

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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In the Matter of)	
Fact-Finding Between:)	
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CITY OF NORTH CANTON)	Case No. 2014-MED-03-0456
)	
)	
-and-)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
OHIO PATROLMEN’S BENEVOLENT)	
ASSOCIATION)	

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For the Union:

Kevin Powers, Esq., General Counsel
Ohio Patrolmen’s Benevolent Association

For the Employer:

Gust Callas, Esq., Black, McCuskey,
Souers & Arbaugh, LPA
Timothy L. Fox, Esq., Director of
Law - City of North Canton

Date of Issuance: October 20, 2014

I. PROCEDURAL BACKGROUND

This matter came on for hearing on October 16, 2014, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on September 12, 2014. The hearing was conducted between the City of North Canton (“City” or “Employer”), and the Ohio Patrolmen’s Benevolent Association (“Union”), at the City Hall located at 145 N. Main Street, North Canton, Ohio 44720. The Union is the sole and exclusive bargaining representative of all full-time patrolmen employed by the City, excluding all part-time, seasonal and auxiliary officers, lieutenants, dispatchers, chief dispatcher and police chief. (Article 4 of the collective bargaining agreement). At the time of the hearing, the bargaining unit was comprised of approximately seventeen (17) full-time patrolmen. (Union’s Position Statement, at 1). (16 employees per the Employer’s Position Statement, at 1).

This fact-finding presents a short, but rather unique procedural history. The hearing date of October 16, 2014 was confirmed via email from the fact-finder to the parties’ representatives on September 22 and 26, 2014. SERB’s regulations state, in relevant part:

F) Pursuant to division (C)(3)(a) of section 4117.14 of the Revised Code, upon notice of appointment of the fact-finding panel and no later than five p.m. on the last business day prior to the hearing, each party shall submit via electronic mail to the fact-finding panel and the other party a position statement. A failure to submit via electronic mail such a position statement to the fact finder and the other party no later than five p.m. on the last business day prior to the hearing, shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The statement shall include:

- (1) The name of the party and the name, mailing address, email address, and telephone number of the principal representative of the party;

- (2) A description of the bargaining unit including the approximate number of employees;
- (3) A copy of the current collective bargaining agreement, if any; and
- (4) A statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue.

On October 15, 2014, the Union timely filed its position statement via email, but did not attach a copy of the current collective bargaining agreement. The Employer attempted to deliver its position statement, but utilized the incorrect email address for the fact-finder and its statement was not received until hand delivered at the hearing. The Union raised a timely objection to the Employer's position statement which contained a two page discussion of its ability to pay, but which did not provide any statement defining the unresolved issues and summarizing the position of the Employer with regard to each unresolved issue. The Employer countered by asserting that its position with respect to the Union's wage demand and on fifteen other provisions of the collective bargaining agreement, were identified in the Union's position statement and it should be able to rely upon that list to present its case to the fact-finder.

The fact-finder immediately contacted SERB and spoke by telephone with the Bureau of Mediation's General Counsel/Assistant Executive Director and Administrator, together with the Bureau of Mediation's Administrative Assistant. After receipt of SERB's input, the fact-finder determined that the Employer's failure to serve the fact-finder with its position statement was due to a clerical error, and that the Union's failure to attach a copy of the current agreement was a minor, immaterial violation of the regulations. However, the absence of any statement by the

Employer as to the unresolved issues and its position relative thereto was deemed a substantial and material omission.

The fact-finder met with the parties and attempted to resolve the procedural non-compliance issues within the statutory framework. An offer to mediate was rejected as futile by the Union. The Union proposed converting the hearing into a mutually agreed-upon dispute settlement procedure, or MAD, providing for a final and binding resolution of the dispute. The Employer responded that it lacked sufficient time to contact those individuals necessary to agree to such a change, and rejected the Union's offer of a MAD.

The fact-finder directed the parties to proceed with a presentation of their evidence, but held that the Employer, while it could cross-examine the Union's witnesses, if any, and challenge the Union's evidence, was precluded from presenting evidence in support of its case as it failed to define any unresolved issues and summarize its position with regard to each such issue in its position statement. At that juncture, the Employer stated for the record that in addition to its position statement, it was modifying its position by withdrawing its offer of an annual stipend of 1% of the fourth year patrolmen's base salary. The Employer was offered the opportunity to be present and participate in the hearing as outlined above, but declined to do so and voluntarily left the hearing room.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed

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in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Issue 1: Article 27 - Wages

Position of the Union

The Union emphasizes that despite the City's position that it is without the funds necessary to pay the Union's proposed 3% increases effective August 1, 2014, August 1, 2015

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and August 1, 2016, the evidence is to the contrary. A report prepared by Sargent & Associates, a financial investigations and forensic accounting firm, reviewed the Employer's property taxes, income taxes, local government funds, estate and other revenue streams. The Union argues the Sargent & Associates report counters the decline in the general fund balance set forth in the Employer's position statement, reasoning that the fund balance is the result of a planned reduction. In fact, the general fund expenditures through June 2013 are 43% of the total budget at a point one-half of the way through the year, and at that rate the general fund carryover at the end of 2014 will be \$1,300,000, rather than the Employer's claimed balance of \$460,373. (Union Ex. 1; City's Position Statement at 2).

Further, the income tax fund, which contains tax revenues to be transferred to the general fund, capital improvement fund and other funds, has a growing carryover balance not distributed to the general fund at the historic rate of 75%. Therefore, the true general fund carryover balance into 2014 should have been \$3,064,000 – a 41% carryover balance. Total wages paid for the Police Department in 2013 were \$8,000 less than those paid in 2009. In summary, the Union's financial analysis concludes that tax revenues from the 1.5% city income tax have steadily increased, but have not been fully transferred to the general fund. Such taxes would offset any loss to the general fund from elimination of the estate tax and reductions in the local government fund. The wage increases sought for the bargaining unit are easily affordable from the 2014

police department budget (including at 2.32% increase for police officer wages) and the carryover balance in the General Fund.¹

Position of the Employer

The Employer’s position statement cites the decrease in local government funding and the elimination of the inheritance tax for its revenue loss. Property tax revenues have also decreased as a result of lower evaluations due to the 2012 reappraisals, and income tax revenue has not returned to the peak of 2005. As noted above, the Employer withdrew its proposed annual stipend of 1% of the fourth year patrolmen’s salary.

Final Recommendation

The fact-finder recommends the following wage rate increases for the bargaining unit employees to replace the current language of Article 27.01:

Section 27.01 Employees shall be paid in accordance with the following hourly rate schedule:

	8/1/14	8/1/15	8/1/16
Patrolman (4 th Year)	\$26.36	\$27.15	\$27.96
Patrolman (3 rd Year)	\$25.26	\$26.01	\$26.79
Patrolman (2 nd Year)	\$24.05	\$24.77	\$25.52
Patrolman (1 st Year)	\$22.92	\$23.61	\$24.31

1. The Sargent report calculated a 1% wage increase for the bargaining unit to cost \$19,529.

The fact-finder determines that the Employer presented insufficient evidence to substantiate its position that it has an “inability to pay,” and that a wage freeze is necessary in order to maintain current operations.

Remaining Issues Listed In Union’s Position Statement

All but one of the remaining 15 issues listed in the Union’s position statement are purportedly unresolved issues raised by the Employer during negotiations, but for which there is no evidence presented at hearing.

Final Recommendations

Issue 2. Article 39.1 - Duration of Agreement – The first sentence of paragraph 39.1 shall read: “This Agreement is effective from August 1, 2014 through July 31, 2017.”

With respect to the remaining unresolved issues listed in the Union’s position statement, they all appear to be generated in response to anticipated issues from the City for which no evidence was presented. Accordingly, the following recommendations are made:

- Issue 3. Call-out Pay (17.01): Current Language.
- Issue 4. Sunday Pay (17.04): Current Language.
- Issue 5. Holiday Pay (18.03): Current Language
- Issue 6. Holiday Pay (18.04): Current Language.

- Issue 7. Vacation (19.06, 19.07): Current Language.
- Issue 8. Sick Leave Cash-out (20.01): Current Language.
- Issue 9. Sick Leave Conversion (20.12): Current Language.
- Issue 10. Personal Time (26.03): Current Language.
- Issue 11. Shift Differential (27.02): Current Language.
- Issue 12. Senior Patrol Pay (27.04): Current Language.
- Issue 13. “Me-too” Provision (27.07): Current Language.
- Issue 14. Longevity Pay (28.01): Current Language.
- Issue 15. Uniform Allowance (29.01): Current Language.
- Issue 16. OIC Pay (31.01): Current Language.

/s/ Jonathan I. Klein
Fact-finder

Dated: October 20, 2014

CERTIFICATE OF SERVICE

A copy of this Fact-finding Report and Recommendation was served on Kevin Powers, General Counsel, FOP, OLC, Inc. at kpowersopba@sbcglobal.net; Timothy L. Fox, Director of Law, City of North Canton at tfox@northcantonohio.gov; Gust Callas, Esq., Representative of City of North Canton at gcallas@bmsa.com; and upon Donald Collins, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board at donald.collins@serb.state.oh.us each by electronic mail this 20th day of 2014.

/s/ Jonathan I. Klein
Fact-finder