

STATE EMPLOYMENT  
RELATIONS BOARD

DEC 19 10 15 AM '96

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:           CITY OF BROOK PARK  
                                  (Employer)  
                                  and  
                                  OHIO PATROLMEN'S BENEVOLENT  
                                  ASSOCIATION  
                                  (Employee Organization)  
CASE NO:   95-MED-10-0964

OPINION AND AWARD OF THOMAS R. SKULINA, CONCILIATOR

HEARING

This matter was heard on December 2, 1996. Marc J. Bloch, Esquire represented the City and Lou D'Amico, Esquire was the Union's advocate.

BARGAINING UNIT

This bargaining unit consists of all patrolmen/patrol women and detectives and contains approximately thirty-one employees.

ISSUE

This conciliation involved only one issue: whether the bargaining members should receive overtime pay at time and one-half or whether they be credited with compensatory time.

The Union's position is that compensatory time be awarded in lieu of paid overtime. The maximum accumulation shall be eighty hours.

The City seeks to eliminate compensatory time and pay time and one-half. All present compensatory time shall be grandfathered.

BACKGROUND

The parties had been engaged in negotiations for a new contract since late 1995. After numerous meetings an agreement was reached for all issues except compensatory time. The single issue was taken to a fact-finding on October 10, 1996.

The fact-finder, Brian Heshizer ruled in favor of the City and affirmed the City's position that compensatory time is eliminated and paid overtime shall be accepted.

It is therefore this sole issue that has been brought to conciliation.

In the current rounds of negotiations, the fire fighters preceded the police union. The fact-finder on March 3, 1996, sustained the City's position to eliminate compensatory time as sought in this hearing. The other findings are not relevant to this sole issue hearing.

A conciliator upheld the City on this issue on May 6, 1996.

The City and this same Union, which also represents the dispatcher/clerks of the Brook Park Police Department, went to fact-finding on several issues that resulted in a July 23, 1996 recommendation. The fact-finder had found in favor of the City on the issue of compensatory time.

As it turned out, both parties rejected the recommendations of the fact-finder and sought conciliation.

On September 26, 1996, the conciliator sustained the City on this issue. The other issues are not relevant to this hearing.

No other bargaining units in Brook Park in the completed current rounds of collective bargaining are paid with compensatory time. (The contract with higher ranked officers is still open).

The Union in this matter had originally bargained not only to retain compensatory time in its contract, but sought to increase it to four hundred eighty hours (480) for any year. The hours were reduced by the Union to a request for one hundred and twenty hours (120) at the fact-finding hearing.

That number has been further reduced to a request for eighty (80) hours at this hearing.

The City had not addressed compensatory time in its original proposal to the Union. When, however, it was eliminated from the Fire Department through conciliation, it got on the table in these negotiations.

In the two prior instances, where the City was challenged on this issue, it won both in fact-finding and conciliation. Presently it has prevailed before the fact-finding on review here.

## DISCUSSION

Both parties set out the provision of the Ohio Revised Code and the Ohio Administrative Code Rule that delineates the factors that should be considered by the fact-finder and by this conciliator (Section 4117.14(G)) Rev. Code Ohio and Rule 4117.9-06).

The Union emphasized that the fact-finder did not properly rely on all the factors he should have under the law, but rather resolved the issue based on "parity". The Union also argued that the City was inconsistent on this issue since it did not extend parity to the dispatchers when the dispatchers sought the same comp time as the police unit.

The Union also relied upon the fact that virtually all the police departments in surrounding communities utilize comp time and opined that the fact-finder ignored this.

The Union also argued that this was clearly within the ability of the City's financial interest.

Testimony was introduced to distinguish the time schedules of the police as opposed to the fire fighters.

The police work rotating shifts and have rotating days off as opposed to the fire fighters twenty-four hours on and forty-eight hours off regimen.

Police interested in community work have difficulties in scheduling their time. Patrol officer work four of six weekends while detectives work three of six weekends.

One officer who had problems with health opted for comp time to be used when sick time was used up.

Comp time therefore was very desirable to the members of this unit.

The City on the other hand not only relied on "parity" but indicated its desire to run its financial house on a "pay now" basis rather than paying overtime some years down the line at a higher rate.

Whether a City should bite the bullet and pay its overtime when its earned or whether it should use the compensatory time approach is a management rights issue that is certainly appropriate for the bargaining table.

## OPINION

A number of broad based principles are involved here.

There is the issue of how much scrutiny of the fact-finder's recommendation should take place at this hearing.

There is also the issue of parity or pattern practice as it applies in this case.

Remaining is the issue whether there is some reason why an exception to parity would exist in this case.

Fact-finder's recommendations certainly may be scrutinized and reversed by a conciliator. In the absence of data that was not available, or mistaken facts or erroneous conclusions the recommendations should usually be followed. The conciliation process is not a lottery. It is available to safety forces that are not allowed to strike and has its usefulness where a fact-finder goes astray. In instances where the fact-finder's recommendation require reversal, something more substantial, however, than a philosophical difference is necessary.

No such evidence was presented in this hearing.

The burden of persuasion to reverse is on the party who rejects the fact-finder..

Pattern practice and parity is a fact of life in the public sector. Not only should neutrals be consistent in their findings, the principle of parity in itself is a rule of consistency. Reliance on this approach has been routinely sustained by fact-finders, including me, on numerous occasions. The principle is called upon by both appointing authorities and unions when it suits their interests. Though not binding, parity is certainly persuasive.

Though there are obvious differences in the job of a fire fighter as opposed to a police officer, compensatory time is still compensatory time. Many communities opt to use comp time and in the collective bargaining process both unions and the appointing authorities incorporate it in their agreements.

There is, however, no engraved in stone requirement that either side must choose one method over the other to address compensation for overtime.

In the bargaining process, once a pattern is established, parity will ordinarily be honored unless a valid reason exists to grant an exception to a particular unit.

There is no reason to reverse the fact-finder's recommendation.

AWARD

The City's position is sustained.

No future compensatory time shall be credited. All overtime shall be paid at time and one-half in the regular pay check. All present compensatory time shall be grandfathered.

  
\_\_\_\_\_  
THOMAS R. SKULINA

DATE ISSUED: Dec 16, 1996