

**STATE EMPLOYMENT RELATION BOARD
FACT-FINDING REPORT
JANUARY 13, 2002**

AFSCME, Ohio Council 8,)
Local 2937)
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Union)
))
-and-)
))
CITY OF CANTON, Ohio)
ASSOCIATION)
))
Employer)

CASE NO. 02-MED-08-0735; 0736

APPEARANCES FOR THE UNION:

STEVAN P. PICKARD, Representative
MICHAEL ANGELO, President
PAUL T. LESSJEK, Negotiating Team
KEVIN GARNER, Negotiating Team
KENNETH D. GROVES, Negotiating Team
RICHARD A. SIMMONS, SR., Sanitation
LYNETTE RANNELI, Community

APPEARANCES FOR THE EMPLOYER:

KEVIN L. HOMMEDIEU, Law Department
MICHAEL L. MILLER, Director of Public Service

FACT-FINDER:

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INTRODUCTION

In a letter dated November 29, 2002, the State Employment Relations Board contacted the parties notifying the parties that the undersigned was appointed as the fact-finder "effective immediately". The undersigned received the notification a few days later. The undersigned is unaware of the date notice was received by the parties. The undersigned was instructed to conduct a hearing and serve the parties with a written report no later than December 13, 2002, unless the parties mutually agree to extend the period of fact-finding pursuant to Section 4117-9-05(G) OAC.

The parties and the undersigned met on December 7, 2002, at the request of the parties, extensive mediation was done. By the end of the mediation session, the parties reached a tentative agreement. However, this tentative agreement was not approved by either or both of the parties. This case was then set for fact-finding. Although the agreement was not approved, the parties agreed to extend the time limits for fact-finding and to make everything retroactive to January 1, 2003.

On December 30, 2002, the parties proceeded to fact finding. The representatives of the parties guided the undersigned through each of their respective position statements. The undersigned found and the parties agreed that there were sixteen issues. Five of those issues were settled and taken off of the table at fact-finding.

The issues were addressed one at a time with each party presenting evidence, exhibits and arguments.

The undersigned considered the following factors before making any recommendations:

1. Past collectively bargained agreements, if any between the parties;
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 in welfare of the public, the ability of the public employer to finance and to administer the issues proposed, and the effects of the adjustments on the normal standards of public service;
 4. The lawful authority of the public employer;
 5. Any stipulations of the parties;
 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.

In support of the defense of “inability to pay”, the city has presented an affidavit from its Director of Management and Budget. In that affidavit there has been a projected deficit. The undersigned is somewhat confused because of it talks about projected deficits in the millions in September 2002 when the hearing took place in December 2002.

In its same submission, a newspaper article attached to his affidavit, the President of the local firefighters union said that the city officials haven't always been up-front about finances in the past. He was quoted as saying, “We've been misled”.

The last two paragraphs reflect the demeanor of the parties. The city claims financial distress and threatens layoffs with any attempted increase. The union members are confused and have a serious lack of trust for management.

This union is funded differently from the other unions. In this union only seventeen percent(17%) of it is budgeted through the general fund. The rest is paid by service fees.

Canton, Ohio is an old, unionized city with an erosion of its industrial base. Increasing health care costs are hurting the city's budget.

After reviewing all the exhibits and after reviewing all the evidence introduced the undersigned finds that the city has not established the defense of "inability to pay" as a general defense for each economic item. It is therefore necessary to look at each item individually to determine whether or not the request is within the best interest of the parties and the taxpayers and whether that individual item could be or should be afforded by the city.

**ISSUE #1
ARTICLE 12, SECTION 7
PERFECT ATTENDANCE**

Discussion

The union proposes an additional day off for perfect attendance stating that it wants "parity with the police". The union simply states that it wants to be treated equally with the police.

The city responds that the union members should be made equal with the non-union employees who have no perfect attendance days off. The city claims that the police make concessions in order to obtain that extra day.

The union has not produced any evidence, that another day off for perfect attendance, is needed in this situation.

RECOMMENDATION

It is the recommendation of the undersigned that the contract language remain the same.

**ISSUE #2:
("OFF THE TABLE")**

**ISSUE # 3
ARTICLE 18, SECTION 2(A)
TIMES ABLE TO BID**

Discussion

The union wants employees able to bid three times per each calendar year into new positions. At the present time, an employee is precluded for bidding more than two times. The city states that it would agree to increase the number of times when employees are allowed to bid if and only if that right is granted with a "sun-set" of eleven months.

The undersigned is not persuaded at all with the city's argument for a "sun-set" language in this situation. Three times to make a bid in a year is not a unreasonable amount of time to allow a senior employee to better himself/herself.

RECOMMENDATION

It is the undersigned's recommendation that the last sentence of Article 18, Section 2 shall read as follows:

" The city may, at its discretion, reject the bid of any employee who, in the proceeding (12) months, has participated in *three (3)* trial periods pursuant to Section 3 of this Article and voluntarily reverted to their original job".

**ISSUE #4,
ARTICLE 22 SECTION 2
OVERTIME CALCULATION**

Discussion

The city complains that union members are using sick time improperly. The city claims that the current language allows employees to paid overtime on holidays, vacation,

paid leaves and all sick leave . The union claims that the city is attempting to fix a problem that will not affect abuses. The union states that there is language in the contract for punishing sick use abuse. The undersigned agrees with the position of the city. Making sure that the situation does not occur in which of the city is recommended.

RECOMMENDATION

It is the undersigned's recommendation that ARTICLE 22, SECTION 2 should read as follows:

SECTION 2 - COMPUTATION OF WORKED TIME

For purposes of computing overtime, credit shall be given for all time paid except for sick leave for which an incident (absence occurrence) is charged pursuant to ARTICLE 12, Sections 1&2 of the collective bargaining agreement, whether actually worked or not.

**ISSUE # 5
("OFF THE TABLE")**

**ISSUE # 6
ARTICLE 25, SECTION 2
EXTRA DAY VACATION**

Discussion

Union wants clarification that if a holiday falls within a week that an employee selects for vacation, that employee has the right to take an extra day's pay to be deducted from his or her accumulated vacation and to be paid at straight time.

After careful review of this issue along with a review of the history between the parties, the union suggestion would probably reduce if not eliminate any further grievances on this matter.

RECOMMENDATION

It is the undersigned's recommendation that ARTICLE 25, Section 2.A. shall read as follows:

For purposes of administering vacations, the employee may elect to take an extra day's pay to be deducted from his/her accumulated vacation within a week of scheduled vacation time off. To further clarify, any week scheduled vacation in which a holiday fall in it, shall be considered a weeks vacation and the employee may take an extra day's pay to be deducted from his/her accumulated vacation to be paid at straight time.

**ISSUE # 7
("OFF THE TABLE")**

**ISSUE # 8
ARTICLE 25, SECTION 2 (D)
BANKED VACATION**

Discussion

The city desires to abolish the ability to bank vacation in the future, for both current and future and employees. In the year 2002, the city paid out the amount of \$198,558 in banked vacation. The vacation time, according to city officials is paid out at the current pay rate. It is the position of the city that this practice is a practice of permitting employees to bank vacation is a serious financial strain on the city.

The union counters that the city should have planned for this. The union states that in 1992 a second tier for vacations was created for 1982 hires. Those hired after 1982 will not get the same pay outs as pre 19982 hires. The union states that this another take away for new employees. The union claims that the attitude regarding vacations of "use it or lose it", in the long run, will hurt the city and the unit in the future.

They city responds that it has a waiting line for new hires because there are no private sector jobs, like the jobs that they have at the city. The city claims that there are no problem getting employees to work here because the benefits are so good. City claims that this practice is financially

troubling, to say the least, to the city.

The undersigned agrees with the representative from the city that the practice of carry over vacation is fiscally damaging to the city. It is a practice that should have not been started but for reason unknown today that practice was started and continued for a long time. The city is now feeling the consequences of that decision.

On the other hand, the city cannot unreasonably withhold those funds, especially at retirement. Workers have sacrificed long and hard to accumulate those hours relying on the fact that the city would pay them when they did retire. Any attempt not to pay that person when they do retire would simply be wrong. Those hours that are currently banked, belong to the employee and not to the city of Canton. The city of Canton holds those hours in trust for those employees.

RECOMMENDATION

It is the undersigned's recommendation that Article 25, Section 2(D) shall read as follows:

Employees may choose to carry over not more than 10 work days vacation into the next anniversary vacation period each year.

(Please note that the undersigned does not recommend any of the other changes recommended by the city in this article).

ISSUE # 9 ("OFF THE TABLE")

ISSUES # 10 & 11 ARTICLE 29 and ARTICLE 31

Discussion

The city proposes changes in the medical benefits in cost sharing to offset the projected 1.5 million dollar increase in the cost of benefits in 2003. In support of this allegation of a 1.5 million dollar increase in claims over the past year the city has provided this fact-finder with exhibits showing

the claims from January 2002 to November 2002. These claims show an increase of approximately of 1.5 million dollars in the year 2002. This evidence is unchallenged.

The city produced an expert to testify. Said expert is the President of East Ohio Benefits and Local Insurance brokerage firm. His name is Robert Fisher and has been in the business since 1978. Mr. Fisher confirmed those above increases in costs and gives the following reasons:

1. Prescription drug costs are up 20%.
2. Some employees in the plan have had extreme healthcare costs. For instance, one individual incurred catastrophic claims of approximately \$300,000 dollars. In 2001 there were three (3) individuals that had claims of approximately \$268,000 dollars and in 2002 there were (5) claimants that had claims in excess of \$672,000. These high claims drive up the cost of health care for everyone.
3. There is nationwide medical inflation of approximately 12 % per year. The witness thought that it would be 10-11%. During the Clinton years, the factor was kept low. However, once President Bush assumed the Presidency, the medical inflation shot up. Currently now the cost for hospitalization is \$7500 per employee per year. There is a projection that with a 12% increase that amount will be \$ 8,400 per employee per year.

Mr. Fisher's testimony essentially went unchallenged. Increased medical costs seems to become a fact of life. Restriction of benefits and cost sharing appear to be the only way to reduce costs. Unless there is some type of cost sharing of this increase in health care cost, there will probably be lay offs in the amount of 12-15 persons.

The undersigned see no way other than active participation of those who use the health system

to have any affect on the cost. The undersigned sees no alternative other than to accept the proposals of the city.

RECOMMENDATION

It is recommended that ARTICLE 29 of the collective bargaining agreement reads as follows:

HEALTHCARE AND LIFE INSURANCE COVERAGE

Section 1.

The City shall maintain meant care and life insurance coverage in effect on January 1, 2003. Health care coverage includes: Comprehensive Plain with an annual deductible of One Hundred Fifty dollars(\$150) per person, Two Hundred Fifty dollars (\$250) per family which is applied first before medical benefits are paid to In-Network or Out-of-Network providers.

After payment of the deductible, the Plain will pay 80% of covered medical expenses to In-Network providers. In-Network co-insurance is subject to an annual maximum of \$1,000 per person/\$2,000 per family. Once this maximum is met, the Plain begins to pay covered medical expenses at 100%.

After payment of the deductible, the Plan will pay 70% of Usual, Customary and Reasonable covered medical expenses to Out-of-Network providers. Out-of-Network co-insurance is subject to an annual maximum of 2,000 per person/\$4,000 per family. Once this maximum is met, the Plan begins to pay 100% Usual, Customary and Reasonable covered medical expenses. Any amount above Usual, Customary and Reasonable will not be covered by the Plan.

Life threatening emergency room visits will be covered at 100% after paying a \$50.00 per visit co-payment.

For any employee whose spouse has other health coverage available through an employer, City Plan will pay benefits secondary to spouse's group coverage.

Life insurance coverage provides a minimum of Twenty Thousand Dollars (\$20,000) term life insurance for all employees.

Section 2.

The City agrees to maintain the same level of benefits as set forth above if it restructures hospitalization/life insurance during the term of this agreement. The City retains the right to restructure the health care and life insurance during the term of this contract as to cost containment procedures such as pre-hospital admission certification, mandatory second opinions, etc., but may not institute any change of coverage without mutual agreement of the parties herein.

Section 3.

To offset the increased cost of Health and Life Insurance coverage set forth above, as well as the AFSCME Ohio Care Plan set forth in Article 31, each full-time employee covered shall have deducted from each pay \$19.38, commencing with the first pay issued in 2003.

RECOMMENDATION

It is recommended that ARTICLE 31 of the collective bargaining agreement reads as follows:

Section 1.

The employer agrees to contribute to the AFSCME Ohio Care Plan for the purpose of providing various benefits to eligible bargaining unit employees in accordance with the Rules and Regulations of the Fund and all applicable Federal and State Laws. Contributions shall be made on the 1st day of the month for each bargaining unit employee according to the following monthly rate schedule.

In the event of delinquency in payment, the employer agrees to abide by all Rules and Regulations established by the Trustees, including but not limited to those requiring the payment of interest at the rate established by rules of the Board of Trustees, counsel fees and other costs of collection of such delinquencies, and to give security in sufficient amounts as required by the Trustees to secure payment of such delinquencies.

The employer hereby agrees to permit an authorized representative of the Fund to inspect its payroll records for the purpose of checking the accuracy of the contributions required to be made by the employer to the Fund.

If the employer fails to make the contributions provided for herein within the time required by the rules and regulations of the Fund, then the Trustees may terminate insurance coverage for such employees on whose account the employer has failed to contribute.

All contributing employers shall use the reporting forms provided by the Trustees and comply with the instructions of the Trustees in completing such forms. Such periodic reporting forms shall be filed by the employer with the Fund each month regardless of whether any contributions are due and owing the Fund for the reporting period.

The employer agrees to be bound by the provisions of the Trust Agreement, and Rules and Regulations of the Fund to which contribution are required to be made herein, including such Amendments to same as may be adopted from time to time by the Board of Trustees.

Only the Board of Trustees has any authority to determine matters involving coverage, eligibility, and types of welfare benefits provided to the employees by the Fund. No employer or Union may make any form of representations or commitments as to such past, present and future coverage, eligibility, amount, and type of benefits for any employee or group of employees. No

representation or commitment not in writing and signed by the Board of Trustees shall be binding on the Board of Trustees or the Fund. No officer, agent, representative or employee of any employer shall be deemed an agent or representative of the Board of Trustees or be deemed or authorized to make any oral or written representations, or give any form of commitment, which may be relied upon by an employee, spouse, beneficiary or dependant.

**ISSUE # 12
ARTICLE 35, SECTION 6
TERMINAL PAY**

Discussion

The city proposes a new pay out schedule of accrued sick leave upon retirement which reduces abuse and better rewards city employees who have high accruals of sick leave. The city is willing in this contract to have the new language applied to new hires only.

The union points out that the city attempting to take what little the employees have remaining in the form of benefits. The union points out that the FOP contract does not have this clause for new hires. The union further states that it believes it has stepped forward to force the non-existing employees. The city does not deny this.

There is no evidence that there is any abuse in this practice.

RECOMMENDATION

The undersigned recommends that the contract remain status quo regarding ARTICLE 35.

**ISSUE # 13
ARTICLE 41
RESIDENCY**

Discussion

The union desires to abolish the residency requirement for the city of Canton but keep

corresponding \$150 dollar incentive pay. The city on the other hand is willing to cease requiring employees to live in the city of Canton in exchange for elimination of the corresponding \$150 dollar incentive payment.

The undersigned has reviewed the entire issue here along with its history. The undersigned knows that there have been labor and legal challenges to this requirement and this requirement has been the source of bargaining for at least two prior collective bargaining contracts. In this situation the undersigned is of the opinion that the contract remains status quo.

RECOMMENDATION

It is recommended that the contract remain status quo as to this issue.

ISSUE #14 ARTICLE 44 SHIFT DIFFERENTIAL

Discussion

The union proposes to adding vacation to shift differential pay. In other words, if one is working on a shift with a pay differential, then when that parties goes on vacation, vacation pay shall encompass the shift differential pay. The city has indicated that this proposal is definitely the “tail wagging the dog”. The reason for shift differential is because someone is working an uncomfortable or inconvenient time of the day. When one is on vacation, one is not working.

The undersigned sees no justification for any type of change in the contract language under ARTICLE 44.

RECOMMENDATION

It is recommended that the contract remain status quo under ARTICLE 44.

**ISSUE 15
ARTICLE 66
HAZARD PAY**

Discussion

With concerns about AIDS, drug use and people not doing the appropriate packaging, the union requests those who collect this trash and work with it should receive extra money as hazard pay. The union compares these higher rates to those who receive the rates received by those in the Water Department working with human waste.

The union states that these are self-sustaining funds and that no money will come from general funds.

The city states that this is a “backdoor raise”. The city states that there is a vast difference between what the sanitation personnel do versus what those people do in water pollution. The city claims that the personnel in the Water Department must work with human waste for the entire shift. The city further states the rates of pay are actually higher than those persons who work in sanitation versus those who work in the Water Department.

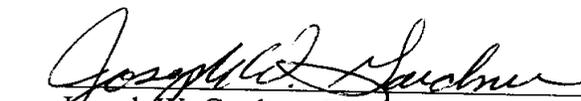
In this situation, those in this bargaining unit earn more than those who work in the Water Department who receive hazard pay.

The undersigned finds no justification for this type of pay differential at this time.

RECOMMENDATION

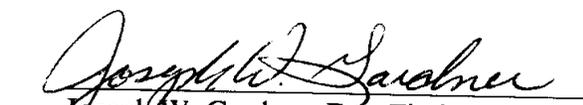
It is the recommendation of the undersigned that the contract in this issue ARTICLE 66 remain the same.

**ISSUE 16
("OFF THE TABLE")**


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CERTIFICATION

A copy of the Fact-Finding Report was sent via Certified Overnight Mail, this 13 day of January, 2003 to: STEPHEN PICKARD, 1145 Massillon Avenue, Akron, OH 44306 and KEVIN L. HOMMEDIEU, City of Canton, 218 Cleveland Avenue, S.W. 7th Floor, Canton, OH 44702 and regular US Mail to: Dale A. Zimmer, Administrator, Bureau of Mediation, 65 E. State Street 12 Floor, Columbus, OH 43215.


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