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STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION REPORT

CITY OF SIDNEY

AND

FRATERNAL ORDER OF POLICE/OLC. (DISPATCHERS)

CASE NUMBER: 99-MED-09-0802

MICHAEL MARMO

CONCILIATOR

CINCINNATI, OHIO

MAY 9, 2000

HEARING

ISSUES REMAINING AT IMPASSE

The hearing took place on Tuesday, April 25, 2000 in the City Manager's Conference Room in Sidney, Ohio, and lasted from 9:00 a.m. until 10:30 a.m. Representing the City of Sidney were its principal representative, attorney, Dan Rosenthal; John Crusey, Assistant City Manager; Mike Lundy, Police Captain; Steve Wearly, Chief of Police; Thomas Judy, Finance Officer; and John Schwab, Personnel Department. Representing the FOP were its principal representative, Robert Malone, a Staff Representative of the FOP; Kay Cremeans, FOP General Counsel; and Union Representatives, Debi Sniffen, Melissa Lange, and Marcus Wiley

At the time of the hearing, the following issues remained in dispute:

Article 13, WAGES

Article 14, Section 4, COMPENSATORY TIME OFF

Article 15, LONGEVITY PAYMENTS

Article 19, Section 1, SICK LEAVE

Article 19, Section 8, ATTENDANCE BONUS

Article 20, Section 6, INSURANCE

Article 20, Section 7, INSURANCE

Article 22, Section 3, MILITARY LEAVE

New Article, COURT TIME

MEDIATION

Mediation was attempted, but was not successful in resolving any of the issues in dispute.

CRITERIA FOR AWARDS

As provided by the rules of the State Employment Relations Board, the Conciliator based his award on the following:

--The past collectively bargained agreements between the parties;

--A comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

--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;

--The lawful authority of the employer;

--Any stipulations of the parties; and

--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.

DISCUSSION AND AWARDS ON UNRESOLVED ISSUES

ARTICLE 13, WAGES

FINAL PROPOSALS OF THE PARTIES

The final proposal of the City was an increase of 3.15% effective January 1, 2000, an increase of 3.1% the second year, and an increase of 3% for the third year of the contract. The FOP's final proposal was an increase of 3.3% effective January 1, 2000, and an increase of 3.25% for both the second and third years of the contract.

ARGUMENTS OF THE PARTIES

The City argued that its final offer should be awarded because it is closer to the factfinder's recommendation, than is the final proposal of the Union. In addition, the City contended that because bargaining unit members are not underpaid compared with other dispatchers within 35 miles, its increase is appropriate. Finally, the City maintained that its final offer should be adopted in order to maintain internal equity. The City pointed out that

the recent AFSCME agreement with the City provided for annual increases of 3.15%, 3.1%, and 3%. The firefighter's contract provides for increases of 3.15% for the first year, and increases of 3.1% in 2000 and 2001. The City's non-union employees received a 3.15% increase in 2000.

The FOP argued that based on the comparables, their final proposal is reasonable. They also indicated that the City has the ability to pay the increase proposed. Finally, the Union argued that settlements between the City and other groups of employees is irrelevant, because each unit is different.

DISCUSSION

The differences between the final proposals of the City and the FOP are not very large, amounting to a difference of only about one-half a percent over the three year life of the agreement. The recommendation of the factfinder on this issue is extremely reasonable, as evidenced by the fact that each of the parties has modified its original proposals to come closer to her recommendation.

Because no new evidence or testimony was introduced at the hearing to cast doubt on the appropriateness of the factfinder's recommendation, and because the City's final proposal is closer to that recommendation, the final offer of the City on this issue should be adopted.

AWARD

For the reasons cited, the final position of the City is awarded.

Article 13 of the current Agreement should be modified to reflect a:

--3.15% increase effective January 1, 2000

--3.1% increase effective January 1, 2001

--3.0% increase effective January 1, 2002

ARTICLE 14, COMPENSATORY TIME

FINAL PARTIES PROPOSALS OF THE PARTIES

The current provision dealing with this issue provides that "...no employee can accumulate more than 80 hours of compensatory time." The Employer proposed to change this language to read "...no employee can earn more than 80 hours of compensatory time in a calendar year." The FOP proposed to retain current language on this issue.

ARGUMENTS OF THE PARTIES

The FOP indicated that bargaining unit members work a six days on, and two days off schedule. As a result, they are often required to work weekends and holidays. Because most of the members in the unit are women, the Union argued, they frequently use compensatory time to attend school functions of their children, or to take care of other family responsibilities. Compensatory time is of great importance to these employees, the FOP argued, because it allows them to spend time with their families in lieu of missed week-ends and holidays.

The Employer maintains that retention of the current contract language creates a real hardship for the City and its citizens. Because the unit is comprised of only nine employees, the City pointed out, when one dispatcher takes compensatory time off they are typically replaced by another employee who is earning compensatory time. The Employer pointed out that some employees take a considerable amount of compensatory time off, with one bargaining unit member taking 5.8 weeks in 1999.

The City indicated that problems with compensatory time are not limited to the Dispatchers unit. As a result, the City said, they recently eliminated compensatory time for its non-union employees. In the most recent firefighter negotiations, compensatory time was also essentially eliminated. Finally, the Employer pointed out that their proposal was identical to the one recommended by the factfinder in recent negotiations with their AFSCME unit.

DISCUSSION

The Employer clearly has justifiable concerns with the operation of the current provision dealing with compensatory time.

The City has not met the burden, however, of indicating why this current procedure should be changed. On the other hand, there are a number of reasons why the final position of the FOP should be awarded. First, the factfinder recommended that current contractual language be retained, the position taken by the Union. Second, Conciliator's are required to base their awards, in part, on the provisions in "past collectively bargained agreements between the parties". Because this practice is in the current Agreement, there is a burden on the party that wants to change the current practice. Finally, the Conciliator believes that this is the type of issue where the logic of internal equity should not control. To again quote the SERB criteria upon which the Conciliator is required to base his award; you must look at "...other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved." This criterion clearly recognizes that particular bargaining units have special considerations that need to be addressed. The fact that the AFSCME and firefighter units have recently agreed to what the City proposed is not particularly relevant. Dispatchers often work weekends and holidays, something not typical of AFSCME members. And while firefighters do often work weekends and holidays, their scheduling peculiarities give them ample time to attend to family obligations.

Finally, the Conciliator believes that the gender composition of the bargaining unit is a factor "peculiar...to the classification involved" that needs to be taken into account. Clearly, the demographic make up of a bargaining unit will impact its contractual priorities. Although, employees are not entitled to something "extra" because of their gender, the priorities a particular bargaining unit will place on particular issues certainly can reflect whether they are predominantly men or women. Issues such as day care or compensatory time may not be as highly valued in a bargaining unit comprised mainly of men.

AWARD

For the reasons cited, the final position of the Union is awarded.

The current contractual provision dealing with compensatory time should be retained.

ARTICLE 15, LONGEVITY PAY

FINAL PROPOSALS OF THE PARTIES

The Union proposed the deletion of Section 2 of this Article, which provides that employees hired after January 1, 1998 not receive the longevity pay bonus. The City proposed that this provision be retained.

ARGUMENTS OF THE PARTIES

The FOP argued that it is not equitable to provide a longevity bonus to some bargaining unit members, but not to others. In addition, they pointed out that police and fire employees currently receive the longevity bonus.

The City argued that it is in the process of eliminating this benefit for other employees. It has already been eliminated for the AFSCME unit, as well as for those employees who are not represented by a union. The City maintained that this benefit is not needed to hire and retain employees.

DISCUSSION

The provision to phase out longevity pay was incorporated into the Agreement in the last set of negotiations. Although testimony was not presented on this point, the Conciliator must assume that the Union would not have agreed to this concession unless it received something of considerable value in return.

Because this provision is included in the current Agreement, and because its retention was recommended by the factfinder, the Conciliator believes it should be retained in the new Agreement.

AWARD.

For the reasons cited, the City's final position is awarded.

Section 2 should be retained in Article 15, Longevity Pay.

ARTICLE 19, Section 1, SICK LEAVE

FINAL PROPOSALS OF THE PARTIES

The City proposed reducing the number of sick days from 18 to 15 per year. The FOP proposed retaining 18 days of sick leave.

ARGUMENTS OF THE PARTIES

The City argued that of the 10 communities within a 35 mile radius of Sidney, all provide for sick leaves of 15 days. They contend, that when sick leave is combined with other generous leave provisions, such as compensatory time, bargaining unit members are able to be off work for excessively long periods of time. They also pointed out that the factfinder recommended a reduction in sick days from 18 to 15.

The Union argued that they currently receive 18 days of sick leave, and that this current policy provides parity with the police and fire units as well as other city employees.

DISCUSSION

Conciliators and factfinders typically look at two sets of comparables when determining the appropriateness of particular proposals: employees performing other types of work in the same governmental entity, and employees performing the same type of work in other jurisdictions. The problem in this case is that following concerns for internal equity dictates that the number of sick days remain at 18, but considerations for external equity suggest that the number of days be reduced to 15. Although 18 days of sick leave is generous based on external comparisons, the City did not provide persuasive evidence on why Dispatchers should be treated differently than other employees of the City.

AWARD

For the reasons cited, the Conciliator awards the final proposal of the Union.

The number of sick days should remain at 18.

ARTICLE 19, SECTION 8, ATTENDANCE BONUS

FINAL PROPOSALS OF THE PARTIES

The FOP proposed that if an employee does not use more than one day of sick leave in a six month period of each calendar year, that they receive one days pay for each six month period. The City proposed to retain the current provision, but to add a contractual requirement that employees have completed one calendar year of employment to be eligible for the attendance bonus.

ARGUMENTS OF THE PARTIES

The City argued that its proposal essentially sets forth the current practice. It added that the change sought by the FOP is not available to any other groups of City employees. The Union argued that its proposal would serve to deter employees from excessive use of sick leave.

DISCUSSION

Although the factfinder did recommend an improvement to the Union in this area, she also reduced the number of sick days from 18 to 15. Because the Conciliator ruled that the sick leave policy remain unchanged, it is appropriate to award the Employer's final proposal on this issue.

AWARD

For the reasons cited, the Employer's final position is awarded.

Article 19, Section 8 should be retained, with the addition of the following sentence: "To be eligible for the bonus, an employee must have completed one year of employment with the City".

ARTICLE 20, SECTION 6 INSURANCE

FINAL PROPOSALS OF THE PARTIES

The Employer proposed including additional language to this article, providing that: "After consultation with the Health Insurance Committee, the City reserves the right to change the medical-surgical insurance plan to maintain the premiums for coverage at approximately the current 1999 levels or to minimize the amount of increase to those

levels." The FOP proposed that no changes be made to the current Agreement on this issue.

ARGUMENTS OF THE PARTIES

The City argued that the inclusion of this new language would give it greater flexibility in its attempt to contain health insurance costs. The Employer maintained that since the Health Insurance Committee is composed of representatives of all city employee groups this would allow the City to pursue a uniform cost containment policy. The FOP argued that the new language gives the City too much latitude in modifying health insurance coverage.

DISCUSSION

The factfinder recommended against this change because: "...it eliminates the need to bargain over changes in insurance coverage in the interest of cost containment." Clearly the Employer has a vital interest in containing health insurance costs. However, the proposed change grants the City the unilateral power to change health insurance carriers. Although, collective bargaining contracts frequently grant the Employer the right to change health insurance carriers, such a right is virtually always contingent upon the present level of coverage being maintained. The change proposed by the City is certainly beneficial from a cost containment standpoint, but it contains no way of addressing the adequacy of the health insurance coverage.

AWARD

For the reasons cited, the Union's final proposal is awarded. No changes should be made in the new Agreement.

ARTICLE 20, SECTION 7, INSURANCE

FINAL PROPOSALS OF THE PARTIES

The FOP proposed that this Section should read:

" City employees choosing not to receive the City's health insurance coverage, and not covered by a spouse or parent also working for the City, will receive an annual cash

benefit of $600 for persons who qualify for family coverage and $350 for single coverage during each year of the duration of this contract. This benefit will be paid to eligible employees on their anniversary date of hire after their first year of employment, and thereafter at the same time as longevity payments are distributed. Re-enrollment would be based on insurance rules and regulations." The City proposed that the present language be retained, with the following added after the first sentence: "The annual cash benefit is only available to those employees who have been eligible for health insurance for the 12-month period prior to November 30 of each year."

ARGUMENTS OF THE PARTIES

There are two separate points on this issue; the amount to be paid to bargaining unit members who elect not to be covered by the City's health insurance plan, and when such payments should be maade.

The Union argued that an increase in the payment to employees who opt out of the City's coverage would serve as an incentive to forego coverage, something that would save the Employer money. The Employer argued that the increased payment would encourage employees to forego their coverage under the City's plan, but contended that this was not beneficial to the City. By reducing the size of the City's insured group, the Employer maintained, they increased their risk of higher premiums.

The Union argued that the timing of the payments creates certain inequities. For employees hired shortly after the December longevity payment, under the current system, employees opting out of the City's health plan must wait up to 23 months before receiving their annual bonus. The Employer argued that it not be a good practice to have different policies for different groups of City employees.

DISCUSSION

Unless there are compelling reasons for a change, the Conciliator believes that the recommendations of the fact finder should be supported. This is not possible on this issue, however, since neither party proposed the factfinder's recommendations.

The Conciliator agrees with the factfinder that new hires should be paid their annual insurance bonus on their first anniversary date of their employment. However, he disagrees with her conclusion that a higher bonus would not encourage employees to opt out of the City's health plan. Both the Union and the City agreed that such an increase would likely reduce the number of bargaining unit members opting to be covered by the City's plan. The Conciliator was not persuaded by the City's argument that it would be disadvantageous to the Employer if employees opted out of the plan, because it would make them more vulnerable to increases in premiums. Although having a smaller employee pool does increase your risk of premium increases on a per capita basis, having a smaller number of employees typically leads to considerable cost savings. The reason employers typically agree to pay a bonus to employees who opt out of health coverage, is because it saves the employer money.

AWARD

For the reasons cited, the Union's proposal on this issue is awarded.

ARTICLE 22, SECTION 3, MILITARY LEAVE

FINAL PROPOSALS OF THE PARTIES

The FOP proposed that Section 3 should read in its entirety:

"Any employee who is a member of the National Guard or of the Military or Naval Forces of the United States, and is required to undergo field training therein, shall be granted a leave of absence with pay for the period of such field training. His paid leave of absence shall be in addition to his vacation leave, but shall not exceed 22 days in any fiscal year." The City proposed retaining the current provision, but changing the number of days leave from 15 to 22 days.

ARGUMENTS OF THE PARTIES

The FOP argued that their proposal is both legal and appropriate. They pointed out that when employees are recruited into military service, they are promised that they will receive "double pay" during their field training period. The City made two arguments; first

that the issue was not properly before the Conciliator, because it had been withdrawn prior to factfinding. Secondly, the City contends that the current practice is legal and appropriate, especially with the increase in the number of leave days from 15 to 22.

DISCUSSION

The Conciliator does not believe this issue is properly before him, and he does not believe that the Union's final proposal should be awarded on its merits.

First, the procedural matter. In footnote number one, on page two of the factfinding report, Factfinder Braverman wrote: "The parties stipulated that the issue of military leave which was originally in dispute would be withdrawn from factfinding based upon a tentative agreement reached by the parties on February 7 to the effect that the military leave language would remain the same as in the current agreement pending resolution of litigation which the FOP intends to commence against the City of Sidney on behalf of the police bargaining unit concerning the issue of the proper payment for military leave. The parties agreed that the language of the Agreement would conform to any final decision of the court in that litigation."

The factfinder clearly believed that a tentative agreement had been reached on this issue. The Employer also believed that a tentative agreement was reached on this issue, because they initially did not submit a final proposal on this issue to the Conciliator. The Conciliator believes that the City would be disadvantaged if the issue of military leave payments was addressed in an award. Based on the factfinder's report, the City could only assume that military leave was not an issue that was before the Conciliator.

Although the Conciliator does not believe this issue is properly before him, he also does not believe it should be awarded on its merits. The factfinder believed that a tentative agreement was reached on this issue, which did not grant the Union's proposal. The City improved its proposal beyond what the current Agreement provides.

AWARD

For the reasons cited, the final position of the City is awarded.

The current wording should be retained, with the exception that the number of days leave for field training will be increased from 15 to 22.

NEW ARTICLE, COURT TIME

FINAL PROPOSALS OF THE PARTIES

The Union proposed the addition of a new provision, dealing with court time, to read: "Employees required to appear on behalf of the City in courts of law when not on regularly scheduled time (duty) shall receive a minimum of three(3) hours of "Court Time". This time shall be paid at time and one-half rate. Employees who are required to appear in courts of law, shall contact the Police Department to confirm that their appearance is still required. If appearance is not required, then the employee shall not receive the minimum three(3) hours "Court Time". If the employee fails to contact the Police Department prior to a scheduled appearance and the appearance is no longer required, the employee should not receive the "Court Time". The City proposed that the Agreement not contain a provision dealing with court time.

ARGUMENTS OF THE PARTIES

The FOP argued that the inclusion of this provision would provide parity with police officers, who have such a clause in their contract. The provision, the Union maintained, would compensate bargaining unit members who are called to testify during their off duty hours. The City contends that because Dispatchers are seldom called to testify in court, such a provision is unnecessary.

DISCUSSION

Based on the fact that bargaining unit members rarely testify in court, and the fact that the factfinder did not recommend the inclusion of such a provision, there is no justification to include such a provision in the Agreement.

AWARD

For the reasons cited, the final proposal of the City is awarded.

The new Agreement should not contain a provision dealing with court time.

FINAL AWARD

As stipulated by the parties, it is the award of the Conciliator that all issues tentatively agreed to be incorporated in the new Agreement.

This concludes the Conciliator's award.

Michael Marmo

Michael Marmo

Conciliator

Cincinnati, Ohio

May 9, 2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served by U.S. Mail overnight delivery on May 9, 2000 to Daniel Rosenthal, Denlinger, Rosenthal & Greenberg, 2310 Star Bank Center, 425 Walnut Street, Cincinnati, Ohio 45202; Robert E. Malone, 409 Brentwood Drive, Marion, Ohio 43302; and by regular U.S. Mail to George M. Albu, SERB, 65 E. State Street, 12th floor, Columbus, Ohio 43215-4213.

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