



STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

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In The Matter of Fact Finding Between

Service And Clerical Workers	}	
	}	Case No.: 08-MED-12-1415
Employee Organization	}	
	}	
AND	}	
	}	
The City of North Canton	}	Fact Finding Report
Ohio Public Employer	}	Michael King, Fact Finder
	}	

This matter was heard on June 19, 2009 in the City of North Canton, Ohio.

APPEARANCES:

For The Union:

Gregory A. Beck, Esq.  
Baker, Dublikar Beck Wiley & Matthews  
400 South Main Street  
North Canton, Ohio 44720

Ed Naiman, Union President  
Bud Philippi, Union Vice President

For The Employer:

Robert J. Tscholl, Esq.  
220 Market Avenue South  
Suite 1120  
Canton, Ohio 44702

Alex Zumbar, Director of Finance, City of North Canton  
Earl Wise, Jr., Director of Administration, City of North Canton

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## **I. Introduction And Background**

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on June 17, 2009. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a new Collective Bargaining Agreement (CBA) new.

The bargaining unit includes all service and clerical workers in the City of North Canton. On the hearing date there were approximately twenty-six (26) persons in the bargaining unit.

Prior to the hearing the parties submitted pre-hearing statements pursuant to SERB Rules.

The Parties identified seven (7) issues at impasse. These were: [1] Accumulation of personal leave days; [2] Sick leave; [3] Ability of New Hires to cash out sick leave at retirement; [4] Computation of overtime; [5] Funeral leave; and [6] Wages; and [7] Payment for commercial driver's licenses. After some discussion at the hearing, the bargaining unit withdrew the issue related to funeral leave.

## **II. Fact-Finder's Report**

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 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 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;
- 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 preparing this report I have attempted to make recommendations that are reasonable based on the evidence presented, and that balance the legitimate economic interests of both parties.

### **III. Matters Relevant To All Issues**

To appreciate the relative positions of the parties it is useful to review two documents, both of which were submitted by the Union. Document one (the Union's Exhibit A) is an executive summary of the City's performance audit. That audit was conducted by Ohio's Auditor of State. The Auditor completed work on this report in June 2008.

The Auditor's report paints a picture of a city in dire financial condition, and suggests various cost-cutting moves including some that are in dispute in this Fact Finding. The Audit states:

Because of the loss of its largest employer, (North Canton) has experienced a diminishment in its revenues. Coupled with increasing costs of doing business, this revenue reduction has placed the City on precarious financial footing. For several years, the City has been able to forego assessments and cost recovery measures; however, it may have to revisit these decisions in order to remain financially viable through the next decade. Without changes in its operations and revenue collections, North Canton faces a sizable deficit at the end of 2012. Avoiding this deficit while continuing to offer its residents an acceptable level of services will require the City and its constituents to consider alternatives to traditional services and make difficult decisions about the future of City operations.

The City should limit negotiated wage increases to zero percent in 2010 and 1 percent in 2011 and 2012. Limiting the negotiated wage increase will help reduce future liabilities and limit future deficits.

Ohio's Auditor of State also recommended stricter policies for sick leave, increased employee contributions for health care, and re-negotiation of "costly provisions in the collective bargaining agreements."

Document two (offered as the Union's Exhibit E) is a schedule of payments and benefits under the City's revised health insurance program. According to that document, the annual deductible for individuals increases to \$250 from \$150, and for families the increase is to \$500 from \$300. Maximum out-of-pocket expenses per calendar year excluding the deductible and office visit co-pays triples for individuals to \$1,500 from \$500. For families that amount would increase to \$3,000 from \$1,000. It is important to note that the maximum out-of-pocket expenditure previously INCLUDED the deductible and office visit co-pays.

The City reached a new agreement with its police union that included terms of the above-referenced revised medical insurance plan. The City doesn't desire separate medical policies for different unions, and thus the Service Union reluctantly concedes on this issue.

### III. **Unresolved Issues**

Issue # 1      Accumulation of Personal Leave Time

#### **Management Position:**

North Canton says it must control, and where practicable, reduce the cost of employee benefits. Under current contract language members of the bargaining unit can receive additional personal leave time based on their accumulation of sick leave. Management seeks to modify this provision in two ways. First, current employees would need to maintain a certain amount of sick leave in order to qualify for the additional personal leave time. Second, persons hired after the expiration date for the most recent contract wouldn't be entitled to this opportunity for additional leave time. The City proposes the following contract language:

10.02 Employees shall receive, in addition, a maximum of three (3) personal days provided they accrued and currently maintain a minimum of four hundred (400) hours sick leave. Such three (3) personal days to be charged to sick leave. Said personal days may not be taken in less than four (4) hour increments, subject to scheduling considerations. Anyone hired as a full-time employee after August 1, 2008, is not entitled to the benefits of this provision.

According to Management, these represent enormously generous benefits, given years ago in much better economic times. The City can't any longer afford these benefits and needs to find ways to cut employee costs. This proposal would add to employee incentive to use sick leave sparingly. Also, it would effectively reduce the payroll costs of new hires by creating a lower-tier benefit level for new hires.

**Union Position:**

The Union views the current policy on personal days as a long recognized and bargained-for employee incentive. The Union says its members do the "grunt work" for the City. The personal leave policy is an added encouragement to come to work even when ill. It's also a reward for connectivity. This benefit, the Union argues, shouldn't be denied to new hires.

**Finding And Recommendation**

I find that North Canton is a city in financial distress, and must make reasonable efforts to curb expenses. The proposal has no adverse impact on anyone currently in the bargaining unit. The proposed change in the policy on accumulation of personal leave should be accepted.

Issue #2      Sick Leave

**Management Position:**

Management proposes to add to the contract a more detailed statement of what constitutes abuse of sick leave. Under current language abuse of sick leave is "just and sufficient cause for disciplinary." The City would augment that by adding the following contract language:

Sick leave is intended for use by employees for absences granted per the negotiated collective bargaining agreement for legitimate medical reasons. Abuse of sick leave may include but is not limited to:  
Unauthorized use of sick leave, which includes but is not limited to, failure to notify supervisor of medical absence, failure to complete the appropriate sick leave form, failure to provide physician's verification when requested, presentation of fraudulent physician verification.

Misuse of sick leave, which includes but is not limited to, the use of sick leave for purposes for which it was not intended or provided.  
Pattern abuse of sick leave, which includes but is not limited to: consistent periods of sick leave usage; usage before and/or after holidays, weekends, and regular days off; usage on any one specific day, usage following overtime period worked; a continued pattern of maintaining zero or near zero balance of sick leave; usage of all or nearly all sick leave as soon as it is earned or shortly after it is earned; excessive absenteeism.

**Union Position:**

The Union's position is that the old language is adequate. It notes that neither party can point to any instance when efforts to discipline or terminate an employee for abuse of sick leave failed because of inadequate contract language.

**Finding And Recommendation**

I find no compelling reason to add new language to the contract on this issue. There is no evidence that members of the bargaining unit abuse sick leave, or that they fail to understand the nature and purpose of sick leave. I recommend no change in this section of the contract.

Issue # 3      Cash For Sick Leave As It Relates to New Hires

**Management Position**

Here again the City seeks a lower tier of benefits for new employees. Under the current system eligible employees may elect to receive a cash payment of one-half the total value of earned but unused sick leave at the time of retirement. Management would deny this option to employees hired after expiration of the previous contract. It proposes the following language:

Anyone hired as a full-time employee after August 1, 2008, shall not be entitled to the benefits of this provision.

**Union Position**

The Union has the same objection here as for Issue No. 1. The current policy is an added encouragement to come to work even when ill. It's also a reward for longevity. This benefit, the Union argues, shouldn't be denied to new hires.

**Finding And Recommendation:**

I find that North Canton faces short term and intermediate term financial constraints which necessitate some spending reduction. Elimination of some benefits for new hires is one way to reduce costs. I recommend acceptance of the contract language proposed by Management.

Issue # 4      Computation of Overtime

**Management Position**

The City seeks to modify the method for calculating when overtime pay is appropriate. Specifically, Management seeks to limit use of paid time off in determining the baseline above which overtime pay kicks in. The current contract language states:

For the purposes of computing overtime pay, holidays, vacations sick leave, personal days and funeral leave shall be counted as hours and days worked.

The Management proposal is to strike the terms “sick leave” and “personal days” from that section, thus eliminating those two from the baseline calculation. The City believes that its current policy is more generous than what is required under the Fair Labor Standards Act. It got relief on this matter in the police contract, and would like to make the policy consistent across bargaining units.

**Union Position**

For the Union this is but one more example of the Union being treated unfairly by the City. Overtime is far less of an issue for this union than it is in the police union. Under current rules, overtime must be authorized in advance. During the workweek overtime is minimal. Overtime for members of the Service Department frequently is the result of emergencies occurring at night, or on weekends. Service Department workers called in on Saturdays are paid overtime by the contractor responsible for the project if there isn't an emergency. That said, it seems to the Union this is an effort to take from workers such little overtime as they might otherwise receive for responding to emergencies during nights and weekends.

**Finding And Recommendation:**

I respect the Union's concern over this issue. However, neither party has shown that the proposed change is likely to have significant impact -- for good or bad. That said, consistency across contracts simplifies administrative oversight. I recommend acceptance of Management's proposed changes to the section.

Issue # 5      Wage Rates

**Management Position**

Management proposes no increase in wages during the first year of the contract. It proposes a one (1) percent increase in the second year of the contract, and an additional one (1) percent increase in the third year of the contract. This wage proposal comes on top of a revised medical insurance plan that places a greater share of medical costs on the employee. Indeed Management's proposal mirrors the recommendations offered by Ohio's Auditor of State.

In the past this Union typically received the same percentage wage increase as that given to the police union. North Canton would like to follow that pattern this time, but that's not practical. Police went to Fact Finding and ultimately settled for a two (2) percent increase in the first year, a two and one-half (2.5) percent increase in the second year, and a two and one-half (2.5) percentage increase in the third year. That wage increase is partly offset, however, by a major economic concession from the police. Under some circumstances the City will be able to use part-timers instead of regular police officers. Part-timers will cost an average of \$15 an hour, compared to the average \$50 an hour the City would otherwise pay in overtime.

Management also noted that its nonunion employees haven't had their salaries increased, and there aren't any plans to do so.

**Union Position**

The Union didn't put forward a specific wage increase request. Instead, it stated that it seeks "a fair compromise on wages and other issues." It notes that changes in the health insurance plan amount to real wage cuts for members of the bargaining unit. Also, the City hasn't been replacing persons who left. That means more work done by fewer people. The Union has limited bargaining power here. Unlike the police, this Union isn't entitled to pursue conciliation. The Union also argues that the City is cutting costs disproportionately from the bottom up, and not from the top down.

### **Finding And Recommendation:**

Neither party presented evidence of what would be a comparable group for wage adjustments in or out of the public sector. I find that the Ohio Auditor of State's report is persuasive on the issue of North Canton's financial wherewithal and financial outlook. In past negotiations and agreements, the parties evidenced a view that wage adjustments for police and for members of this bargaining unit generally should move in the same direction at about the same pace. The decision to change that practice can't be altogether explained by a presumed adjustment to police overtime. Even using past overtime experience, the exact amount of overtime available to each police officer is somewhat speculative. What isn't speculative is that police will receive an increase in real base wages over three years of approximately seven (7) percent before adjusting for compounding effect.

After reviewing all of the evidence submitted, I find that a wage adjustment is appropriate in an amount greater than what is proposed by the City. This is so even though the City is in weakened financial condition. I recommend wage increases of one (1) percent in the first year of the contract, not to be retroactive, but to be effective on the first day of the month in which the contract is settled. I further recommend an increase of one and two-tenths (1.2) percent to be effective on August 1, 2010, and an increase of one and four-tenths percent (1.4) percent effective August 1, 2011.

Issue # 6      Payment For Commercial Driver's Licenses

### **Management Position**

Management requires that some members of the bargaining union maintain a commercial driver's license (CDL) in order to hold their positions. Under previous contracts the City provided study materials, and paid for employees to take the CDL examination one time. Thereafter, the City pays the cost to renew the CDL. The CDL incorporates within it an ordinary driver's license. A regular driver's license cost approximately \$24 to renew. The CDL costs approximately \$19 more for a total cost of approximately \$43. The City proposes to cease paying the full cost of the CDL renewal. For the City, it's simply a fundamental disagreement with paying for renewal of a private driver's license merely because the individual also has a CDL. Instead, it proposes to only pay the difference between the regular license and the CDL. It proposes the following language:

26.03 The Employer shall pay the difference between the cost of the renewal of the Commercial Driver's License and the cost of the renewal of a regular driver's license of each employee whose position requires the possession and maintenance of a CDL.

Michael L. King  
P. O. Box 221312  
Beachwood, Ohio 44122  
440-617-9213  
[michaelruler@hotmail.com](mailto:michaelruler@hotmail.com)

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July 3, 2009

Edward Turner, Administrator  
Bureau of Mediation  
Ohio SERB  
65 East State Street, 12<sup>th</sup> Street  
Columbus, Ohio 43215-4213

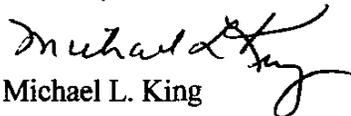
Re: 08-MED-12-1415  
North Canton Service & Clerical Employees and City of North Canton

Dear Mr. Turner:

Enclosed please find the fact-finding opinion in the above-referenced matter.

Please do keep me in mind for other matters in the future.

Sincerely,

  
Michael L. King

Enclosure: