

Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until December 31, 2004. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested the Factfinder to attempt mediation of unresolved issues prior to holding an evidentiary hearing. A mediation session was accordingly convened on January 25, 2005 at the Newton Falls Community Center in Newton Falls, Ohio. Mediation resulted in the settlement of a number issues at impasse between the Parties, but failed to resolve the remaining issues below. Accordingly, the matter was submitted to the Factfinder for a Report & Recommendations, pursuant to ORC 4117.14, *et seq.* The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 14 – Grievance Procedure***
2. **Article 15 – Layoffs**
3. **Article 17 - Overtime**
4. **Article 20 – Sick Leave/Attendance**
5. **Article 21 – Wages**
6. **Article 23 – Insured Benefits – Health Insurance**
7. **Article 30 – Uniforms**

*Resolved in mediation, by mutual agreement of the Parties.

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1)** Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(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;
- 4117-9-05(K)(3)** The interests 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;
- 4117-9-05(K)(4)** The lawful authority of the public employer;
- 4117-9-05(K)(5)** Any stipulations of the parties;
- 4117-9-05(K)(6)** Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND AND STATUTORY CONSIDERATIONS

The Parties in the present negotiations relate under the terms of three collective bargaining Agreements for, respectively: the Police Dispatchers; the Police Patrol Officers; and the Police Sergeants in the City of Newton Falls, Ohio. All three bargaining units are represented by the FOP/OLC, and all three Agreements were effective from January 1, 2003 – December 31, 2004. By mutual agreement of the Parties, the successor Agreement under negotiation here shall be effective as of January 1, 2005, and obtain until December 31, 2007.

Also by mutual agreement of the Parties, the statutory timeline for Factfinding was extended to March 4, 2005.

The Parties mutually presented the above issues as being unresolved, and requested that the Factfinder undertake mediation of the enumerated issues. All other provisions of the previous Agreement not enumerated are agreed by the Parties to be accepted as memorialized therein. As noted above, several issues were resolved by mutual agreement during the course of mediation. While some progress was made toward resolution of the remaining issues, the Parties requested that the Factfinder accept the evidence presented during the course of mediation in lieu of an evidentiary hearing, and issue the present Report & Recommendations based on that evidence.

Accordingly, the following recommendations are respectfully submitted to the Parties, as provided in ORC 4177.14 (C)(5).

FINDINGS AND RECOMMENDATIONS

1. Article 15 – Layoffs

FOP/OLC Position

The Union proposes language for an orderly layoff of Department personnel, should lack of funds necessitate such action by the City. Under the FOP's proposal, all part-time Department personnel will be laid off, followed by layoff of full-time members of each bargaining unit, in order of seniority.

City Position

The City agrees in principle to the language proposed by the Union.

Findings & Recommendation

The Parties being in agreement, the following language is recommended for inclusion in each of the respective bargaining unit Agreements:

Article 15 – Layoffs

Section 1. *If a layoff becomes necessary due to lack of funds, all part-time employees of the Department shall be laid off first. Then, if there is still a need due to lack of funds, Bargaining Unit members shall be laid off in order of seniority, with the most junior officer to be laid off first, and a recall shall be made in the inverse order of seniority, with the most senior first to be recalled. If a layoff should become necessary, the Employer shall pay the employees being laid off the following: (1) Regular and overtime pay due; (2) Compensatory time due; (3) Accrued but unused vacation time.*

2. Article 17 - Overtime

City Position

The City maintains that accrued compensatory time creates an unfunded liability, as well as making scheduling difficult in the small department. Therefore, it proposes language that would limit maximum use of overtime to 64 premium or 96 straight time hours, with cash out of all hours of unused compensatory time accrued on December 31 of each year.

FOP/OLC Position

The FOP asserts a willingness to decrease the hours bargaining unit members may carry over each year to 20, and is willing to adjust the total hours accruable to 64/96, as proposed by the Employer. However, the Union rejects the City's proposal to limit total use of compensatory time to 96 hours in any calendar year.

Findings & Recommendation

Under the current contract language, the Employer has the option, at Article 17, Section 6, of cashing out all unscheduled compensatory time at the current rate, by providing two week's notice. While it would seem administratively unfeasible to do so every two weeks, there is no restriction on the City's ability to cash out the accrued compensatory hours of employees periodically, or to cash out the hours of any employee exceeding a predetermined amount. Accordingly, retention of current contract language is recommended.

3. Article 20 – Sick Leave/Attendance

City Position

The Employer identifies attendance, and particularly abuse of sick leave, as a problem. In some cases, the City contends that some bargaining unit members have established patterns of using sick leave on days contiguous to recognized holidays, weekends, or other days off, in order to extend the time off. Because of the small size of the Department, excessive use of sick leave for purposes other than those provided in the contract create scheduling difficulties, often resulting in overtime. Accordingly, it proposes language providing for consultation with Union representatives regarding bargaining unit members who have six separate occurrences of sick leave use in a year; and the right thereafter to have an employee examined by an independent physician at City expense.

FOP/OLC Position

The FOP/OLC agrees that in a very few instances, there may be cases of sick leave benefit abuse within the Department. However, it suggests that the City's proposal results in a much broader impact than necessary, and suggests language that more effectively targets the few sick leave abusers.

Findings & Recommendation

It is reasonable to believe that in a police department the size of that employed by Newton Falls, excessive sick leave use for reasons not related to the illness of bargaining unit members or their families as provided in Article 20 would cause scheduling and other staffing problems. It is not unreasonable to provide the City a method of dealing with sick leave abuse. Accordingly, the City asks that language to address the problem include consultation with Union representatives prior to action being taken under the progressive disciplinary system; and that it be able to require medical certification of illnesses, with both courses of action to be available after six separate occurrences of sick leave use.

However, sick leave accrual and its legitimate use are benefits provided bargaining unit members through their collectively bargained agreement with the City; their use in compliance with existing contract provisions does not constitute abuse, up to the limit of the contractual accrual.

In an effort to balance these sometimes conflicting requirements, it is recommended that consultation with the Union, and the City's right to seek a medical examination by a mutually agreed upon independent physician at their cost and discretion be available at the City's discretion in instances in which any bargaining unit member accrues six separate occurrences of sick leave within a twelve month period - an occurrence being defined as use of one or more consecutive days sick leave as the result of the same illness or injury:

Article 20 – Sick Leave/Attendance

Excessive, unwarranted or patterned sick leave use shall constitute sufficient cause for disciplinary action, up to and including removal from the payroll. After six (6) occurrences of sick leave use in any twelve (12) month period, and prior to any employee entering the progressive disciplinary system enumerated in Article 13, Section 1, the FOP/OLC Staff Representative or designee shall be advised. Following consultation with the FOP/OLC Representative, and where the Employer has cause to believe abuse may have occurred, the City retains the Management right to have the Employee examined by a mutually selected physician, at its sole expense.

4. Article 21 – Wages

FOP/OLC Position

While it concedes that members of the Dispatcher's bargaining unit are compensated in accordance with colleagues in peer jurisdictions, the Union contends that members of the Patrol unit, and by extension the Sergeants, are below market wage rates. Consequently, the Union seeks 2%/2%/2% increases in the base wage rates of the Dispatch unit; an immediate equity adjustment of \$1.00 or similar adjustments of \$.50 per year for each year of the contract for Patrol Officers and 2%/3%/3% increases to base wage rates for each year of the Agreement; and an increase in pay differential for Sergeants of 7%/8%/9% in each respective contract year. The Union further proposes that BAC payments amounting to some \$.50 per hour, currently made by the City, be rolled into the basic hourly wage rate.

City Position

The City argues that its Dispatchers are well compensated, and proposes increases of 0%/2%/2% in each year of their Agreement. And while it concedes that Newton Falls Patrol Officers are somewhat below area market wage rates, the Employer maintains that the gap is not sufficient to award the compensation sought by the Union. Accordingly, it offers a \$1.00 equity adjustment in 2005 and increases equal to 3% of base wage rates in the final two years of the Agreement. It also proposes rank differential for Sergeants of 6 ½%/7 ½%/8% in each contract year.

Findings & Recommendation

Discussion indicated that Newton Falls Dispatchers are compensated within the range of comparable communities. Accordingly, annual increases of 1%/2%/2% in each respective year of their Agreement are recommended, with the current year's increase effective January

1, 2005.

The City's Patrol Officers, on the other hand, are slightly below market wage rates. Consequently, it is recommended that a \$1.00 equity adjustment to the basic Patrol wage rate be made effective January 1, 2005. Additionally, it is recommended that a 1% increase in the base hourly wage rate, and incorporation of the BAC payment be instituted in the current contract year, effective January 1, 2005; and that increases of 3% and 3% occur in the final two contract years.

Discussion also revealed that Newton Falls Police Sergeants receive somewhat below the rank differential of comparable communities. Accordingly, a rank differential of 8%, effective on January 1, 2005, is recommended.

5. Article 23 – Insured Benefits – Health Insurance

FOP/OLC Position

The Union agrees in principle to the City's proposals, with the provision that maximum annual out-of-pocket expenses for families – both in and out of the provider network – be capped at \$1,500.

City Position

The Employer argues that it must contain health care costs, and accordingly proposes a schedule providing for increases in prescription drug costs to \$5/\$10; co-payments equal to 20% of in-network office visits, and 30% out-of-network; maximum annual out-of-pocket costs of \$1,500 for combined in-network and out-of-network costs; and a deductible increase to \$200/\$400 in the provider network and \$300/\$475 out of network.

Findings & Recommendation

The City is self-insured, and must be able to meet its health care obligations. Accordingly, the following contract language is recommended:

Article 23

Section 1. *The City shall pay the full cost of hospitalization, eye care, dental and prescription drug benefits for the policy as is currently in effect. Effective May, 2005 the coverage levels specified in Exhibit A attached to this Agreement shall become effective. It is further agreed that the level of benefits shall not be reduced for the duration of this Agreement, except to increase the level of benefits. If during the*

term of this Agreement, another City of Newton Falls Bargaining Unit is granted eye care or chiropractic benefits in excess of those benefits currently provided to members of the FOP/OLC Bargaining Unit(s) the City shall provide said enhanced benefits to FOP/OLC Bargaining Unit members.

6. Article 30 – Uniforms

FOP/OLC Position

The Union argues that the uniform allowance presently afforded members of all bargaining units is inadequate to replace uniforms. It asks that the uniform allowance be increased to \$500 effective January 1, 2006, and to \$600 effective January 1, 2007.

City Position

The Employer argues that present uniform allowances provided all three bargaining units are adequate.

Findings & Recommendation

Replacement of required uniforms reflect general inflationary pressures; some increase in the allowance is warranted over the three year term contemplated by the successor Agreement. Moreover, the appropriateness of such increases is reflected in the fact that part-time Officers in Newton Falls were afforded uniform allowance increases.

Therefore, it is recommended that uniform allowances for Patrol Officers and Sergeants be increased to \$550 in 2005; \$550. in 2006; and \$575 in 2007, effective on January 1 of each respective year.

It is further recommended that uniform allowances provided members of the Dispatch unit be increased to \$500, effective January 1, 2005.

SUMMARY

FINDINGS AND RECOMMENDATIONS

In consideration of the factors enumerated in OAC 4117-9-05(K), *et seq*; the testimony and evidence proffered by the Parties at hearing; and the issues at impasse resolved through mediation, the Factfinder recommends the following:

1. Article 15 – Layoffs

Layoff of part-time Departmental employees before bargaining unit members

2. Article 20 – Sick Leave/Attendance

Consultation with FOP/OLC Representative/discretionary physical examination after six sick leave occurrences with 12 month period.

3. Article 17 - Overtime

Current contract language.

4. Article 21 – Wages

Dispatch 1%/2%/2% increase in base wage rate
effective January 1, 2005

Patrol Officers \$1.00 equity adjustment effective January 1, 2005
1% increase in base wage rate effective January 1, 2005
BAC roll in to base wage rate effective January 1, 2005
3% increase in base wage rate effective January 1, 2006
3% increase in base wage rate effective January 1, 2007

Sergeants 8% rank differential effective January 1, 2005

5. Article 23 – Insured Benefits – Health Insurance

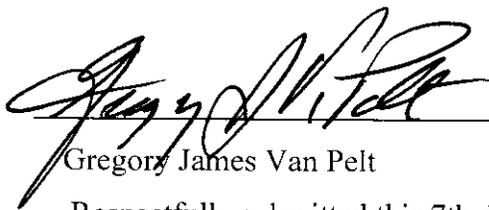
Employer proposal as per Appendix; \$1,500 maximum

6. Article 30 – Uniforms

Dispatch – increase to \$500. effective January 1, 2005

Patrol/Sergeants – increase to \$550 effective January 1, 2005/

\$550 – January 1, 2006/\$575 January 1, 2007



Gregory James Van Pelt

Respectfully submitted this 7th day of February, 2005
At Shaker Heights, Cuyahoga County, Ohio

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GREGORY JAMES VAN PELT
LABOR ARBITRATION
MEDIATION & DISPUTE RESOLUTION
Suite 409

2550 Kemper Road Shaker Heights, Ohio 44120

Administrator
Bureau of Mediation
SERB
65 East State Street, 12th Floor
Columbus, OH 43215-4213

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