THE STATE EMPLOYMENT RELATIONS BOARD
May 4, 2010

NORTH CANTON PROFESSIONAL FIREFIGHTER & PARAMEDIC ASSOCIATION, IAFF LOCAL 3489,	)	SERB Case No. 09-MED-05-0612
Employee Organization (Union),	)	
and	)	FACT FINDER: **JOSEPH W. GARDNER**
CITY OF NORTH CANTON, Ohio,	)	
Employer (City).	)	**FACT FINDING REPORT**

APPEARANCES

For the **UNION:**

DENNIS HAINES, Union Attorney
MICHAEL TAYLOR, OAPFF
JOHN KASTOR, Neg. Team
SCOTT KELLY, IAFF Local 3489 President
CAPTAIN DEAN W. McDONALD, Neg. Team

For the **EMPLOYER:**

ROBERT J. TSCHOLL, Attorney
EARL WISE, Director of Administration
ALEX ZUMKAR, Finance Director

INTRODUCTION

On February 3, 2010, in compliance with the Ohio Revised Code §4117.14(C)(3), SERB appointed this fact finder in this case. The parties agreed that fact finding would be held on March 23, 2010 at 10:00 a.m., at the North Canton City Hall. The parties agreed that they would each provide post-hearing briefs and that would be submitted on or before April 23, 2010.

The Fact Finding report would be mailed and/or e-mailed on or before May 11, 2010.

As required by state statute, this fact finder considered all of the below factors:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) 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;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

ISSUES

Before fact finding, the parties consented to mediation. The parties were separated. This fact finder spent a substantial amount of time speaking with both of the representatives and members of each party. Mediation was successful to the point that some of the issues were eventually settled between the parties, and both parties and this fact finder gained an in depth understanding of all of the facts surrounding this fact finding. After mediation was finished, parties commenced the fact finding conference.

The parties were left with the following issues:

Issue No. 1: **Wages**; Article 29, Sections 1-6

Issue No. 2: **Term of Collective Bargaining Agreement**; Article 1, Section 1

Issue No. 3: **Paid time off used for the calculation of overtime pay**; Article 25, Sections 3 & 5

Issue No. 4: **Right of First Refusal**; Article 25, Section 6

Issue No. 5: **Use of Maternity leave toward maximum time off per week**; Article 25, Section 6.i

FACTUAL FINDINGS

The bargaining unit consists of full time fire fighters, inspectors and emergency medical personnel. There are approximately 12 members of the bargaining unit.

The Hoover Company Building is located directly across the street from the North Canton City Hall Building. At one time, the Hoover Company employed as many as 3,000 employees. During that time, the City received not only withholding tax on employee wages but the City also received net profit tax on the net income of the Hoover Company.

On September 27, 2007, the Hoover plant started to close. In June of 2008, the facility shut down and closed its doors[1].

Income taxes that peaked in the year 2000 for $7 million are down to an approximate $5.45 million in the year 2010. See Company's submission, Tab 5, and chart No. 3. The City's income tax fund balances have dropped dramatically since 2000. *Id.*, *See* Chart No. 5 attached hereto.

The Union has answered that the Hoover has already projected 478 new jobs in the past two years and more development is on the horizon. The Union states that the following employers are currently operating the old Hoover Building:

1. Meyers Controlled Power – 104 employees
2. TruBridge Total Care – 100 employees
3. Controlled Fluid Power – 10 employees
4. Mr. Watch.com – 8 employees
5. Securium – 6 employees

[1] It is not known if the shutdown was due to a general lack of demand for the Hoover products, or if the Company moved because of the cost of production which would include tax dollars.

6. The Schroer Group which consists of Altercare, Absolute, Avalon Food Service, Renaissance – 250 employees

We do not know if the taxes generated by the above companies will be equal to the tax revenue generated when the Hoover Company was in full production at the North Canton location. Both parties have speculated about the tax dollars generated by the above companies, but at this writing, it is an unknown statistic.

The Union further states that the total 2010 budget includes items such $35,000 to remodel the entrance doors at City Hall, $77,000 budgeted for a new lawn mower, $36,000 for computers and software upgrades. Please see page 7 of Union's Post Hearing Brief. The Union blames the City for unnecessary expenditures as the cause of the City's economic distress.

Fact finding reports from recent neutrals were introduced into evidence. In his June 19, 2009 Fact Finding Report, Michael King found that North Canton is a city in financial distress and must make reasonable efforts to curb expenses. In December of 2006, Fact Finder John T. Meredith stated that the slowing down of the Hoover facility has caused the reserve funds to decline rapidly.

It is clear that the revenue of tax dollars has plummeted in the past few years. The loss of the Hoover plant is a significant factor of the loss of revenue. This is not the first major employer in Ohio to shut down.

One of the main issues, if not the main issue, is overtime for the bargaining unit members. The gross wages for 2009 are listed below. (The names of the personnel are not disclosed here):

GROSS WAGES FOR 2009

$68,305.42
$76,260.85
$100,614.60
$64,449.82
$81,623.79
$95,469.54
$80,067.42
$97,551.21
$63,345.96

During the hearing, the finance director testified that the average yearly wage is $81,000.00 per year. The base wage for captains is $58,000.00 and the average wage for the rest is $48,000.00 for a year.

$81,000.00
-$58,000.00
$23,000.00
Overtime per captain (28% of captains' wages appears to be overtime).

$81,000.00
-$48,000.00
$33,000.00
Overtime pay for the rest of the employees (40% of their wage appears to be overtime).

The total amount of overtime wages are almost 30% to 40% of all the wages paid. Overtime wages are, at least, time and a half of the regular wage rate. Therefore, overtime is a serious expense to the taxpayers of the city.

In addition to the wages, the City provides a pension pick up. Evidence was introduced that the City pays the pension costs of each employee. The pension cost of each employee is 14% of each of the workers' wages. There is one exception in this bargaining unit. In that one exception, the City pays 24% of the pay for one of the employees and that 24% is for that employee's pension. In the City's Exhibit, Tab 7 is a newspaper article from the Associated

Press regarding state pensions and pension plans. *See,* Exhibit 1, attached hereto. A copy of that article is attached hereto.

In addition to the wages, overtime wages and pension contributions, the City provides health insurance benefits. The representative for the City estimated the yearly cost of the City for health insurance benefits is $14,000.00 to $15,000.00 per employee per year.

Each employee (Bargaining Unit member) has a compensation package as follows:

Wages
Overtime Wages
Pension Pickup (Approximately 14% of wages)
+Health insurance (Approximately $14,000.00-$15,000.00 per year)
Total Compensation

If the City cannot control costs with this unit, the City's representative stated privatizing the service is an alternative.

In the private sector, if an ambulance company provides the same services and a lower rate, the consumer of that service will choose the less expensive ambulance company. In the private sector, "competition" controls the price to the consumer. "Competition" controls the ancient law of supply and demand.

If, however, competition is removed from consideration, those selective few providing the service can usually charge a much higher rate for the service they provide. If the demand is high, and if the supply of the service is limited because competition is removed, the cost of service will increase.

No witnesses appeared and no affidavits were submitted by the City that any councilperson or anyone from the administration is asking to privatize this department. This fact finder has no evidence that anyone on council or in the administration has taken any action or has made any statements that this department should be "privatized."

The City's position is that the City is in financial distress and "overtime costs" with this bargaining unit is a significant cost to the taxpayers. The City states that overtime costs would significantly be reduced if the City was permitted to freely use part timers to reduce the use of overtime with full-time employees.

The Union states that the services, provided by this unit, are very important to the citizens. The Union argues that the City is using scare tactics regarding "gloom and doom". The Union states the "threats" of privatization are empty threats because services by private contractors would be unacceptable by City council, the taxpayers and the citizens.

Both parties have suggested that there should be a change in the way that overtime is given to the employees. The Union has proposed language for a melded list. The melded list is attached to Union's post-hearing brief, a copy of which is attached hereto as Exhibit 3.

The City has proposed sweeping changes in overtime payment and procedures. The proposal is listed in the City's position statement, attached hereto as Exhibit 4.

The Union argues that, historically, the full time employees, who are the members of this bargaining unit, should have the right of first refusal of the overtime before the part-timers are offered the work. As a compromise, the Union has proposed a list where part-timers would be on a list along with members of this Bargaining Unit for overtime work. Overtime would then be alternated by the full timers and the part timers. A copy of the Union's proposal, including the "melded list", is attached hereto as Exhibit 3; Union's Post Hearing Brief.

Since the full timers have had control of the payment of overtime for a significant period of time, it can be considered a past practice. It is more than a past practice. Control of the overtime has been vested with the full timers by the collective bargaining contract. "Past

practices" and "past collective bargaining agreements" are matters that our Collective Bargaining laws mandate that fact finders and conciliators must consider. *See*, ORC § 4117.14(G)(7)(a).

When considering a change to a past practice or to a prior item in the Collective Bargaining Agreement, the law mandates that the parties and neutrals examine and consider these historical factors set forth in ORC § 4117.14(G)(7)(a).

This fact finder searched for the reasons why overtime laws were enacted. The Supreme Court of the United States has spoken directly to overtime when interpreting the Fair Labor Standards Act (FLSA) enacted by Congress. The Supreme Court stated the reason for the payment of mandatory overtime rates (1 and ½ times the regular rates) was two fold: (1) to spread employment by placing financial pressure on the employers through the overtime pay requirement; and (2) to compensate the employees for the burden of a workweek in excess of the hours fixed in the act. (FLSA, 29 USC §201 et. seq.) Walling v. Helmerich and Pain, Inc., 323 U.S. 37 (1944).

The Supreme Court's interpretation of this Congressional Act was that the overtime rate was to "pressure" the employer to employ other persons so that the employer will hire more employees to do the work that would have been done on overtime by current, full time employees. Furthermore, the reason for the time and ½ rate was to compensate the employees for the *burden* of a workweek in excess of normal hours.

In this arbitration the reasons for overtime appear to be at odds with the Supreme Court's reasons for overtime.

No comparables have been introduced as to whether the regular wages of the full timers are low. No one has introduced evidence that the part-timers provide inferior service. There are no complaints or evidence that the wages for the full timers are inadequate. There is no evidence

that the "pension pick up" and the health insurance benefits are inadequate. Hiring part timers to perform overtime work of full timers appears to be in line with the interests of the City, and in the long run, with the Union.

Issue No. 1:
WAGES

Article 29, Sections 1-6

DISCUSSION

If the City's recommendation regarding overtime work is accepted, the use of part timers could drastically reduce, if not eliminate overtime. This would be a cost savings to the City of the overtime wages less the cost of the part timers. This would also lower the cost of providing the additional amounts for the pension pick up. The savings would more than make up for the increase in the base rate of 2½ - 2½ - 0 for the term of the contract.

RECOMMENDATION

The recommendation is that the base rate increase as follows:

2010 = 2½% increase

2011 = 2½% increase

2013 = 0% increase

Issue No. 2:
TERM OF COLLECTIVE BARGAINING AGREEMENT
Article 1, Section 1

DISCUSSION

The contracts have been historically three (3) years. I see no reason to change.

RECOMMENDATION

It is recommended that the term of the Collective Bargaining Agreement be three (3) years, commencing from the end of the prior agreement and three (3) consecutive years forward.

Issue No. 3:
PAID TIME OFF USED FOR THE CALCULATION OF OVERTIME PAY

Article 25, Sections 3 & 5

DISCUSSION

When a full time employee, a "forty (40) hour employee", works in excess of fifty-three (53) hours in a single work week, those hours in excess of fifty-three (53) are compensated at time and one-half of the base wage rate. Holiday hours, Vacation, Personal Leave, Funeral Leave, and Sick Leave are counted as hours worked for the calculation of overtime eligibility. The City wants to eliminate this contractual clause and replace the clause with language that no paid time off shall be counted or used in the calculation of overtime. *See,* City's position statement, attached as Exhibit 4.

The Union recognizes the problem and is willing to eliminate personal leave, funeral leave and sick leave as paid hours that would count towards the calculation of the overtime rate. The Union wants holiday hours and vacation days to still count as hours worked for overtime pay.

It its post hearing brief, the Union states that EMT overtime for 2009 was approximately $173,000.00 per year. Using the "melded list", the City's overtime would be reduced by no less than $90,000.00 per year. This fact finder has recommended that the City's position on overtime be accepted (*See,* Issue No. 4 below). This fact finder has not recommended the "melded list", the Union's position. Therefore, the savings on overtime should exceed the projection of the Union.

Items such as personal leave, funeral leave, and sick leave are usually controlled neither by the employer nor the employee. With the possible exception of the use of personal leave,

neither the employer nor the employee control leave for the above reasons. Time must be taken off during these times and both the employer and the other employees must make adjustments, immediately at times, to cover the absence of the subject employee. It is fair that the subject employee share in this "inconvenience" by not using that time to count for overtime.

Holiday time and vacation time are times that the employee has already earned. Vacation time off and holiday time off is not an "unexpected" time off. The employer, management, knows ahead of time when an employee intends to use vacation time or whether an employee is scheduled to work on a holiday. With the elimination of the "right of first refusal", scheduling is vested with the employer. The employer can minimize overtime with careful scheduling.

RECOMMENDATION

Article 25 – Overtime Pay, Sections 3 and 5. Please delete the last two (2) sentences of each section and shall replace those sentences with the following:

> Holiday hours and vacation shall count as hours worked for the calculation of overtime eligibility. No other paid time off shall be counted or used in the calculation of the overtime rate for purposes of computing overtime.

Issue No. 4:
RIGHT OF FIRST REFUSAL
Article 25, Section 6

DISCUSSION

In the prior Collective Bargaining contract, the full time employees have the right to first refusal for overtime. The overtime costs are substantial. Management must control overtime costs. There is no evidence that the part-time employees are not competent. Management should be able to freely engage part-time employees to reduce or eliminate the need for overtime.

RECOMMENDATION

It is recommended that the first paragraph of Article 25, Section 6 be replaced with the following paragraph as set forth in the position statement of the City, Exhibit 4, attached hereto:

> **<u>PROCEDURE TO FILL VACANCIES</u>: MANAGEMENT WILL FILL FULL-TIME VACANCIES WITH ANY AVAILABLE PART-TIME EMT-PARAMEDICS AND/OR PART-TIME EMT-BASICS. EACH SHIFT SHOULD HAVE AT LEAST TWO EMT-PARAMEDICS, ONE OF WHICH MUST BE A FULL-TIME EMT-PARAMEDIC. PART-TIME EMT-PARAMEDICS AND BASICS MUST HAVE SIX (6) MONTHS EXPERIENCE AS A PARAMEDIC OR BASIC AND HAVE THREE (3) MONTHS EXPERIENCE WITH THE NORTH CANTON FIRE DEPARTMENT TO BE ELIGIBLE. IF SUFFICIENT PART-TIME EMT-PARAMEDICS AND EMT-BASICS ARE NOT AVAILABLE FULL-TIME EMT-PARAMEDICS WILL BE CALLED IN BASED UPON THE BELOW LISTED PROCEDURES THROUGH SECTION 7 OF THIS ARTICLE.**

Issue No. 5:
USE OF MATERNITY LEAVE
TOWARD MAXIMUM TIME OFF PER WEEK

Article 25, Section 6.i

DISCUSSION

The City desires to include Maternity Leave as counting towards the maximum of 96 hours per week allotted for any scheduled time off. There is no evidence that this has ever been a problem or has incurred excessive costs to the City.

RECOMMENDATION

It is recommended that Article 25 – Overtime Pay – Section i shall remain the same and "Maternity Leave" shall not be included.

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EXHIBIT LIST

Exhibit No.:	Description:
1.	Associated Press Article regarding Public Pension Plans; City Exhibit, Tab 7.
2.	Union's Position Statement
3.	Union's Post-Hearing Brief
4.	City's Position Statement
5.	City's Post-Hearing Brief

CERTIFICATION

I hereby certify that on May 4, 2010 a copy of the foregoing Fact Finder's Report was sent via facsimile and/or regular U.S. mail and/or e-mail to the following: Representative for the Union, **DENNIS HAINES**, Attorney at Law, Green Haines Sgambati Co., LPA, P.O. Box 849, Suite 400, PNC Bank Building, Youngstown, Ohio 44501-0849, dhaines@green-haines.com; Representative for the Employer, **ROBERT J. TSCHOLL**, 220 Market Avenue South, Suite 1120, Canton, OH 44702, btscholl740@yahoo.com; and to **Mary E. Laurent**, Administrative Assistant, SERB Bureau of Mediation, 65 East State Street, 12th Floor, Columbus, OH 43215-4213, Mary.Laurent@serb.state.oh.us.

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HARRISBURG, Pa. – States may be forced to reduce benefits, raise taxes or slash government services to address a $1 trillion funding shortfall in public sector retirement benefits, according to a new study that warns of even more debilitating costs if immediate action isn't taken.

The Pew Center on the States released a survey Thursday of state-administered pension plans, retiree health care and other post-employment benefits in all 50 states that blamed a decade's worth of policy decisions for leaving them shortchanged.

The result for some states will be "high annual costs that come with significant unfunded liabilities, lower bond ratings, less money available for services, higher taxes and the specter of worsening problems in the future," the study said.

The cost of the trillion-dollar shortfall, which will be paid over the coming decades, is about $8,800 for each American household. The study did not include many city, county and municipal pension plans, which are thought to have similar underfunding.

"We have a significant problem now, but it's a problem that can be solved by taking relatively modest steps," said Susan K. Urahn, the center's managing director. "If they don't do anything, if they wait, eventually they will have an unmanageable crisis on their hands."

As of 2008, states had $2.4 trillion to meet $3.4 trillion in promised pension, health care and other post-retirement benefits, according to the report.

The true gap may even be wider, because the study did not account for the full impact of investment losses in late 2008, during the stock market downturn, and because many plans employ multiyear smoothing techniques to lessen the effect of a single year's losses. But more recent stock market returns could help — on Wednesday, for example, Pennsylvania's $47 billion public school pension plan reported it had earned about 12 percent on investments in the 2009 calendar year.

Pew deemed 16 states solid performers in how they fund pensions, 15 needing improvement and 19 considered to be facing serious concerns.

"Meanwhile, more and more baby boomers in state and local government are nearing retirement, and many will live longer than earlier generations — meaning that if states do not get a handle on the costs of post-employment benefits now, the problem likely will get far worse, with states facing debilitating costs," the study said.

The exploding financial burden could be a bitter pill for taxpayers, many of whom will not be collecting similar pensions or other benefits when they retire, said David Kline with the California Taxpayers' Association. About one in five private sector workers have traditional defined benefit pensions, compared with about 90 percent of public-sector employees — including some that do not get Social Security.

"Taxpayers in the future will be paying for people who worked decades before they may have even lived in the area or begun paying taxes, because the obligation for these benefits is just snowballing," Kline said.

The study graded states on how well they have managed employees' retirement benefits. Florida, Idaho, New York, North Carolina and Wisconsin began the current recession with fully funded pension systems, while eight states have left more than one-third of their pension liability unfunded.

Illinois was rated the most troubled pension system during the study period, with a 54 percent funding level and a total liability of more than $54 billion.

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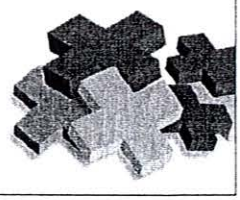

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tabbies EXHIBIT 1

In Pennsylvania, a series of decisions by the Legislature and governor have shielded taxpayers from much of the pain for the past decade, but costs of less than $1 billion a year now is projected to climb to about $6 billion annually in the coming three years.

The report said policy makers have exacerbated the problem by expanding benefits, relying on overly optimistic assumptions about investment returns and failing to sufficient fund the programs.

"Even though the actuaries tell the states what they should be doing, the states feel free to ignore that," said Olivia Mitchell, director of the Pension Research Council at the University of Pennsylvania's Wharton School. "So putting some teeth behind the requirements is really the problem."

Pew calculated a $587 billion national cost for current and future retiree health care and other nonpension retirement benefits, with only about 5 percent of that amount funded as of 2008. The cost of health care and the number of retirees are both on the rise, adding to the pressure on states.

The study found that 15 states made some legislative changes to their state-run systems last year, 12 did so in 2008 and 11 in 2007. About a third of states had formal efforts to study potential reforms under way last year.

"Pension plans work when they are allowed to work, and part of that dynamic is that sometimes adjustments have to be made," said Keith Brainard, research director with the National Association of State Retirement Administrators. "It's important not to take away decent retirement benefits for some of the few people that have them."

Pew said states should consider changes that have proven to be effective and politically viable. Among them: setting minimum contribution levels that are actuarially sound, sharing some of the investment risk with employees, cutting benefits, increasing the minimum retirement age, making employees pay more into the system and providing more robust oversight and investment rules.

Mitchell said many states have constitutional prohibitions against lowering employee pension benefits, but health care programs can more easily be altered.

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March 12, 2010

Joseph W. Gardner, Esquire
4280 Boardman-Canfield Road
Canfield, Ohio 44406

IN RE SERB Case No. 09-MED-05-0612
North Canton Professional Firefighter and
Paramedic Association, IAFF Local 3489
-and- City of North Canton

Dear Mr. Gardner:

In accordance with the SERB rules regulating fact-finding, the following information constitutes the Union's Fact-Finding Statement:

1. **Union Representative**

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Paramedic Association, IAFF Local 3489
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Fax: (330) 743-3451

City Representative

City of North Canton
Attorney Robert T. Tscholl
220 Market Avenue, South
Suite 1120
Canton, Ohio 44702
Telephone: (330) 456-7702
Fax: (330) 456-7610

2. The bargaining unit presently consists of all sworn and uniformed employees of the Fire Department excluding the Fire Chief. There are 12 employees in the bargaining unit. The breakdown of the unit is as follows:

   - 1 Firefighter/Paramedic
   - 3 Fire Inspectors
   - 8 Paramedics (3 are EMS Captains).

3. A copy of the Collective Bargaining Agreement is enclosed.

4. The Union's unresolved issue only is wages. The Union seeks a three (3) year contract with wage improvements of two and one-half percent (2.5%) each contract year. The balance of the Union contract should remain the same.

5. The parties have agreed to health care insurance as in the Police contracts retroactive to August 1, 2009 (see attached copy of agreement).

Respectfully submitted,

DENNIS HAINES
E-mail address: dhaines@green-haines.com

DH:lmq
Enclosure--As stated.

From Admin

RECEIVED
DEC 11 2009
ADMINISTRATION
NORTH CANTON

AGREEMENT

The North Canton Professional Firefighters and EMS and the City of North Canton are currently engaged in negotiations for a successor Collective Bargaining Agreement. While negotiations are pending, the City is desirous of implementing the changes in the group health insurance that will become effective on December 1, 2009 and January 1, 2010. The Union is desirous of having any wage increase, if any, that results from the current negotiations retroactive to August 1, 2009.

The Parties therefore agree that the City may immediately implement these changes to the group health insurance for Bargaining Unit Members on December 1, 2009 and January 1, 2010. The City agrees that if any wage increase is negotiated or awarded by a SERB neutral, it will be retroactive to August 1, 2009.

City:	Union:
Earle E. Wise Jr	John Kastor
Earle E. Wise, Jr.	John Kastor
12-11-2009	12/11/09
Date	Date

Certificate of Service

I hereby certify that a copy of the foregoing Fact-Finding Statement has been mailed by regular U.S. mail, postage prepaid, to Robert J. Tscholl, 220 Market Avenue, South, Suite 1120, Canton, Ohio 44702, Attorney for the City of North Canton, on this 12th day of March, 2010. The Fact-Finding Statement has also been filed with the State Employment Relations Board.

By: Dennis Haines

DENNIS HAINES (#0014406)
E-mail address: dhaines@green-haines.com

IN THE MATTER OF FACT-FINDING
BEFORE FACTFINDER JOSEPH W. GARDNER

NORTH CANTON PROFESSIONAL FIREFIGHTER AND PARAMEDIC ASSOCIATION, IAFF LOCAL 3489	)	SERB CASE NO. 09-MED-05-0612
Firefighters	)	
- and -	)	
CITY OF NORTH CANTON	)	
City	)	

POST HEARING BRIEF OF IAFF LOCAL 3489

DENNIS HAINES, ESQ.
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EXHIBIT
3

BACKGROUND

IAFF Local 3489 (called "Firefighters") is the bargaining unit for all sworn and uniformed employees of the Fire Department of the City of North Canton (called "City") except for the Fire Chief. The unit is comprised of:

1 Firefighter/Paramedic,

3 Fire Inspectors, and

8 Paramedics (3 are EMS Captains).

The negotiations for a new Collective Bargaining Agreement (called "CBA") between the parties ensued in early 2009. The parties' prior CBA had an effective date of August 1, 2006 through July 31, 2009. The previous CBA was submitted to the Factfinder with the parties' Factfinding Statements.

Prior to factfinding, the parties were able to reach agreement on health care insurance and wage increase retroactivity. A copy of the agreement was provided in the Firefighters' Factfinding Statement. By the agreement, the Firefighters accepted the City's request that it be bound by the healthcare insurance provisions as in the police contract and the City agreed that any negotiated or awarded wage increase would be retroactive to August 1, 2009.

Also, the parties have agreed that all the terms and conditions of their previous CBA remain the same in the new CBA except as changed or modified by their current negotiations or the State Employment Relations Board neutral's awards.

At the onset of factfinding, the parties agreed that the issues to be decided by the factfinder were the following:

1. Wages and the duration of the CBA.
2. Should Article 25 - Overtime Pay, Sections 3 and 5 be modified to provide, as submitted by the City that: **No paid time off shall be counted or used in the calculation of the overtime rate for purposes of computing overtime.**
3. Should Article 25 - Overtime Pay Section 6 be modified to provide as submitted by the City that:

   PROCEDURE TO FILL VACANCIES: **Management will fill full-time vacancies with any available part-time EMT-Paramedics and/or part-time EMT-Basics. Each shift should have at least two EMT-Paramedics, one of which must be a full-time EMT-Paramedic. Part-time EMT-Paramedics and Basics must have six (6) months experience as a Paramedic or Basic and have three (3) months experience with the North Canton Fire Department to be eligible. If sufficient part-time EMT-Paramedics and EMT-Basics are not available full-time EMT-Paramedics will be called in based upon the below listed procedures through Section 7 of this article.**

4. Should Article 25 - Overtime Section 6 be modified to include Maternity Leave?

During factfinding the Firefighters, with the approval of the Factfinder, amended their wage proposal as follows:

First Year	Second Year	Third Year
2½%	2½%	0%.

Also, the Firefighters, with the approval of the Factfinder, withdrew their position that Article 25, Section 6, regarding the overtime call-out procedure, remain the same and offered proposed language for a melded overtime callout list (see copy attached) in order to provide significant savings for the City.

During the factfinding hearing and mediation between the parties, the matters for the factfinder's consideration were fully advocated.

FACTFINDING POSITION

Duration of CBA

The Firefighters seek a three (3) year CBA. The City wants a two (2) year CBA. Yet, the parties have historically always negotiated three year agreements; and, indeed, the State Employment Relations Act provides for three year agreements. Three year agreements are the standard for agreement duration throughout the State of Ohio and countless factfinders have expressed the value of three year CBAs as lending to greater stability in the relationship between the parties.

The City argued at hearing that it wanted a two year CBA to help it achieve some uniform pattern in its bargaining with all its unionized employees. The Firefighters,

however, pointed out that the differences between the various units and the duties they perform do not require a uniform duration of agreement for all the unions with which the City negotiates. And at hearing, the City which negotiates six union contracts acknowledged that only one had previously contained a two-year agreement duration.

If the Factfinder were to decide that the CBA would be only for a two year duration, the parties would be back in negotiations by the end of this year. The time consumed in negotiations and the attendant costs surely do not justify any change in the established pattern of three year CBAs with the Firefighters.

The Factfinder should decide that the term of the parties' CBA should be for three years, August 1, 2009 through July 31, 2012.

Wage Increase

The Firefighters have proposed the following wage improvements: 2½% in the first year, an additional 2½% in the second year of the CBA and 0% in the third year of the CBA. The City has proposed 2½% increases for the first and second contract years. The City asserted that the increases should only be paid if it got its way regarding its demand to change the overtime provisions of the CBA.

Prior to fact-finding, the Firefighters had already agreed to change their hospitalization coverage and out-of-pocket contributions per the City's demand. As was discussed in mediation, the hospitalization change was what the City won in factfinding against the police union. For the 2009 agreement year, the police achieved a 2½% increase. The Firefighters contend that they are entitled to the same consideration. It was observed in mediation that the first year wage was essentially a

wash given the dramatic increase in hospitalization out-of-pocket costs absorbed by the Firefighters. And, based on the parties' agreement, the wage increase is retroactive to August 1, 2009.

The third year of the CBA, if a third year is granted by the Factfinder, will not impose any undue financial hardship because the Firefighters are willing to take a zero increase in the third contract year. The Firefighters' willingness to forego any future battle over wages in the third year is based on the expressed concerns of the City of possibly reduced tax collections for 2011 and whether or not the community will support a tax levy. While the Firefighters do not share all the doom and gloom heralded by the City in factfinding, they are willing to forego any third year improvement in wages to see what awaits the City's financial future in 2011.

As for the second year of the CBA, the City has proposed a 2½% increase, but tied the increase to the Firefighters' retreat on its present contractual overtime. Significantly, the Firefighters have proposed a change in overtime which will save the City no less that $90,000 per year. That savings will be more fully discussed below in our position regarding the overtime provision. Further, the City acknowledged that entering into 2010, it had a $600,000 carryover. Furthermore, City officials testified that the City was not replacing certain City positions that are presently vacant which will save even more for the 2010 calendar year.

The City does not have the same revenue streams it had when the Hoover Company was viable. But, there is light at the end of the tunnel. The Hoover facility project has already produced 478 new jobs in the past two (2) years and more development is on the horizon.

Businesses Currently Occupying the Old Hoover Building

1. Meyers Controlled Power - 104 employees,
2. TruBridge Total Care - 100 employees,
3. Controlled Fluid Power - 10 employees,
4. Mr. Watch.com - 8 employees,
5. Securium - 6 employees, and
6. The Schroer Group which consists of Altercare, Absolute, Avalon Food Service, Renaissance - 250 employees.

Total employees for these businesses - 478.

Interestingly, the current 2010 budget includes items such as $35,000 to remodel the entrance doors at the rear of City Hall; $77,000 budgeted for a new lawn mower; $36,500 for computers and software upgrades; $10,000 for miscellaneous expenditures; $565,889 for two (2) new vehicles; and two (2) other new mowers and $10,000 to paint and repair the gazebo roof at Price Park. Clearly, there are significant discretionary funds available for 2010. The City's expressed concern was its projected exhaustion of all its rainy day funds in 2011, which is why the Firefighters made no demand for an increase in the third year of the CBA. Indeed, the City awarded the police units 2½% increases for 2010. The Firefighters deserve no less.

Accordingly, the Factfinder should decide in the Firefighters' favor regarding wages as follows:

First Year	Second Year	Third Year
2½%	2½%	0%.

Changes to Overtime Pay

The City seeks to change certain overtime provisions in the parties' present CBA. The City, having achieved its desired change to hospitalization also challenges as, too expensive, the Firefighters' overtime. The Firefighters, who have enjoyed the benefits of the overtime provisions for years, entered into mediation with the purpose of, in good faith, reducing a significant portion of the City's overtime cost. Yet, the City's demands are too burdensome recognizing the financial hit the Firefighters have already agreed to regarding the change in hospitalization.

The City wants Article 25, Sections 3 and 5 to be changed to eliminate certain paid time off for calculating the Firefighters' overtime rate. Specifically, the City wants holiday hours, vacation days, personal leave, funeral leave and sick leave out of the overtime calculations because these are paid time off days. The Firefighters have proposed a compromise that would eliminate personal leave, funeral leave and sick leave as paid hours that would count towards the calculation of the overtime rate. The Firefighters' compromise concession is important in seeking to reach the City's demand for change. This compromise change will noticeably reduce the City's overtime costs.

The City's most compelling demand for change is its desire to eliminate the present Article 25, Section 6 which would give the City the absolute right to use part-timers for all full-time vacancies. If the City's request is granted, it would be a dramatic change to the overtime benefit which the Firefighters have negotiated for and enjoyed for years. Still, the Firefighters, in a good faith effort to reach out to the City, have proposed a procedure to fill vacancies based on the creation of a Melded List, a copy of the proposal which was offered into evidence at the Factfinding hearing, is attached.

The proposal will open the door for the use of part-time paramedics in the department and lead to significant savings. At factfinding, the evidence showed that EMT overtime for this past year was approximately $173,000. If the Firefighters' Melded List is adopted, it will reduce the City's overtime cost no less than $90,000 a year. That savings was never disputed as a fair estimate by the City. The City simply wants more. But, the City's call for more is unwarranted.

The City's police overtime in 2009 was $137,000. The EMTs' (Firefighters) overtime was $173,000, $36,000 more in overtime than police for 2009. If the Melded List proposed by the Firefighters is adopted and with the expectation that overtime call-outs will run the same in the second year of the Firefighters' CBA, then Firefighters' overtime would be reduced to approximately $83,000 (based on the $90,000 savings) or $54,000 less than police overtime. In fact, the proposed reduction by the Firefighters through the Melded List will on average reduce the EMTs' pay by $15,000 each year. The Firefighters' proposed compromise is of compelling support for the City's request for aid in reducing overtime for the future.

Because of the compromises proposed by the Firefighters which will clearly reduce the City's overtime costs, the Factfinder should:

1. Amend Sections 3 and 5 of Article 25 by deleting personal leave, funeral leave and sick leave out of the Firefighters' calculations of the overtime rate for purposes of computing overtime; and,
2. Adopt the Melded List proposal of the Firefighters in Article 25, Section 6 as the procedure to fill vacancies.

Adding Maternity Leave to Section 6
Regarding Maximum Scheduled Time Off

To add Maternity Leave to the Maximum Scheduled Time Off provision will further restrict scheduled time off for the Firefighters. As it is, no more than two (2) Firefighters can be scheduled time off per shift. Frankly, there was no evidence offered by the City at either mediation or factfinding of any urgent need by the City to change the current contract. Nothing discussed by the parties suggested any real burden on the City to maintain the current contract language. And, the City did not prove any need to change the current CBA language.

Accordingly, the Factfinder should decide to keep the current provisions in Article 25, Section 6 as is and deny the City's request for change.

Respectfully submitted,

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Attorney for IAFF Local 3489

March 23, 2010

Proposed Language for Melded List
Article 25 Overtime Pay
Section 6 – Overtime Procedure

The purpose of this procedure is to establish a policy to fill vacancies of scheduled duty hours using a melded list consisting of all full time paramedics, paramedic captains and part time paramedics.

A part time paramedic will be eligible to be included in the list when he/she has 6 months experience as a paramedic and has 3 months experience with the North Canton Fire/EMS Department.

A list will be established at the beginning of each year that will include all available paramedics, full or part time. Initially the order of the list will be full time paramedics in order of seniority and then part time paramedics, also in order of seniority. The actual procedure to be used will remain as currently reflected in the existing CBA. The call rotation will proceed all the way through the list and continue to do so as each opening occurs.

All the remaining sections of the existing section 25 Overtime Procedure pertaining to how shifts are filled will remain as is.

ALSO REFERRED TO AS COMBINED LIST DURING FACTFINDING.

YAHOO! MAIL Classic

North Canton Firefighters IAFF #3489 and City of North Canton Thursday, April 1, 2010 3:47 PM

From: "Loretta Quinn" <lquinn@green-haines.com>
To: "'Joseph W. Gardner'" <jwg1118@sbcglobal.net>
1 File (340KB)

ncff post hr

Dear Mr. Gardner:

I am forwarding the Post Hearing Brief of the North Canton Firefighters, IAFF #3489 as requested by you at the Factfinding hearing with the City of North Canton.

Our understanding is that you will exchange the briefs when you have received the briefs of both parties.

Would you please acknoweldge receipt of our brief at your earliest convenience.

Thank you for your consideration.

Dennis Haines

ROBERT J. TSCHOLL

Attorney-at-Law
220 Market Avenue South, Suite 1120
Canton, OH 44702
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Facsimile (330)456-7610
E-mail – btscholl740@yahoo.com

March 17, 2010

Joseph W. Gardner, Esq.
4280 Boardman-Canfield Road
Canfield, OH 44406

Re: SERB Case No. 09-MED-05-0612
North Canton Professional Firefighter and Paramedic Association, IAFF Local 3489
and City of North Canton

Dear Mr. Gardner,

Please be advised that the Employer submits the following written statement in the above-captioned case pursuant to OAC 4117-9-05(F) 1-4:

1. The principle representative for the City of North Canton is the undersigned.
2. The bargaining unit consists of full-time firefighters, inspectors and emergency medical personnel. There are approximately twelve members of the bargaining unit.
3. A copy of the current Collective Bargaining Unit has been provided by the Union.
4. The unresolved issues and summary of the City's positions are stated below.

a. ARTICLE 25 – OVERTIME PAY

The City's proposal for the specific contract language is included below. Please note that the language that the City seeks to delete has a line through that language. The new language is in bold.

Section 1. Pursuant to 29 U.S.C. §207 (g)(2), employees perform two or more different kinds of work, i.e., Paramedic, Firefighter, Fire Inspector, and Emergency Medical Technician. Pursuant to this Agreement there exists two (2) different rates of pay, one rate of pay for Fire Inspector and one rate of pay for Paramedic, Firefighter and Emergency Medical Technician.

Section 2. When an employee is performing the Fire Inspector job duties, he/she shall be entitled to time and one-half at the applicable rate for a Fire Inspector for all work performed as a fire inspector over forty (40) hours in any week.

Section 3. When a forty (40) hour employee (Fire Inspector) works in a single work week, on an overtime basis, as a Paramedic, Emergency Medical Technician or Firefighter, he/she shall be paid at his/her forty hour rate of pay for all hours up to fifty-three (53) hours in a single work week. Aggregate hours worked in excess of fifty-three (53) hours in a single workweek shall be compensated at time and one-half of the employee's base forty (40) hour rate. ~~Holiday hours, Vacation, Personal Leave, Funeral Leave and Sick Leave shall count as hours worked for the calculation of overtime eligibility.~~ **NO PAID TIME OFF SHALL BE COUNTED OR USED IN THE CALCULATION OF THE OVERTIME RATE FOR PURPOSES OF COMPUTING OVERTIME.**

Section 4. To the extent permitted by law, the parties agree to utilize the exemption permitted for public sector fire department employees commonly known as the Section 207k exemption under the Fair Labor Standards Act.

Section 5. For the purposes of computing overtime pay, fifty-three (53) hour employees, shall be paid at their overtime rate for hours worked in excess of such employees usual work schedule as set forth in Article 6, Section 1 and Article 6, Section 3a. ~~Holiday hours, with the exception of the eighty-eight (88) hours paid under Article 10, Section 1, Vacation, Personal Leave, Funeral Leave and Sick Leave shall be counted as time, hours and days worked.~~ **NO PAID TIME OFF SHALL BE COUNTED OR USED IN THE CALCULATION OF THE OVERTIME RATE FOR PURPOSES OF COMPUTING OVERTIME.**

Section 6. ~~Overtime Procedure: The purpose of this procedure is to establish a policy to fill vacancies of scheduled duty hours using seniority of full-time Paramedics or Firefighter/Paramedics ('Medic'). Eligible part-time paramedics will also be included. A part-time paramedic will be eligible when he/she has 6 months experience as a paramedic and has 3 months experience with the North Canton Fire Department.~~

PROCEDURE TO FILL VACANCIES: MANAGEMENT WILL FILL FULL-TIME VACANCIES WITH ANY AVAILABLE PART-TIME EMT-PARAMEDICS AND/OR PART-TIME EMT-BASICS. EACH SHIFT SHOULD HAVE AT LEAST TWO EMT-PARAMEDICS, ONE OF WHICH MUST BE A FULL-TIME EMT-PARAMEDIC. PART-TIME EMT-PARAMEDICS AND BASICS MUST HAVE SIX (6) MONTHS EXPERIENCE AS A PARAMEDIC OR BASIC AND HAVE THREE (3) MONTHS EXPERIENCE WITH THE NORTH CANTON FIRE DEPARTMENT TO BE ELIGIBLE. IF SUFFICIENT PART-TIME EMT-PARAMEDICS AND EMT-BASICS ARE NOT AVAILABLE FULL-TIME

EMT-PARAMEDICS WILL BE CALLED IN BASED UPON THE BELOW LISTED PROCEDURES THROUGH SECTION 7 OF THIS ARTICLE.

Overtime shifts cannot result in Full-time Medics working more than 48 consecutive hours of on-duty time. A 12-hour minimum time off is required before returning to work. No full time personnel shall be charged more than 24 hours on any given date.

Vacancies will be filled from the Over-Time Logbook (OT Log) beginning a maximum of three weeks from the time needed. Generally, these shifts will be offered in 12-hour increments but may vary due to sudden illness, injury, personal time or other unforeseen situations resulting in openings of indeterminate duration. A running total of hours offered to each person will be maintained in the OT Log to establish the order that calls are made during the year. Contact will be made by pager and a primary phone number (regular or cellular). The phone numbers will be kept in the OT Log Book.

There will be no charge to the OT Log if you are offered time during your vacation, personal day or EDO and refuse it. You may not accept time on your own individual vacation or personal day but you may choose to work shifts before or after. You are allowed to work hours on your EDO. Any hours actually worked during this time will be added to the log.

Section 6a. Fill Procedure for 8 days or more

Contact will be made according to the established list to fill this opening. Each Medic will be contacted by phone and pager. The time offered will be automatically added to the OT Log Book. You have four (4) hours to respond. After four (4) hours, the time will be offered to the next person in line. If the opening cannot be filled by this method it will be offered to part-time paramedics in order of seniority. If the opening cannot be filled using the above methods, the mandatory shift assignment procedure will be used.

Section 6b. Fill Procedure for more than 24 hours and less than 8 days

Contact will be made according to the established list to fill this opening. Each Medic will be called by phone and pager. The time offered will automatically be added to your OT Log. You have two (2) hours to respond. After two (2) hours, the time will be offered to the next person in line. If the opening cannot be filled by this method it will be offered to part-time paramedics in order of seniority. If the opening cannot be filled using the above methods, the mandatory shift assignment procedure will be used.

Section 6c. Fill Procedure for 24 hours or less notice

Contact will be made according to the established list to fill this opening. The AM shift will be filled first. Each Medic will be called by phone and if there is no answer, the next person in line will be contacted immediately. You may accept or refuse the hours offered. If you refuse the hours, they will not be added to your OT Log. Personnel who accept the shift will have a maximum of two (2) hours to respond to work. If the opening cannot be filled by any of the above methods, the mandatory shift assignment procedure will be used.

Section 6d. Fill Procedure for the Primary Ambulance

This procedure shall only be used to fill one (1) person on the Primary Ambulance when no part-time personnel are scheduled. The pager will be used exclusively for this section as the means of communication and fill will be on a first-come first-serve basis, except list item #4. After each page you will have thirty (30) minutes to respond. The earliest start time for this procedure will be at 1700 hours on the eve of the affected shift. All offered time must be taken in its entirety.

The procedure is as follows:
Any Part-time EMT – P, EMT – I or EMT – B will be offered the time
Full-time staff will be offered overtime and must be at the station
Part-time staff will be offered paid standby time
Full-time Mandatory procedures will be followed

Section 6e. Mandatory Shift assignment procedure

A mandatory shift assignment procedure will be used if a vacancy in the regular full-time paramedic shift schedule cannot be filled using the procedures listed above.

A separate list will be maintained in the OT Log book for mandatory shift assignment. The list will reverse the order of seniority for full-time staff and will not include part-time paramedics. Once a mandatory shift has been filled, any full-time Medic or eligible part-time paramedic may offer to assist in filling any part or all of the time. If the shift is split between Medics, the hours actually worked by an individual will be credited against the full-time employee's mandatory shift log and their regular accumulated time sheet. This entry will not reflect a duplicate charge of hours for the mandatory shift and the initial refusal. In the case of an eligible part-time paramedic, the hours will be added to their regular accumulated time sheet.

Section 6f. Mandatory Shift with more than 3 days notice

Mandatory shifts occurring with more than 3 days notice will be assigned to the Medic with the lowest seniority and number of hours in the log. Notification will be by phone and pager.

Section 6g. Mandatory Shift with less than 3 days notice

The Medic with the lowest seniority and total hours in the mandatory log who can be contacted directly by phone or in person due to the limited time frame will be assigned the shift. This may not be the Medic with the lowest accumulated hours in the mandatory log.

Section 6h. Exclusion from Mandatory Shift assignments

Full-time Medics who are on vacation, personal days, EDO and sick leave cannot be assigned mandatory shifts occurring during their time off. Trades extending vacation, personal days and an EDO that provide continuous time-off will also be included in this exclusion. This time starts at the conclusion of the last shift day before time-off begins and continues until the first day back to work.

Section 6i. Maximum scheduled time off

There will be a maximum of 96 hours per week allotted for any scheduled time off. This includes **MATERNITY LEAVE,** vacation, personal time and EDO's. No more than two personnel will be offered scheduled time off per shift.

Section 6j. Calling personnel while on Sick Leave

You may be called while you are on sick leave and offered time for shifts that will occur after your return to work date. The procedures and time frames listed above will determine whether the hours are added to the OT Log.

Section 6k. Calling personnel while off on Vacation or Personal Time

The standard filling of shift process will be followed to fill openings on the full time schedule, and the same time to respond limits shall be used. You will be charged accordingly in the OT log if you do not respond, UNLESS you leave a note in the book informing the person responsible for filling the shift other directives that you may have while you are out of town.

Section 7. When a vacancy occurs that involves on-duty full time, fifty-three (53) hour employees, of more than one (1) hour, but less than four (4) during a regular business day (Monday through Friday from 7:00 am to 5:00 pm, not including holidays), the Chief of the department may assign an on-duty (40) hour

employee to that time period. The assigned employee must carry the same certifications as the employee being replaced. Such time is to be considered as part of the normal 40-hour work week for the Firefighter/EMT/Inspector and not part of the time worked toward the 53-hour week of a paramedic.

RATIONALE

The rationale for the changes, include but are not limited to the fact that the City has established a pattern with its patrol officers, lieutenants and dispatchers. In all of those units the City has eliminated paid time-off counting towards the calculation of the rate for purposes of computing overtime.

The City has also eliminated the right of first refusal. This means that the City is free to use part-timers as opposed to full-timers, to fill vacancies. This would result in a cost savings to the City because when a full-timer fills a vacancy, often it is done at overtime rates. By having the ability to use part-timers both basics and medics to fill vacancies, the City can fill those vacancies at straight time rate. The straight time rate for part-timers is lower than the straight time rate for a full-timer.

The funding for the paramedic unit is by way of a levy, billing for the services and payment out of the general fund.

The City is facing a very uncertain economic future as a result of the loss of the Hoover Company.

Included as part of the City's rationale are the recent factfinding recommendations involving the OPBA (Patrolmen) issued by Christopher Miles, the report involving the Dispatchers issued by Nels Nelson and the report involving the Service and Clerical Workers issued by Michael King. All these reports indicate that the City is facing a very difficult and uncertain financial future.

If the City is unable to achieve savings through this procedure whereby the general fund is not required to subsidize this operation, the City will have to consider alternatives including privatization of the EMS service to the citizens of the City of North Canton.

b. WAGES

Assuming that the City achieves the savings through the changes in Article 25 as indicated above, the City is willing to offer the pattern to members of this bargaining unit established in the patrol and dispatch units, which would result in a

2 ½ % increase effective August 1, 2009 and a 2 ½ % increase effective August 1, 2010.

Respectfully Submitted,

Robert J. Tscholl

RJT:sgw

Enclosures

Cc: Dennis Haines w/ Enclosures

IN THE MATTER BETWEEN:

City of North Canton	::	Case No. 09-MED-05-0612
	::	
and	::	Fact Finder Joseph Gardner
	::	
International Association of Firefighters	::	
	::	
	::	

POST-HEARING BRIEF OF THE CITY OF NORTH CANTON

I. Background Information

On March 23, 2010 a factfinding hearing was conducted pursuant to RC4117.14 in the above-captioned case.

At the conclusion of the factfinding, the City of North Canton requested that it be permitted to submit a post-hearing brief. The Parties agreed that the post-hearing briefs would be submitted on or before April 23, 2010. Mr. Gardiner, the SERB-appointed Fact Finder, would exchange the briefs between the Parties upon receipt.

The City of North Canton's post-hearing brief is being submitted pursuant to this arrangement.

II. Position of the City of North Canton

The City of North Canton employs approximately twelve EMTs and firefighters, who are covered by the Collective Bargaining Agreement at issue in this matter.

The City of North Canton lost its major employer, the Hoover Company within the last two years. As a result of the loss of this major employer, the City has suffered a serious diminution in the various taxes that it was able to collect from the operation of this long-term major employer. Such loss of tax revenue has resulted in a severe financial setback for the City in its general fund. The general fund provides most of the funding for the employees in the bargaining unit. **This is undisputed testimony.**

The City of North Canton also participated in contract negotiations for its patrolmen, ranking officers, dispatchers, service workers and finance workers prior to negotiations with this EMT and fire unit.

For the units that were able to take contract issues at impasse to conciliation, a pattern was set that resulted in the following changes at issue at this hearing:

1. Paid time off does not count towards hours worked when determining overtime.
2. Elimination of the right of first refusal, which resulted in the City being able to utilize part-time employees at a substantially lower rate than the overtime rate for a regular full-time bargaining unit member.
3. Wage increases in 2009 and 2010 of 2 ½ %.

The previous neutrals determined that these wage increases would be funded by the contract changes in the overtime determination and elimination of the right of first refusal, along with the insurance changes that the City and the Unions have accepted.

"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." (see Christopher Miles Recommendation page 4, City Exhibit 4)

Mr. Nelson was even more emphatic.

"The Fact Finder recommends that the city's demand be adopted. The city is facing a difficult financial situation yet it is offering significant wage increases based on the recommendations of Miles. He made it quite clear that his recommended wage increases depended on savings in other areas, including reducing overtime costs by changing the way overtime is computed. Since the Fact Finder will recommend the wage increases granted to the patrolmen, he must recommend the rest of the pattern-setting settlement." (see Nels Nelson Analysis page 4, City Exhibit 4)

and

"The Fact Finder must recommend the city's demand. As indicated above, the city's proposed wage increase <u>is predicated on savings in other areas, including overtime</u> (emphasis added). Since the Fact Finder will recommend that the dispatchers be granted the same wage increase as the patrolmen, he must also recommend that they make the same concessions with respect to overtime." (see Nels Nelson Analysis, page 5, City Exhibit 4)

The City offered this same deal to bargaining unit members in this Union. The Union rejected the City's offer. It is looking for a better deal than the pattern set by the other conciliation units.

The units in the City of North Canton that were not able to take their contract disputes to conciliation received substantially less than the units that were able to take their contract disputes to conciliation.

It is the City's position that the pattern for this conciliation unit was set by

the neutrals' decision with the policemen, the lieutenants and the dispatchers. The City has included as evidence in this hearing the factfinding decisions by Christopher E. Niles and Nels Nelson.[1] These are both experienced SERB neutrals, who both found the City's financial condition to be problematic,

> "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..." (see Christopher E. Miles Fact Finder recommendation page 4, City Exhibit 4)

The statutory criteria requires that the internal comparables be considered when making a factfinding recommendation,

> "The Fact Finder believes that the pattern established by the patrolmen and lieutenants should be extended to the dispatchers. The pattern includes the changes the City sought with respect to the calculation of overtime and the right of first refusal, which the Fact Finder has recommended above, and the proposed wage increases in Article 27, Section 27.01." (see Nels Nelson Fact Finder Analysis page 6, City Exhibit 4)

This unit somehow believes that they have an entitlement to work overtime and that their overtime determination should not be adjusted as was done with other safety force units in the City of North Canton. There is absolutely no rational, logical reason that has any legal or statutory basis to consider the Union's position.

If the two above-quoted neutrals are not enough to establish the dire circumstances that the City of North Canton currently finds itself in regarding its ability to fund wages and benefits for its employees, a third neutral, Michael King (City Exhibit 4) found the following,

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[1] The lieutenants settled without going to factfinding.

> "I find that North Canton is a city in financial distress, and must make reasonable efforts to curb expenses..." (see Michael King Finding and Recommendation page 5)
>
> and
>
> "I find that North Canton faces short term and intermediate term financial constraints which necessitate some spending reduction..." (see Michael King Finding and Recommendation page 7)

All of the neutrals, who have reviewed the extensive evidence provided to them by the finance director, have concluded that the City is in financial distress. The City has provided the same financial information in all hearings and the finance director, Alex Zumbar, has testified to the City's financial position in each and every hearing under RC4117.14 and provided the same financial information to these neutrals. (see City Exhibits 5 & 6)

In addition, these public sector employees have pensions with multi-million dollar actuarial values funded by taxpayers, that they are able to achieve after twenty-five or thirty years. These multi-million dollar actuarial value pensions are not available to any private sector employee and the disparity between the benefits in the public sector and private sector is unconscionable. Private sector EMTs earn between $10.00 and $17.00 per hour with no pensions, only a 401K plan and significantly less other fringe benefits.

The average wage for employees in this unit in calendar year 2009 was $83,042.00. This average wage does not count their Cadillac health plan or the multi-million dollar pension plan. One employee earned $100,614.00 in calendar year 2009. In addition to her gross wage, the North Canton taxpayers

contributed over $25,000.00 to her pension plan. It is no wonder that the actuarial value of these pension plan for these employees,
many of whom are able to retire in their late 40's or early 50's, is in the multi-million dollar range.

The Union objects to the impact on overtime if in fact the City's position is recommended by the neutral. The Union's argument is that they have a right to this overtime and the ability to earn this overtime should not be diminished by this neutral. They have no right or entitlement to overtime!!

The City Counsel did not establish this emergency unit for the purpose of enabling these public sector employees to earn tens of thousands of dollars in overtime a year. The purpose of providing this service to the citizens of North Canton is to have an emergency medical operation available to assist citizens in need and not to provide overtime.

The City has a fiduciary duty to the taxpayers to run an effective and efficient organization. Providing hundreds of thousands of dollars in overtime to this unit is not fulfilling the City's obligation to run an effective and efficient organization. The City has a further obligation to provide the service at straight time rates when there are qualified employees able to work at straight time as opposed to overtime.

The City has not minced any words in advising this unit that if the City does not achieve cost savings in this EMT operation, that the City could opt to

eliminate the unit and let the private sector ambulance service take over these these emergency services in the City of North Canton. The general fund cannot continue to support these wages and benefits without severely affecting other City general fund operations.

The City is not required to have an emergency and medical transport services by law.

Conclusion

After reviewing the evidence presented at the factfinding hearing and the statutory criteria, it is requested that the Fact Finder recommend the pattern settlement achieved in the previous conciliation units.

Respectfully Submitted,

Robert J. Tscholl

RJT:sgw

PROOF OF SERVICE

I certify that a copy of this written statement has been sent via e-mail and regular U.S. Mail to Joseph Gardner, Esq., 4280 Boardman-Canfield Road, Canfield, OH 44406, JWG1118@sbcglobal.net this 16th day of April, 2010.

Robert J. Tscholl