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**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT  
RELATIONS BOARD

**IN THE MATTER OF:**

**CASE NO.**

2006 NOV -3 A 10: 26  
**06-MED-05-0659**  
**(Lieutenants)**

**FRATERNAL ORDER OF POLICE,  
OHIO LABOR COUNCIL, INC.**

**"Employee Organization"**

**and**

**CITY OF NORTH CANTON**

**"Employer"**

**REPORT OF FACT-FINDER  
AND RECOMMENDATIONS**

**DATE OF REPORT AND DATE OF MAILING: November 2, 2006**

**APPEARANCES:**

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## **I. INTRODUCTION.**

This matter comes before the Fact-Finder as a result of a referral on July 11, 2006 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the Fraternal Order of Police, Ohio Labor Council, Inc., as the collective bargaining representative for six (6) police officers in the classification of Police Lieutenant.

At the time of the Fact-Finder's initial appointment, he was instructed to conduct a hearing and issue a report by July 25, 2006, unless the parties mutually agreed to an extension of fact-finding as provided under Administrative Code 4117-9-05(G). By correspondence dated July 24, 2006, August 14, 2006 and August 22, 2006 and telephone conferences with the parties, the parties had mutually agreed to an extension of time and, ultimately, a fact-finding hearing was scheduled and held on September 26, 2006.

In addition to the representatives identified on the face sheet of this Report, also in attendance, and/or testifying, were the follows:

On behalf of the Union:

Police Lieutenant Joe Nist, Union Representative  
Police Lieutenant Mike Wurgler, Union Representative

On behalf of the City:

Nicholas Codrea, Labor Economist  
Michael Grimes, Chief of Police  
June A. Herr, Director of Finance  
Earle Wise, Jr., City Administrator

The Fact-Finder received and has taken into consideration numerous exhibits and materials presented by both parties, including the parties' respective pre-hearing position statements, the current Collective Bargaining Agreement between the parties effective August 1, 2003 to July 31, 2006, and post-hearing correspondence.

In addition to the material presented, testimony of the witnesses and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

Prior to the hearing on September 26, 2006, the parties had conducted bargaining sessions and/or submission of proposals on June 16, July 14, August 3 and August 23, 2006.

## **II. RECOMMENDATIONS.**

During the course of the fact-finding, the Fact-Finder also engaged in mediation conferences with the parties with a view of resolving the issues or in delineating the essential differences. As a result of those proceedings and discussions, except as otherwise noted herein, the Fact-Finder considers it sufficient to summarize the issues and the recommended proposals pertaining to them.

### **Article XVI - Overtime Pay Allowance; Article XXV - Personal Days**

The issue involved in these two articles deals with the right of first refusal as, for example, Section 16.6 of Article XVI currently states: "Members of the bargaining unit shall be given the right of first refusal of overtime in order of seniority whenever a lieutenant is not on duty due to vacation, compensatory time off, sick time, funeral leave, or regular days off." The issue of right of first refusal is likewise an issue being pursued under the collective bargaining process between the City and the police officers, non-lieutenants. As with the disposition pertaining to Article XXX, the Fact-Finder recommends that the provision as ultimately entered into between the police officers and the City shall be incorporated into and shall be part of Article XVI and XXV of the instant Agreement. Any inconsistencies between the present contract language and the language as

ultimately negotiating by the police officers and incorporated herein shall be deemed to supercede any existing language.

**Article XVI - Overtime Pay Allowance; Article XXV - Personal Days**

In addition to the right of first refusal, there was also an issue raised as to the Police Chief's scope and authority regarding assignments, taking into consideration the City's safety and security issues. In order to delineate that issue, the Fact-Finder recommends that the following language be inserted in Articles XVI and XXV or, alternatively, that the language be incorporated in a separate "side letter" or "letter of understanding":

"The Chief of Police shall have the exclusive right to fill vacancies involving shift supervisors. The Chief's primary consideration in determining the officer in charge of the shift shall be the safety of the officers and the security of the citizens of North Canton. Secondary to the safety issue shall be any fiscal consideration of concern to the employer when making decisions regarding the filling of such vacancy."

**Article XXVI - Wages**

The most contentious issue between the parties, as is commonly encountered, dealt with the issue of wages. Under the current contract, as of August 1, 2005, lieutenants received an hourly pay of \$26.60, and lieutenants (probationary) received an hourly pay of \$24.76. The Union has proposed a percentage rank differential between the highest paid patrolman and lieutenant. At the present time, patrol officers receive a "base salary" of \$22.29 per hour plus a patrol shift differential of \$0.283 per hour and a payment of \$0.216 per hour referred to as a "senior patrol officer stipend" or a total compensation package of \$22.79 per hour. Lieutenants receive an hourly pay of \$26.60 plus the patrol shift differential of \$0.283 or a total of \$26.88 per hour. The City maintained that for the year effective August 1, 2003, there was a differential of 17.877%; for August 1, 2004, there was a differential of 17.893%; and for the year commencing August 1, 2005, there was a differential of

17.963%. (City Exhibit 2) The Union has proposed a rank differential of 19.34%, whereas the City has proposed a rank differential of 18.2%. The Union's argument basically proceeds along the lines of stating that there is a \$4.31 difference between lieutenant and the highest paid patrolman (\$26.60 - \$22.29) and that this \$4.31 difference is equivalent to 19.34%. The City, on the other hand, argues that in properly determining the patrol officer's compensation, you have to take the hourly pay of \$22.29 plus the senior patrol officer pay of \$0.216 which totals \$22.506 (rounded off to \$22.51), and that if you take \$22.51 times 18.2% as the differential, you would come up with the figure of \$26.60 which is the current lieutenant hourly pay.

The Fact-Finder notes that in addition to the compensation elements referenced above, there is also a shift differential pay of \$0.283, however, that amount is paid equally to lieutenants and patrol officers and, thus, is not added into the formula in determining the pay differential.

The Fact-Finder further notes that both the Union and the City appear to be in agreement that the rank differential is to be computed using the total of: (1) the base salary of a patrolman, (2) the senior patrol officer's stipend, (3) any possible monetary benefits that might be granted or increased for patrolmen. The core difference between the Union's and the City's positions centers around the percentage of rank differential.

The Fact-Finder also notes (Union Exhibit 1) that under the Collective Bargaining Agreement with the dispatchers, under Article XXVII, Section 27.01, the chief dispatcher was to be paid a differential from the top rate for other dispatchers equal to the differential between patrolmen and lieutenants but not to exceed 19.29%.

Considering the bargaining history and determining that under the formula the highest paid patrolman is paid \$22.51 (excluding the patrol shift differential), that a rank differential of 18.2%,

which is slightly higher than in previous years, is a fair and reasonable differential during the duration of the new contract.

Accordingly, the Fact-Finder recommends that Article XXVI, Section 26.01, be amended to read as follows:

"Effective the first full pay period, which includes August 1 of each year of this Agreement, there shall be established a rank differential for all members of the bargaining unit. The rank differential will be set at 18.2% above patrolmen's base salary as defined below in subsections (a), (b) and (c) for non-probationary members of the bargaining unit. A rank differential of 17.0% shall be established for all bargaining unit members in their probationary status. The base salary used for this rank differential shall be the sum of:

(a) the base salary of a patrolman as defined by the Patrolmen's Collective Bargaining Agreement for the Patrolman fourth year;

(b) Senior Patrol Officer's stipend as defined by the Patrolmen's Collective Bargaining Agreement, reduced to an hourly rate.

(c) Subsequent to August 1, 2006, in the event any current monetary benefit(s) is increased for patrolmen or a new monetary benefit is granted to the patrolmen (whether or not said benefit or compensation appears in the Patrolmen's Collective Bargaining Agreement) that is considered taxable income to the patrolmen and the same is not granted to the lieutenants in a similar manner or fashion. Other than the Senior Patrol Officer stipend as recited in paragraph (b) above, as of July 31, 2006, there are no current monetary benefit(s) which would be added to the patrolmen's base rate for purposes of computing the rank differential."

**Article XXX - Hospitalization and Major Medical Insurance, Dental, Optical and Prescription Program.**

As to this issue, it should be noted that the City is proceeding with negotiations pertaining to its patrolmen who are covered under a separate Collective Bargaining Agreement. In order to bring the patrolmen and the lieutenants in equipoise, it is recommended that whatever healthcare coverage benefits and the like are set forth in the patrolmen's Collective Bargaining Agreement shall likewise be incorporated into and become part of a new Article XXX pertaining to the lieutenants.

**Article XXXV - Miscellaneous**

Section 35.01 presently reads: "Employee shall be required to live within twelve (12) miles from the center of the City of North Canton." After discussion with the parties, the Fact-Finder recommends that Section 35.01 be deleted in its entirety and that Sections 35.02-35.05 be renumbered accordingly.

**Article XXXVI - Duration of Agreement**

The Fact-Finder recommends that Section 36.01 of the current Agreement be deleted in its entirety, and in lieu thereof, the following be substituted:

"This Agreement is effective from August 1, 2006 through July 31, 2009. This Agreement shall continue from year to year unless a party to this Agreement gives sixty (60) days written notice of intent to negotiate a new agreement. In the event such notice is given by a party, the procedures for negotiation contained in Ohio Revised Code Chapter 4117 shall apply."

Except as otherwise provided in this Report and recommendation, the Fact-Finder recommends that present contract language be retained and that the Union and the City respectively be deemed to have withdrawn all other aspects or issues.

The Fact-Finder further finds and recommends that, except as otherwise provided in this Report and Recommendations, no new or added changes shall be deemed to have been made to the current contract and the language therein.

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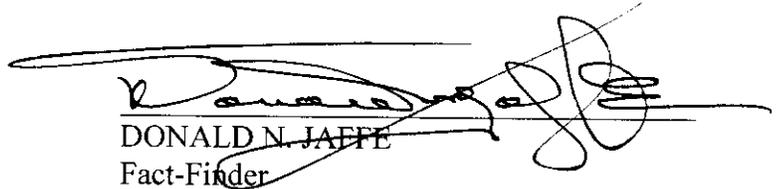
Executed at the City of Cleveland, Cuyahoga County, Ohio, this 2<sup>nd</sup> day of November, 2006.

Respectfully submitted,

  
DONALD N. JAFFE  
Fact-Finder

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded to the Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Chuck Choate, The Fraternal Order of Police, Ohio Labor Council, Inc., 2721 Manchester Road, Akron, Ohio 44319-1020; and Robert J. Tscholl, Esq., 220 Market Avenue South, Suite 1120, Canton, Ohio 44702 , via FedEx, this 2<sup>nd</sup> day of November, 2006.

  
DONALD N. JAFFE  
Fact-Finder