

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2009 FEB -9 A 10: 20

**IN THE MATTER OF
THE FACT FINDING**

Between

CITY OF NORTH CANTON

And

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
(Full-Time Police Patrolmen)**

SERB No. 08-MED-05-0630

Before:

**CHRISTOPHER E. MILES, ESQUIRE
Fact Finder**

APPEARANCES:

**Robert J. Tscholl, Esquire
Representing the City**

**Kevin Powers, Esquire
Representing the Association**

BACKGROUND

This case concerns the fact finding proceedings between the City of North Canton, Ohio (hereinafter referred to as the "City") and the Ohio Patrolmen's Benevolent Association representing the Full-Time Patrol Officers (hereinafter referred to as the "Union"). By letter dated October 16, 2008, the undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB). The fact finding proceedings were conducted pursuant to the Ohio Administrative Code Rule 4117 and the rules and regulations of SERB, as amended. The City and the Union engaged in the collective bargaining process for a period of time prior to the appointment of a Fact Finder. During their negotiations, the parties were able to resolve several provisions for the new collective bargaining agreement; however, the following issues remained unresolved:

- Article 17 Overtime Pay Allowance
- Article 19 Vacations
- Article 20 Sick Leave
- Article 26 Personal Days
- Article 27 Wages
- Article 28 Longevity Pay
- Article 32 Hospitalization and Major Medical Insurance, Dental, Optical and Prescription Program
- Article 37 Miscellaneous

The items which were resolved by the parties during negotiations prior to the fact finding hearing are hereby incorporated in this fact finding report.

The City was represented by Robert J. Tscholl, Esquire, and the Union was represented by Kevin Powers, Esquire. Prior to the fact finding proceedings, which were conducted at City Hall in North Canton, Ohio, on November 7 and December 17, 2008, the Fact Finder offered, and the parties declined, to attempt mediation of the unresolved issues. A fact finding hearing was then conducted and the parties were afforded full opportunity to present testimony and evidence, as well as arguments, in support of their positions. As a result of those deliberations, the Fact Finder makes the Findings and Recommendations set forth below.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the financial information and documentation supplied by the parties, the Fact Finder makes the following recommendations:

ARTICLE 17 – OVERTIME PAY ALLOWANCE

The City seeks the elimination of Sections 17.04, 17.05, and 17.06 of the current Agreement. Section 17.04 provides that the police officers shall be compensated at one and one-half (1½) times the hourly rate for hours worked on Sunday. Section 17.05 states that “For purposes of computing overtime pay, holidays, vacation, funeral leave, sick leave and compensatory time shall be counted as hours and days worked.” Section 17.06 requires that police officers be offered the first opportunity to work all overtime. The Union proposes that the current language in the three sections be retained.

Recommendation

With regard to Section 17.04, the Fact Finder does not recommend the deletion of this long-term provision and practice.

The Fact Finder does recommend the City’s proposal concerning Section 17.05. The Fair Labor Standards Act does not require that paid time-off be included in overtime calculation. The elimination of this provision will provide economic savings to the City. Approximately 20% of the hours paid to police officers have been at the overtime rate. In my opinion, time away from work should not be counted as time worked.

The Fact Finder also recommends the elimination of Section 17.06. This will enable the City to make better use of its part-time officers who are paid approximately 30% of the overtime rate for a full-time police officer. The deletion of this section will provide an economic savings for the City.

ARTICLE 19 – VACATIONS

The City proposes a new vacation schedule for newly hired police officers. The Union seeks the retention of the current language.

Recommendation

The Fact Finder does not recommend a new vacation schedule for new hires. The current vacation schedule does not appear to be out of line with those of comparable jurisdictions.

ARTICLE 20 – SICK LEAVE

The City wants to eliminate Section 20.10 which provides for a pay of sick leave upon retirement. The City also seeks the elimination of Section 20.11. The Union proposes that the current language be retained.

Recommendation

The Fact Finder does not recommend the elimination of either Section 20.10 or Section 20.11. Section 20.10 provides that an employee who has qualified for retirement benefits shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement, multiplied by one-half ($\frac{1}{2}$) the total of accumulated but unused sick hours earned by the employee. This is fair and reasonable and represents an economic saving to the City when compared to payment of all sick days if the police officer used them prior to retirement. Moreover, it is understandable that a police officer would want to accumulate sick days in the event of a catastrophic illness.

Section 20.11 provides that an employee who accumulates a minimum of four hundred (400) hours of sick leave shall receive an additional three (3) personal days per year. The usage of the personal days shall be charged to sick leave and the use of any personal day taken pursuant to this section is subject to the approval of the Police Chief. This provision represents a win-win situation for both sides. The accumulation of a minimum of 50 days of sick leave means that the police officer is reporting for work as scheduled and not having to be replaced. The reward for the officer is personal days charged to sick leave.

ARTICLE 26 – PERSONAL DAYS

The City proposes the elimination of this article. The Union seeks the retention of the current language.

Recommendation

It is not recommended that the provision for personal days be eliminated from the Agreement. Personal days for officers have been a long standing practice prior to collective bargaining and then provided for in the parties' Agreement. The designation of personal days (2) is subject to approval of the Chief of Police. The current language is fair and reasonable.

ARTICLE 27 – WAGES

The City is proposing a new hire rate for officers hired after August 1, 2008. In addition, for the current police officers the City is proposing no increase for the first year. For the second and third years of the Agreement, the City proposes a one percent (1%) increase for each year. The Union seeks an across-the-board increase of four percent (4%) for each of the three years.

Recommendation

After review and consideration of the documentation, data, and arguments presented by the parties, the Fact Finder does not recommend a new hire rate for officers hired after August 1, 2008. The Fact Finder recommends an increase of two percent (2%) for the first year of the new Agreement and two and one-half percent (2½%) for the second and third year of the new Agreement.

27.01 Effective the first full pay period which includes August 1, all employees shall be paid in accordance with the following hourly rate schedule:

	2% GWI	2.5% GWI	2.5% GWI
EFFECTIVE	8/01/08	8/01/09	8/01/10
Patrolman (fourth year)	\$ 24.12	\$ 24.73	\$ 25.34
Patrolman (third year)	\$ 23.11	\$ 23.69	\$ 24.28
Patrolman (second year)	\$ 22.01	\$ 22.56	\$ 23.13
Patrolman (first year)	\$ 20.97	\$ 21.50	\$ 22.03

There is no doubt that the City is experiencing economic difficulties, the same as other public employers nationwide. The loss of thousands of jobs at Hoover Company and the consequential decrease in tax revenue has been especially detrimental to the City. Some of those lost jobs have been recouped and the modest wage increase recommended for the police officers will enable them to absorb the increase health insurance premiums and co-pays recommended below while not incurring an overall loss of income. With the savings realized by the City from other recommendations made in this Report, the City will have the ability to pay the wage increases recommended for this three year Agreement.

ARTICLE 28 – LONGEVITY PAY

The Union seeks an increase in longevity pay from \$70.00 per year of employment to \$75.00 per year. The City opposes any increase in longevity pay.

Recommendation

The Fact Finder does not recommend an increase in longevity pay.

**ARTICLE 32 – HOSPITALIZATION AND MAJOR MEDICAL INSURANCE,
DENTAL, OPTICAL AND PRESCRIPTION PROGRAM**

The City proposes changes in the health insurance coverage. It seeks to have employees contribute more of the health insurance premiums and changes the coverage in the group health insurance. The Union wants to continue the current health insurance coverage set forth in the current Agreement except that the Union seeks to limit the City's right to change the prescription drug formulary to one time each year. It also proposes a new provision for Section 32.08 which would permit a one time health insurance reopener for plan year 2010.

Recommendation

After review and consideration of the data presented at the hearing concerning the *proposed changes sought by the City for Article 32, the Fact finder recommends that the changes sought by the City, set forth in Appendix "A", be included in the new Agreement.* It is further recommended, however, that the rate of contribution by the police officers be increased to eight percent (8%) of the monthly COBRA amount for family or single coverage, which ever is applicable, not twelve percent (12%) as proposed by the City. This represents a 100% increase in the officers' contribution to the insurance premium

The City continues to experience cost increases for health care coverage. The *recommended changes will result in some cost savings.* The recommended increases are found to be appropriate and generally in line with the comparable jurisdictions.

The Union's proposals with regard to Section 32.07 and a new Section 32.08 are not recommended. The current language set forth in 32.07 ensures that the level of benefits for major medical and hospitalization, dental, optical and prescription drugs shall not be reduced in the event of a change of insurance carrier.

ARTICLE 37 – MISCELLANEOUS

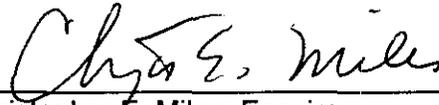
The City seeks to eliminate Section 37.03 which provides that “All City owned and operated jobs shall be paid at the four (4) hour minimum overtime rate.” The City asserts that this language limits its use of Part-time officers. The Union seeks the retention of the current language.

Recommendation

The Fact Finder recommends, in conjunction with the changes recommended above for Article 17, Overtime Pay allowance, that Section 37.03 be eliminated. The elimination of this language will enable the City to better utilize its part-time officers for economic savings and provide a potential pool of police officers to fill future vacancies.

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.



Christopher E. Miles, Esquire
Fact Finder

February 5, 2009

APPENDIX A

COMPREHENSIVE MAJOR MEDICAL BENEFITS

Proposed changes are in bold type and underlined

Pre-certification Review: Pre-certification review is required for all inpatient Hospital confinements. For elective stays, certification is required at least 48 hours prior to admission and for emergency admissions; certification is required within 48 hours following admission.

"R&C" means "Reasonable & Customary"

Lifetime Maximum Amount Payable Per Individual\$1,500,000.00

Calendar Year Deductible:

Network (PPO Providers):

Per individual **\$250.00**
Per Family **\$500.00**

Non-Network (Non-PPO Providers):

Per Individual **\$500.00**
Per Family **\$1,000.00**

Network (PPO Providers)

Then: all eligible charges will be paid at 90% until the maximum out-of-pocket amount has been satisfied.

With: 100% payment on eligible charges thereafter for that individual for the remainder of that calendar year.

Maximum Out-of-Pocket Expense Per Calendar Year (excluding the deductible and office visit co-pay)

Per Individual **\$1,500.00**
Per Family **\$3,000.00**

Non-Network (Non-PPO Providers)

Then: all eligible charges will be paid at 70% R&C until the maximum out-of-pocket amount has been satisfied.

With: 100% payment (R&C) on eligible charges thereafter for that individual for the remainder of that calendar year.

Maximum Out-of-Pocket Expense Per Calendar Year (excluding the deductible and office visit co-pay):

Per individual **\$3,000.00**
Per Family **\$6,000.00**

**COVERED SERVICES
Percentage Payable Network Non-Network**

Maximum Daily Room Charge (In Hospital) 90% 70% R&C

Private Room Rate (The Hospital's average semi-private room rate) 90% 70% R&C

**APPENDIX A
CITY OF NORTH CANTON
SCHEDULE OF BENEFITS
CONTINUED**

	Percentage Payable	<u>Network</u> <u>Non-Network</u>
Special Care Unit (ICU & CCU)	90%	70% R&C
Inpatient Miscellaneous Charges	90%	70% R&C
Inpatient Physicians Visits	90%	70% R&C
(One visit per day, per specialist)		
Preadmission Testing	90%	70% R&C
Diagnostic X-ray and Lab	90%	70% R&C
Consultation Expenses	90%	70% R&C
Surgical Expense Benefits	90%	70% R&C
Second Surgical Opinion	90%	70% R&C
Outpatient Surgery	90%	70% R&C
Durable Medical Equipment	90%	70% R&C
Anesthesia	90%	70% R&C
Ambulance Services	90%	90%
Emergency Room Treatment (within 72 hours)	90%	90% R&C
(For acute medical conditions and accidental bodily injury)		
Non-Emergency Treatment in Emergency Room	90%	70% R&C
Physician Office Visits*	<u>\$25.00</u> co-pay	70% R&C
Allergy Testing & Injections*	<u>\$25.00</u> co-pay	70% R&C
Routine Mammogram/Pap/Prostate Exam/GYN Exam*	\$15.00 co-pay	70% R&C
(Frequency per AMA Guidelines)		
Routine Physical Exam (Age 9 and older)*	<u>\$25.00</u> co-pay	70% R&C
(Maximum - One per Calendar Year including lab and x-ray)		
Well Baby Care/Well Child Care*	\$15.00 co-pay	70% R&C
(Including Immunizations - up to 2 years of age/2 years to 9 years of age limited to \$150.00 per Calendar Year)		
Therapy Services	90%	70% R&C
(Includes medically necessary radiation therapy, chemotherapy, dialysis, physical therapy, speech therapy, respiratory therapy, and occupational therapy)		
Chiropractic Care (<u>Maximum of 12 visits per year</u>)	90%	70% R&C

**APPENDIX A
CITY OF NORTH CANTON
SCHEDULE OF BENEFITS
CONTINUED**

	Percentage Payable	<u>Network</u> <u>Non-Network</u>
Skilled Nursing Care..... Calendar Year Maximum: 120 days	90%	70% R&C
Private Duty Nursing Calendar Year Maximum: 120 days	90%	70% R&C
Home Health Care Calendar Year Maximum: 100 visits	90%	70% R&C
Hospice Care Lifetime Maximum: 180 days	90%	70% R&C
Transplants	90%	70% R&C
Mental/Nervous Disorders		
Inpatient	90%	70% R&C
Outpatient Calendar Year Maximum: 12 visits combined w/Alcohol & Substance Abuse)	90%	70% R&C
Alcohol & Substance Abuse		
Inpatient Lifetime Maximum: 15 days	90%	70% R&C
Outpatient Calendar Year Maximum: 12 visits combined w/Alcohol & Substance Abuse)	90%	70% R&C
NOTE: The above outpatient charges for Mental Disorders, Alcoholism and Drug Abuse will not be counted in accumulating covered charges toward the 100% payment percentage of other charges.		
Diabetic Counseling	90%	70% R&C

**APPENDIX A
CITY OF NORTH CANTON
SCHEDULE OF BENEFITS
CONTINUED**

PRESCRIPTION DRUG BENEFITS

<u>NORTH CANTON PROPOSED PRESCRIPTION PLAN</u>		
	<u>RETAIL CO-PAY</u>	<u>MAIL ORDER CO-PAY</u>
[*]GENERIC: 1st TIER	<u>\$10.00 or 20% WHICHEVER is GREATER</u>	<u>\$27.00</u>
^{**}PREFERRED: 2nd TIER	<u>\$20.00 or 30% WHICHEVER is GREATER</u>	<u>\$48.00</u>
^{***}PREFERRED: 3rd TIER/ LIFE ENHANCING	<u>\$30.00 or 35% WHICHEVER is GREATER</u>	<u>\$74.00</u>
^{****}NON-PREFERRED: 4th TIER	<u>\$45.00 or 50% WHICHEVER is GREATER</u>	<u>\$95.00</u>
GENERIC ENFORCEMENT PROVISION IS INCLUDED		
<u>AultCare Prescription Drug Tier Definitions</u>		
[*]GENERIC: 1st TIER is defined as all generic drugs (subject to plan limitations). The CITY of NORTH CANTON		
Prescription Drug Plan includes a mandatory generic enforcement provision. If a brand name is selected by the employee over the generic, the cost will be the brand name co-pay plus the difference in cost between the brand name and the generic drug.		
^{**}PREFERRED: 2nd TIER is defined as preferred name brand drugs(i.e. heart medications, anticonvulsants, cancer medications)		
^{***}PREFERRED: 3rd TIER is defined as preferred name brand drugs that are considered to increase the quality of life or a life style modification drug that is not necessary to sustain life (i.e. allergy medications, pain medications)		
^{****}NON-PREFERRED: 4th TIER is defined as non-preferred Brand name drugs		
<u>PLEASE NOTE: THE PROPOSED PLAN REVERSES TIER 3 and TIER 4 FROM 2006 PRESCRIPTION PLAN. THE PROPOSED PLAN HAS NON-PREFERRED AS TIER 4 AND LIFE ENHANCING AS TIER 3 as per AultCare plan</u>		

If a brand name is chosen by the employee over the generic, the cost will be the brand name co-pay plus the difference in cost between the brand name and generic. if the brand name is specifically prescribed for medical reasons, or a generic is unavailable at the time, the brand-name co-pay shall apply.

Oral contraceptives to be covered as detailed above.

DENTAL CHARGE BENEFITS THROUGH PREFERRED PROVIDER NETWORK

Cash Deductible, each Calendar Year:
Per Person \$50
Family Unit Limit \$150

The deductible applies to these Classes of Service:
Class B Services - Routine
Class C Services - Major
Class D Services - Orthodontia and Implants

Percentage Payable:
Class A Services - Preventive 100%
Annual Maximum Two visits per year, up to R&C

Class B Services - Routine 80%

Class C Services - Major 50%

Class D Services - Orthodontia and Implants 100%
Lifetime Maximum \$1,500

Maximum Benefit Amount:
Per Person Per Calendar Year \$1,500

VISION CHARGE BENEFITS

Percentage Payable (**\$15 Co-Pay then 100%**) 100%

Maximum Benefit Amount:
Per Person every 24 months \$250

Laser Eye Surgery (for covered employees only) **N/A**