do so. The union indicates the township's proposal would result in lost pension time for employees. It states that given the potential for a long-term injury, the township's proposal could have a significant negative impact on an employee.

Analysis - The Conciliator must select the township's final offer. He appreciates the union's concern about the potential for pension losses in the township's original final offer. However, the township's revised final offer, which the Conciliator accepted after mediation, fully addresses the union's concern and eliminates any possible loss in pension time.

Award - The Conciliator selects the township's final offer. It is as follows:

When an Employee is injured or suffers an occupational disease in the line of duty while actually working for the Employer, the Employee will be entitled to injury leave pay for any remaining days within the hundred twenty (120) calendar day period from the date of the injury. The Employee must file for Workers' Compensation to be eligible for injury leave pay. The Employee shall also be subject to the Workers' Compensation requirements regarding light duty and/or transitional work programs. The Employee shall receive their regular pay (including pension contributions) during injury leave and shall sign over any and all payment for temporary total disability to the Township.

If the Employer and the Employee agree, the employee may participate in a workers' compensation wage continuation program. Under this program, the Employee will be paid his or her present hourly rate with applicable federal, state, and local withholdings. This entitlement will be reviewed after 520 hours. In order to be eligible for this salary continuation, the Employee must file for and be eligible to receive Workers' Compensation. Wage continuation will be discontinued when you do not provide proper documentation, you return to work, the minimum of 26 weeks has been reached, if a

dispute arises regarding the cause or extent of disability, or if you are able to perform light duties available and you refuse.

4) Article 39 - Extra Duty Employment Opportunities - The current contract requires the chief to post extra duty jobs of an ongoing nature to be bid on by full-time patrol officers and sergeants based on departmental seniority and permits any unfilled positions be offered to other officers. The township seeks to include lieutenants along with the patrol officers and sergeants. It also seeks to add a clause that states that it has the right to approve or disapprove extra duty assignments. The union initially sought to retain the current language.

Township Position - The township argues that its final offer is more reasonable. It claims that it is unfair to exclude the lieutenants from bidding on extra duty jobs along with patrol officers and sergeants. The township observes that the current restriction means that lieutenants may be unable to work extra duty jobs they have worked prior to being promoted. It states that this has resulted in too few officers volunteering to work extra duty jobs.

The township contends that it needs the ability to approve or disapprove extra duty jobs. It states that in some instances there may be concerns regarding workers' compensation claims and liability. The township adds that its proposal responds to a grievance filed by the union over the approval of extra duty jobs.

Union Position - The union argues that the Factfinder's report regarding its position was erroneous. It states that it agreed to the township's demand to approve or disapprove requests for extra duty jobs but insists that it rejected the township's wish to include lieutenants in the bidding for extra duty jobs.

Analysis - The Conciliator believes that the issues related to extra duty jobs have been resolved. The union submitted a revised final offer that incorporated the townships's language regarding the approval of extra duties assignment. In addition, its revised offer opens bidding on extra duty jobs to union members which it defined as patrol officers, sergeants, and lieutenants. The revised offer puts to rest a potentially divisive issue and should benefit patrol officers as they are promoted over the course of their careers.

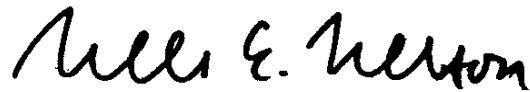
Award - The Conciliator selects the union's final offer. It is as follows:

In order to be eligible for extra duty employment, Officers must be on vacation, personal leave, compensatory time or regular scheduled time off.

When scheduling for extra-duty assignments that are of an ongoing nature, the Chief or his designee shall post the jobs which will be bid in order of department seniority (from the date of full-time appointment). Full-time Union Members (Lieutenants, Sergeants and Patrol Officers) will be given first right of refusal on all jobs. Any remaining jobs will then be offered to other non-union members.

Extra duty details that are requested with less than 72 hours notice shall be posted by the Chief or his designee and will be filled on a first come first serve basis.

Determinations regarding acceptance of extra duty employment opportunities shall rest with the Township.



Nels E. Nelson
Conciliator

June 29, 2009
Russell Township
Geauga County, Ohio