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**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

City of North Canton

and

Ohio Patrolmen's Benevolent Association

Case Number:

11-MED-05-0874 (Full-time Dispatchers/Chief Dispatcher)

PRESENTED TO:

Hans A. Nilges
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and

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and

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Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on December 2, 2011 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

Hearing was held on April 4, 2012 at North Canton City Hall. Prior to the fact finding hearing, the parties engaged in bargaining and then declared an impasse. The parties submitted pre-hearing statements in a timely manner. The Fact Finder inquired if the parties were willing to engage in mediation of the issues submitted at Fact Finding, and settlement discussions ensued. At the close of the hearing, the parties stipulated to all outstanding issues as contained in this Report and Recommendation. The parties then requested the Fact Finder to expedite the Report and Recommendation, and there was agreement that the Fact Finder would write each recommendation without rationale. Both advocates represented their respective parties in an excellent manner and clearly articulated the positions of their clients on the issues that had been at impasse.

The OPBA is the exclusive representative of the bargaining unit which is comprised of seven Full-time Dispatchers including the Chief Dispatcher.

Those participating for the City at hearing include the following:

Hans A. Nilges, Director of Law
Shannon Draher, City Law Department
Michael Grimes, Director of Administration
Stephan B. Wilder, Chief of Police

Those participating for the OPBA at hearing include the following:

Mark J. Volcheck, OPBA Attorney
Randy Freas, OPBA Representative
Michelle Carley, Negotiating Committee
Zach Jencks, OPBA Representative

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles that are outlined in ORC Section 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.

2. Comparison of the issues submitted to fact finding 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.
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, 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.

The Fact Finder indicated that, by agreement of the parties, the Report and Recommendation would be transmitted on April 9, 2012 by way of electronic mail.

RECOMMENDATIONS AND STIPULATIONS

1. Article 1 - Preamble

1.01 This Agreement is hereby entered into by and between the City of North Canton, hereinafter referred to as "the Employer" or "the City," and the Ohio Patrolmen's Benevolent Association, hereinafter referred to as "the Union."

2. Article 4 – Recognition

4.01 The Employer hereby recognizes the Union as the sole and exclusive bargaining agent with respect of wages, hours and other terms and conditions of employment as provided by the State Employment Relations Act, for the Bargaining Unit Certified under SERB Case Number 91-REP-11-0277 including all full time dispatchers and the Chief Dispatcher employed in the North Canton Police Department, excluding all part-time, seasonal and auxiliary dispatchers, lieutenants, patrolmen and police chief. All other employees of the Employer are excluded from the Bargaining Unit. Said recognition shall continue for a term as provided by law.

4.02 Current contract language.

3. Article 16 – Hours of Work

16.01 Current contract language.

16.02 Current contract language.

16.03 Current contract language.

16.04 Irrespective of Sections 16.01, 16.02 and 16.03, effective 8/1/2013, the Chief Dispatcher shall be assigned permanently to the 6:30 am to 2:30 pm shift, Monday through Friday. The Chief Dispatcher’s permanent off-days shall be Saturday and Sunday. This section does not prohibit the Chief Dispatcher from working on Saturdays or Sundays and being paid for such work in accordance with this Agreement, including Section 17.04, if such work is done pursuant to an overtime opportunity or shift trade. Prior to 8/1/2013, the Chief Dispatcher shall have the option to work said schedule, per the terms above, or choose to continue working her current schedule.

4. Article 18 – Holidays

18.01 The following paid holidays will be observed by all full-time employees and such employees shall be paid an amount equal to eight (8) hours of pay at the employee’s regular rate, unless otherwise specified in this Article.

New Year’s Day	Labor Day
Martin Luther King Day	Thanksgiving Day
President’s Day	Friday after Thanksgiving Day
Good Friday	Day before Christmas
Memorial Day	Christmas Day
July 4 th	

18.02 Current contract language.

18.03 Current contract language.

18.04 Current contract language.

18.05 Current contract language.

5. Article 20 – Sick Leave

20.01 Current contract language.

20.02 All employees shall earn sick leave at the rate of 4.615 hours for every eighty (80) hours paid, not to exceed fifteen (15) days per year, and may accumulate such sick leave to an unlimited amount.

20.03 Current contract language.

20.04 Current contract language.

20.05 Current contract language.

20.06 Current contract language.

20.07 Current contract language.

20.08 Current contract language.

20.09 Current contract language.

20.10 Upon the retirement of an employee hired on or before July 31, 2011 who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio Retirement System, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-half (1/2) the total number of accumulated, but unused, sick hours earned by the employee, as certified by the Finance Department.

20.11 Upon the retirement of an employee hired on or after August 1, 2011 who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio Retirement System such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by twenty-five percent (25%) of the total number of accumulated but unused sick hours earned by the employee, as certified by the Finance Department, up to a maximum payment equal to two-hundred forty (240) hours.

20.12 An employee who accumulates a minimum of four hundred (400) hours of sick leave shall receive an additional twenty-four (24) hours of personal time per year. The usage of the personal time shall be charged to sick leave. The Police Chief must approve the use of any personal time taken under this section.

6. Article 21 – Military Leave

21.01 Military leave shall be granted in accordance with all federal and state laws.

7. Article 23 – Disability Pay Allowance

23.01 Any employee injured in the line of duty, whose claim is allowed by the Bureau of Workers' Compensation, shall receive at the discretion of the City, either: (1) the employee's regular full wages; or (2) the difference between the amount allowed per month by the Bureau of Workers' Compensation as an award of Temporary Total Disability benefits and the employee's regular full wages. There shall be a twelve (12) month limit on the amount of disability pay per injury, including reoccurrence of the injury allowed by the Bureau of Workers' Compensation an employee is entitled to under this Article. The Employer, at his sole discretion, may extend the leave, such extension not being subject to the Grievance Procedure. Such discretion shall not be unreasonably denied.

8. Article 26 – Personal Time

26.01 Employees shall receive sixteen (16) hours of personal time per year off work with compensation; said personal time to be designated by the employee with the approval of the Chief of Police.

26.02 An employee hired prior to July 1 will receive sixteen (16) hours of personal time that year. An employee hired after July 1 and prior to September 1 will receive eight (8) hours of personal time that year and an employee hired after September 1 will receive none for that year.

26.03 Current contract language.

26.04 Personal time may be taken in four (4) hours increments, subject to scheduling considerations.

9. Article 27 – Wages

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

	2010 base	Effective 8/1/11	Effective 8/1/12	Effective 8/1/13
Chief Dispatcher	\$22.31	\$22.31	1.15 times greater rate than Dispatcher A	1.15 times greater rate than Dispatcher A
Dispatcher A	\$18.71	\$18.71	\$18.71	Subject to re-opener
Dispatcher B (2 nd 6 months)	\$17.75	\$17.75	\$17.75	Subject to re-opener
Dispatcher B (1 st 6 months)	\$16.82	\$16.82	\$16.82	Subject to re-opener

Note: The City Stipulates that the position of Chief Dispatcher is properly subject to SERB's jurisdiction and that the bargaining unit of Full-time Dispatchers and Chief Dispatcher is lawfully and properly comprised under Chapter 4117 of the Ohio Revised Code. The Chief Dispatcher is not a supervisor as that term is defined by Chapter 4117 of the Ohio Revised Code.

27.02 Current contract language.

27.03 Current contract language.

27.04 Current contract language.

27.05 Current contract language.

27.06 Current contract language.

27.07 Current contract language.

27.08 Each employee hired on or before August 1, 2008 and obtaining and/or maintaining LEADS certification shall receive a \$500 stipend payable in the first half of June 2012 and an additional \$500 stipend payable in the first half of December, 2012.

27.09 The Parties agree to re-open collective bargaining negotiations as to only wages and the subject matter of Union Fact Finding Proposal #12, *Discontinuance of Dispatch Service*, (2012

Fact Finding, Case No. 11-MED-05-0874) in January, 2013 for the contract year beginning August 1, 2013 and ending July 31, 2014. Either party may file a notice to negotiate to commence such negotiations with the State Employment Relations Board after January 1, 2013. ORC 4117.14 (G) (11) shall not apply to said re-opener negotiations and is hereby waived by the parties. For such re-opener, the Chief Dispatcher wage computation as stated in the wage scale in 27.01 shall not be re-opened.

27.10 If, after this Agreement is executed, the City negotiates and voluntarily agrees to provide any increase in compensation to any other City employee through a Collective Bargaining Agreement, all employees shall receive an equal increase in compensation if an equivalent or greater increase in compensation has not already been provided through this Agreement.

10. Article 28 – Longevity Pay

28.01 Subject to Article 28.02, employees shall receive longevity pay at the rate of seventy dollars (\$70.00) per year of full-time employment with the Employer. Annual longevity payments shall be made during the first half of the month of December to all employees who have completed at least five (5) years of continuous service and who are employed by the Employer on November 30th of the year in which the longevity payment is made. Determination of longevity pay shall be from December 1st to November 30th.

28.02 Employees hired after August 1, 2011 shall not receive longevity pay.

11. Article 31 – Hospitalization & Major Medical Insurance, Dental, Optical & Prescription Program (New Appendix Addendum)

31.01 The Employer shall provide hospitalization, major medical, dental, optical and a prescription drug program with coverage levels set forth in Appendix A, effective with December, 2009 plan renewal. Other plan design features are set forth below.

31.02 Bargaining unit members shall contribute, via payroll deduction, eight percent (8%) of the monthly COBRA amount established in December of the immediately preceding year. The Employer will provide the Union Director 30 days notice of any rate change. Said deductions shall be prorated and deducted on a bi-weekly pay period basis. The Employer will continue the Internal Revenue Section 125 Plan so that employee participation as expressed in this Section shall be on a pre-tax basis.

31.03 Employer shall adopt a standardized PPO benefit plan with network/non-network deductible and coinsurance as follows:

Effective August 1, 2011 through July 31, 2012

Network - \$250 single/\$500 family deductible; 90%/10% coinsurance to a maximum annual out-of-pocket expense of \$1500 single/\$3000 family.

Non-Network - \$500 single/\$1000 family deductible; 70%/30% coinsurance to a maximum annual out-of-pocket expense of \$3000 single/\$6000 family.

Effective August 1, 2012

Network - \$500 single/\$1000 family deductible; 90%/10% coinsurance to a maximum annual out-of-pocket expense of \$1500 single/\$3000 family.

Non-Network - \$500 single/\$1000 family deductible; 70%/30% coinsurance to a maximum annual out-of-pocket expense of \$3000 single/\$6000 family.

31.04 Prescription co-pays shall be as follows:

	RETAIL CO-PAY	MAIL ORDER CO-PAY
Generic: 1 st Tier	\$10.00 or 20% Whichever is greater	\$27.00
Preferred: 2 nd Tier	\$20.00 or 30% Whichever is greater	\$48.00
Preferred: 3 rd Tier Life Enhancing	\$30.00 or 35% Whichever is greater	\$74.00
Non-preferred: 4 th Tier	\$45.00 or 50% Whichever is greater	\$95.00

The North Canton prescription plan contains a mandatory generic enforcement component. If the employee chooses a brand name 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. If a brand name is specifically prescribed for medical reasons, or a generic is unavailable at the time, then the brand name co-pay shall apply.

31.05 In network physician's office visits shall have a co-pay of \$25, which shall not be applied against the maximum out-of-pocket. Non-network office visits will be subject to the coinsurance and deductible.

31.06 If an employee and spouse are both employed by the City of North Canton, only one shall be entitled to coverages set forth above, that being the family plan.

31.07 In the event of a change of insurance carrier, the current benefits of major medical and hospitalization, dental, optical and prescription drugs shall not be reduced.

31.08 The increased deductible amounts effective August 1, 2012 described in Section 32.03 shall not apply if the City provides the same or similar health insurance benefits to any other City employee or official and the City requires a lesser deductible amount unless the City is required to do so by means of: (1) a conciliator's award; or (2) a contractual obligation existing at the time this Agreement is executed (including such continuing obligations that exist by operation of law during the pendency of collective bargaining negotiations following an expired collective bargaining agreement).

<The referenced appendix shall be that attached to the Union's FF statement.>

12. Article 37 – Duration of Agreement

37.01 This Agreement is effective from August 1, 2011 through July 31, 2014 . This Agreement shall continue from year to year after August 1, 2014; unless a party to this Agreement gives sixty (60) days written notice of intent to negotiate a new Agreement. In the event such notice is given by a party, the procedures for negotiations contained in Ohio Revised Code Chapter 4117 shall apply.

OTHER AGREEMENTS

13. SIDE LETTER OF AGREEMENT

This side letter of agreement is made by and between the Ohio Patrolmen's Benevolent Association (OPBA) and City of North Canton for the bargaining unit including all full time Dispatchers and the Chief Dispatcher employed in the City of North Canton Police Department.

It is agreed that the OPBA and City of North Canton shall file a joint petition with SERB during the period of the 2011 – 2014 Agreement to amend the bargaining unit's certification to replace the words "Chief Dispatcher" with "Lead Dispatcher." The parties acknowledge that such changes is for purposes of re-naming the position only and does not create a new position or represent any change to the position or the certification. The parties agree that once SERB

orders such amendment, the person occupying the position known as Chief Dispatcher shall be known as the Lead Dispatcher and such person shall continue to be entitled to all the benefits of the Chief Dispatcher as identified in the collective bargaining agreement. At such time the parties shall execute an amendment to the collective bargaining agreement identifying the change in name from the Chief Dispatcher to Lead Dispatcher.

14. PARAGRAPH 14 FACTFINDING STIPULATIONS

In consideration for this stipulated fact finding report, the City agrees to dismiss, with prejudice, the following by noon, April 5, by filing the appropriate and necessary paperwork with SERB:

- A) The City's pending unfair labor practice charge, 12-ULP-03-0065.
- B) The City's pending motions to partially dismiss notices to negotiate; motion to stay and motion to expedite.
- C) The City's pending petition for amendment of certification, Case No. 2012-REP-01-0012

The City stipulates that the Chief Dispatcher position is properly subject to SERB's jurisdiction and that the bargaining unit of Full-time Dispatchers and Chief Dispatcher is lawfully and properly comprised under Chapter 4117 of the Ohio Revised Code. The parties agree that the terms of this Paragraph 14 is binding on the City irrespective of whether either side rejects the fact finder's report. The Chief Dispatcher is not a supervisor as that term is defined by Chapter 4117 of the Ohio Revised Code.

SUMMARY

After review of the pre-hearing statements of the parties, all facts presented at hearing and the stipulations and agreements of the parties, the Fact Finder recommends the provisions, stipulations and agreements contained in this Report and Recommendation. The foundation of this is based on criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

Any other tentative agreements on all or portions of articles, and any language recommended to change and/or remain current are part of the recommendations contained in this Report and Recommendation. Any issues or sub-issues not specifically addressed are also intended to remain current language for the purposes of this Report and Recommendation.

Respectfully Submitted and Issued at Cleveland, Ohio this 9th Day of April, 2012.



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2012, a copy of the foregoing Report and Recommendation of the Fact Finder was served upon Hans A. Nilges, Esq. representing the City of North Canton; Mark J. Volcheck, Esq. representing the Ohio Patrolmen's Benevolent Association; and Donald M. Collins, Esq., General Counsel, State Employment Relations Board, by way of electronic mail.



Thomas J. Nowel
Fact Finder