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BEFORE

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

STATE-EMPLOYMENT
RELATIONS BOARD
DEC 18 10 23 AM '95

UNITED AUTOMOBILE WORKERS
(CORRECTION CORPORALS)
EMPLOYEE ORGANIZATION

AND

CUYAHOGA COUNTY SHERIFF
EMPLOYER

) CASE NO. 95-MED-09-0713
)
) FACT-FINDER'S REPORT,
) FINDINGS OF FACT AND
) RECOMMENDATIONS
)
) DATE ISSUED: DECEMBER 15, 1995
)
) NORMAN R. PRUSA, FACT-FINDER

APPEARANCES:

FOR THE EMPLOYEE
ORGANIZATION

David Roloff, Esq., Counsel
David A. Pavlick, Chief Steward
Robert K. Moore, 2nd Shift
Steward
John J. Summers, 3rd Shift
Steward

FOR THE EMPLOYER

William Cook, Employee
Administrator
Gerard Vancavage, Labor
Relations Attorney for the
Board of County Commissioners
Michael Pavicic, Warden
Patricia Kresty, Assistant
Administrator

In accordance with Ohio Revised Code Section 4117.14(C)(3), I was, on December 1, 1995 appointed fact finder in the above-captioned matter.

On December 12, 1995, a fact-finding hearing convened at 2 P.M. in Cleveland, Ohio, and concluded at 4 P.M.

Prior to the hearing, the parties met twice. At the first meeting, the Employee Organization (hereafter the Union) presented its proposed changes in the collective bargaining agreement. At the second meeting, the Employer presented its proposed changes. Because the parties had no opportunity to engage in meaningful negotiations before the hearing, it was agreed that mediation would not be productive and so that avenue was not pursued.

Nevertheless, during the course of the fact-finding hearing the parties did agree to several items.

Accrued Time Records - Presently the Employer is required to furnish each employee a quarterly accounting of accrued time. The parties agreed that such accounting will be given bi-weekly. The new wording will be as follows:

Accrued Time Records

Section 1. The Employer will bi-weekly provide each employee with a complete accounting of accrued time in all categories in which time may be accrued.

Grievance Procedure - Step 3 of the current grievance procedure provides for an appeal to the Sheriff or his designee from an unfavorable Step 2 response. Within certain time limits, the Sheriff is required to issue a written response to the grievance.

This written response is given to the grievant and to the Union's International Representative.

The parties agree that the Chief Steward should also receive a copy of the Sheriff's written response.

Therefore, the last sentence of Step 3 of the Grievance Procedure will be amended to read:

Within ten (10) working days after the above meeting, the Sheriff shall provide the Employee, the Chief Steward, and the Union's International Representative with a written response to the grievance.

Finally, the parties agreed to a three year contract beginning January 1, 1996 and expiring December 31, 1999.

Remaining for resolution are fourteen items; seven Employer proposals and seven Union proposals.

The Employer's proposals cover:

1. Compensatory Time
2. Hours of Work
3. Lunch and Area
4. Roll Call Compensation
5. Safety Equipment
6. Shift and Days Off
7. Wages

The Union's proposals cover:

1. Hospitalization
2. Retirement
3. Union Business Leave
4. Vacation
5. Personal Leave
6. Deferred Compensation
7. Waages

Findings of Fact and Recommendations on the Issues

In making my findings of fact, I have taken into consideration all reliable information relevant to the issues before me. In making my recommendations, I have taken into

consideration the following:

1. Past collectively bargained agreements;
2. Comparison of the unresolved issues 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, 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 mutually agreed upon dispute settlement procedures in the public service or in private employment.

COMPENSATORY TIME

Presently an employee who accumulates compensatory time may use up to 24 hours of that accumulation as personal time. Personal time requires 3 days notice unless family or personal emergencies preclude such notice.

The Employer would add to this provision the words "The Employer will only disapprove such personal time if the Corporal staffing for that particular period dictates that approving such request would create overtime."

The Employer's proposal is meant to cut down on overtime. The Union opposes any change in the existing provision. It

argues that adopting the Employer's proposal would effectively eliminate the personal time provision on most occasions because the taking of personal time would create overtime on four of seven days.

Cutting down overtime hours is an understandable management goal. However, I tend to agree with the Union that more often than not, a request for personal time will create the necessity of overtime. The ability of an employee to utilize the contractual right to personal time will thus be rendered meaningless.

I therefore recommend that the provision titled "Compensatory Time" remain unchanged.

HOURS OF WORK

The current agreement permits the Employer to establish two work weeks: a five day week consisting of 8 hours per day with two consecutive days off, and a four day work week consisting of 10 hours per day with three consecutive days off. All employees now work a five day, eight hour per day work week with either Saturday and Sunday or Sunday and Monday as off days.

The Employer proposes to establish a different four day work week: three consecutive days of twelve hours per day followed by one day of six hours with three consecutive days off. The Employer states that its proposal would allow it to evenly distribute its work force and reduce overtime.

Of the thirty-eight unit employees, thirteen are presently

assigned to the first shift; fifteen to the second shift; and ten to the third shift.

On the first shift, seven employees are on duty on Sunday and Monday; thirteen on duty on Tuesday through Thursday; and six on duty on Friday and Saturday.

On the second shift, eight are on duty on Sunday and Monday; fifteen on Tuesday through Thursday; and seven on Friday and Saturday.

On the third shift, five are on duty on Sunday; ten on Monday through Wednesday; and five on Thursday through Saturday.

The uneven distribution of employees shown above demonstrates the necessity of the adoption of its proposal according to the Employer. It submitted a sample shift assignment made under its three twelve-hour and one six hour shift proposal. Eighteen employees are assigned to the first shift and eighteen to the second shift. Nine employees are on duty at all times on these shifts. The chief steward and the kitchen corporal are assigned to a five day, eight hour per day first shift.

The Union opposes any change in the shift hours. It claims that the present arrangement was established by the Sheriff himself prior to unionization. It also considers that permanent twelve-hour shifts are unreasonable because of the effect on productivity and the employees' well-being.

I can understand the Employer's concern with staffing under the current agreement. As the Employer stated, some days there

are too many employees on duty; on other days, too few. I do not believe, however, that the Employer's proposed solution is realistic.

I think that a continuous twelve hour shift in any type of employment is unreasonable. This is especially true of the work in which the employees here are engaged. The Employer points out that the employees are responsible for the "supervision, security, custody, control, health and welfare of the [1600] inmates confined in the facility." The employees certainly do not work in a stress-free environment. I would be concerned about the effect that twelve hours on-the-job would have on the employees.

In sum, I recommend that the present provision titled "Hours of Work" be retained as presently written.

SHIFT AND DAYS OFF ASSIGNMENT

The Employer proposes a change in the days off provision. The proposal is geared to the Employer's proposal regarding "Hours of Work" discussed above.

Since I have not recommended adoption of the Employer's "Hours of Work" proposal, consideration of this proposal is unnecessary.

I recommend that the "Shift and Days Off Assignment" provision remain as presently written.

LUNCH AND AREA and ROLL CALL COMPENSATION

The Employer's proposal to change the wording of these two provisions is based on the assumption that its "Hours of

Work" proposal would be recommended. Since I have not done so, there is no need to consider further these two proposals.

I recommend that the "Lunch and Area" and the "Roll Call Compensation" provisions remain as presently written.

SAFETY EQUIPMENT

The current agreement provides that upon an employee's request, the employee will be furnished a riot vest at the Employer's cost.

The Employer seeks to eliminate this provisions. It bases its proposal on the fact that only ten of the thirty-eight employees have requested the vests. Further, that two of the ten have requested that they be allowed to return their vests.

The Union opposes elimination of this provision.

Since eight employees apparently feel more safe and secure with the riot vests, I recommend that the provision be retained.

HOSPITALIZATION

The County presently offers a choice of four health insurance programs from which its employees can select coverage. The County contributes \$165.00 per month for single coverage and \$440.00 per month for family coverage. The Union seeks to increase the County's monthly contribution to \$210.00 for single coverage and \$560.00 for family coverage.

Of the four plans available, only one, the Qual Choice PPO (hereafter QCPPO), presently requires an employee contribution. An employee contributes \$11.09 monthly for single coverage and \$24.47 per month for family coverage. Of the 38

employees involved here, 11 are covered by QCPPO, 1 single and 10 family.

The Union bases its requested increase in the County contribution cap on several factors. One, it believes the insurance carriers consciously bid low to obtain the County's business and, having won the contract, will now escalate premiums far above the cap thus increasing the cost to employees. The Union points out that of the four available plans, only QCPPO exceeds the County contribution cap so that the County has realized savings on its contribution to health insurance.

Although the Union's request may have merit, the fact remains that the health insurance program covers all County employees. Therefore the cost to all employees should be the same. By raising the contribution cap in this case, the door would be open to raise the cap in all other agreements covering County employees.

I am unwilling to be responsible for such a result. Therefore, I recommend the provision titled Hospitalization remain as written.

RETIREMENT

Under the current contract, when an employee retires with over ten years of service, he or she receives one quarter of accumulated sick leave to a maximum of thirty days.

The Union proposes that at retirement an employee receive all of his or her accrued sick leave. The Employer opposes the change.

The Union argues that the provision as now written penalizes the employee who is fortunate enough to remain healthy and thus accumulates sick leave.

However, I know of no public employer which pays for all accrued sick leave when an employee retires, irrespective of the number of hours accrued.

I recommend this provision remain as written.

VACATION LEAVE

Presently, an employee with eight or more years of service, is entitled to 120 hours of vacation leave; after 25 years of service, the employee is entitled to 200 hours of vacation leave. The Union would reduce the period necessary to earn the vacation hours to 5 years and 20 years respectively.

The current vacation program is in effect for all other bargaining units in the Sheriff's office. I find no reason, therefore, to recommend a greater benefit for the unit employees.

I recommend the "Vacation Leave" provision remain as presently written.

UNION BUSINESS LEAVE OF ABSENCE

Presently, an employee who is a Union steward or officer is entitled to 25 days of working day benefits for his or her participation in named union matters. These benefits include vacation time, sick leave time, but not pension credits.

The Union proposes that full pension credits be added to the list of benefits, with the Union reimbursing the Employer for the cost of those credits. In its position paper submitted

to me before the hearing, the Employer opposed this proposal.

During the discussion of this proposal at the hearing, I got the impression at the outset, that the Employer was not as vehemently opposed to the proposal as its position paper indicated. The Employer did point out, however, that the question of how and when any reimbursement would be implemented was not addressed in the proposal.

The Union then expanded the discussion, asking that the Employer also pay the wages of the employee for as long as the union leave continued, but that the other benefits would still be limited to 25 days. The Employer agreed to neither the pension or the wage provision.

The concept of a public employer disbursing public funds to an employee, and then being reimbursed by an employee organization is one which is foreign to me and which causes me some concern.

I can alleviate that concern by recommending that the present "Union Leave of Absence" remain as presently written, and I so do.

PERSONAL LEAVE

This is a new provision which the Union proposes. It provides that:

Section 1. Beginning January 1, 1996, and recurring each January first, each member of the Bargaining Unit will receive 24 hours of personal time.

Section 2. Use of personal time shall be with three (3) days notice unless family or personal emergencies preclude such notice.

Section 3. Unused personal leave may be carried from one calendar year to the next without limitation.

The Union argues that personal leave is available to an employee only if the employee accumulates compensatory time to cover the leave. Overtime generates compensatory time, while this provision is not dependant upon overtime hours.

The Employer opposes this proposal on the grounds that there is no justification for more days off than are available already.

I agree with the Employer. I recommend against adding this proposal to the agreement.

DEFERRED COMPENSATION

This is also a new provision proposed by the Union. It reads:

Commencing with the first pay period of 1996, the Employer shall "match" or contribute on a dollar for each dollar the employee contributes to his/her Deferred Compensation Program Account. This matching contribution shall apply to the first six (6) percent of gross earnings.

The Employer opposes this provision principally on the grounds that Internal Revenue Service regulations preclude it from matching employee contributions.

Apart from IRS regulations, this proposal would be costly and unwarranted.

I recommend against adding the "Deferred Compensation" provision to the agreement.

WAGES

The Union seeks a wage increase of 5% a year over the next three years. The Employer counters with a 3% wage increase in 1996 and a wage reopener in 1997 to determine wages for 1997 and 1998.

The Union justifies its proposal on "September 1995 Budget Projections" issued by the County Office of Budget and Management, and by comparing the wage rates of unit employees with employees doing similar work in other jurisdictions.

Both the Union and Employer are aware of the brightening of the County's financial picture. The Union points to statements in the "Budget Projections" study such as, "General Fund revenues exceed the budget by \$26.8 million; Sales tax collections through October are up by 7.5%; Investment earnings are projected at \$35.3 million or \$21.4 million higher than budget; and On an All Funds basis revenues are up \$34.4 million at \$793.3 million; expenditures are under budget by \$17.5 million at \$762.3 million and the ending balance projected at \$73.2 million or 9.7% of total expenditures."

The Union also compares the salary of a five year unit employee who earns \$32,500, with that of a Greene County County Jail Sergeant, who will earn \$38,209 in 1996. The Union also shows that a corporal in the Franklin County Sheriff's Department earned \$40,705 1994. All the foregoing, according to the Union, justifies a 5% increase each year for the next three years.

The Employer states that after the \$115 million SAFE fiasco, the County projected that it would take 4 years to recover from

SAFE and as a result probably no wage increases for that period could be anticipated.

However, for many of the reasons cited by the Union, the County expects to rebuild its general fund by October, 1996. As a result it anticipates offering all 18 bargaining units with which it negotiates, a 3% increase for 1996.

I am persuaded by the Employer's argument, especially the fact that all employees will be offered a 3% wage increase for one year. In addition the Consumer Price Index has not risen to 3% for 1995.

The foregoing, plus the fact that 3% is in the general area of wage increases nationally, I recommend that the employees be given a 3% wage increase effective January, 1996 with a wage reopener to establish wages for 1997 and 1998.

SUMMARY OF RECOMMENDATIONS

I have recommended that the following provisions remain as presently written:

1. Compensatory Time
2. Hours Of Work
3. Shifts and Days Off
4. Lunch Area
5. Roll Call Compensation
6. Safety Equipment
7. Hospitalization
8. Retirement
9. Vacation Leave
10. Union Business Leave Of Absence.

I have also recommended that the following provisions not be made part of the collective bargaining agreement:

11. Personal Leave
12. Deferred Compensation

I have recommended:

13. A three percent (3%) wage increase effective January 1, 1996 with a wage reopener to determine wages for 1997 and 1998.

12/15/95
Date

Morman R. Prusa
Morman R. Prusa, Fact Finder