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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

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| In the matter of | * | 14-MED-05-0753 |
| | * | |
| Fact-finding between: | * | |
| | * | Martin R. Fitts |
| City of North Canton | * | Fact-finder |
| | * | |
| and | * | |
| | * | |
| Ohio Patrolmen's Benevolent Association | * | November 28, 2014 |
| | * | |
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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the City of North Canton (the Employer):

Timothy L. Fox, Director of Law, City of North Canton
Mike Grimes, City Administrator
Karen Alger, Director of Finance

For the OPBA (the Union):

Mark Volcheck, Attorney for the OPBA
Randy Freas, OPBA Representative
Zach Jenks, OPBA Representative

PRELIMINARY COMMENTS

The bargaining unit has approximately seven (7) members and consists of all full-time dispatchers and the lead dispatcher employed in the North Canton Police Department, excluding all part-time, seasonal, and auxiliary dispatchers, lieutenants, sergeants, patrolmen, and police chief.

The last Collective Bargaining Agreement expired on July 31, 2014. During negotiations the parties reached tentative agreements on several issues, but reached impasse on the following: Article 17 – Overtime Pay Allowance; Article 20 – Sick Leave; Article 26 – Personal Time; Article 27 – Wages; Article 28 – Longevity Pay; Article 29 – Uniform Allowance, Article 31 – Hospitalization & Major Medical Insurance, Dental, Optical & Prescription Program; New Article – Discontinuance of Dispatcher Services; and Article 37 – Duration of Agreement.

This Fact-finder was appointed by SERB on September 24, 2014 and a Fact-finding Hearing was held on November 7, 2014. Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective positions. Mediation was attempted at the hearing, but was mostly unsuccessful. The parties did agree to remove Sections 27.08 and 27.09 from Article 27 – Wages in the new agreement, as they deal with issues no longer relevant. However, the following issues remained at impasse on the following: Article 17 – Overtime Pay Allowance; Article 20 – Sick Leave; Article 26 – Personal Time; Article 27 – Wages; Article 28 – Longevity Pay; Article 29 – Uniform Allowance, Article 31 – Hospitalization & Major Medical Insurance, Dental, Optical & Prescription Program; New Article – Discontinuance of Dispatcher Services; and Article 37 – Duration of Agreement.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the November 7, 2014 hearing.

GENERAL DISCUSSION

The Employer presented economic data and arguments as to the financial condition of North Canton. As with other Ohio municipalities, North Canton receives significantly less in local government funds each year, no inheritance taxes (a loss of nearly a million dollars of annual revenue) for 2014 and beyond, and reduced property and income taxes. Moreover, North Canton is still reeling from the loss of its major source of revenue: 2,400 manufacturing jobs from the Hoover Company moved to Mexico in 2006. The Employer noted that although North Canton has been diligent in revitalizing the former manufacturing plant to attract local businesses to the area, it has been unable to replace the higher-paying manufacturing positions available during the Hoover era.

The Employer argued that the collective bargaining agreements negotiated during the era of growth and prosperity have not been amended to reflect the drastic decreases in revenue and the constant increase in expenses and inflation. In 2012, North Canton spent \$560K more than it brought in; in 2013, it lost \$163,000; in 2014, the projection is a loss of \$106,000; and for 2015, North Canton is projected to take in \$463,000 less than it spends. The Employer stated that this run of deficit spending may not continue without dire

circumstances. The Employer hopes to amend the bargaining agreements it has with its seven unions so that the parties may enter into agreements that reflect the efforts and value of North Canton's employees together with fair and reasonable agreements for its taxpayers.

Considerable financial data was presented by the Employer in Employer Exhibit – 2, which is a report from Ohio State Auditor Dave Yost on the financial forecast for the City of North Canton for the years ending December 31, 2014 through December 31, 2018. The report confirms a decline in general fund revenue from 2011 (\$8,448,000) to 2013 (\$7,259,000) despite a rise in municipal income tax revenues. The report also shows that the City's expenditures for "Security of Persons and Property" has risen from \$2,980,00 in 2011 to \$3,178,00 in 2013, and reflects an ever increasing percentage of total general fund expenditures.

The Auditor's report forecasts that the general fund revenue will show an uptick in 2014 (\$7,938), then dip significantly in 2015 (\$6,632,000) and by 2018 (7,072,000) will still not have risen to 2013 or 2014 levels.

The Union presented a financial review it commissioned of the financial condition of the City of North Canton. The review, conducted by Sargent & Associates, concluded that the City has weathered the economic downturn and notes that income tax revenues have risen steadily since 2009. It noted that the carry-over reserve remains high. It also notes that the City has budgeted for a 2.99% increase in wages for the dispatchers in 2014, and noted that a 1% wage increase for the dispatchers, including roll-up costs, would only total \$4,054 the first year.

The common thread of the Employer's proposals is its desire to remove compensation that is provided for in the current agreement in the form of allowances, stipends, cash-outs and the like. The common response of the Union to these proposals is that these items have been bargained for in previous negotiations over a number of years and there is no compelling reason to now remove them.

ISSUES AND RECOMMENDATIONS

Issue: Article 17 – Overtime Pay Allowance

Positions of the Parties

The Employer proposed that it pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek.

The Union proposed the retention of current contract language that provides that classified civil service employees of the police department shall be compensated at one and one-half (1-1/2) times the hourly rate for hours worked on Sunday.

Discussion

This issue is one of a number of issues that are purely economic in nature, as it represents an economic benefit negotiated in prior contracts that the parties at one time found acceptable. The Employer argued that this is a 24/7/365 operation that by its nature does not differentiate between weekdays and Sundays. It argued that employees already receive overtime compensation for work over the normal 40 hour work week.

The Union countered that this long-standing benefit that affects all bargaining unit members as each employee is scheduled to work 26 Sundays a year. The Union noted that this regular overtime represents approximately 5% of an employee's wages each year.

Findings and Recommendation

The Fact-finder cannot find a compelling reason for the elimination of an economic benefit of such magnitude absent an Employer proposal to offset it with some corresponding increase in wages or other benefit. There was none offered. Adoption of the Employer's proposal would effectively result in a significant and unfair wage reduction for this bargaining unit.

Therefore the Fact-finder recommends the retention of current contract language for Article 17.

Issue: Article 20 – Sick Leave

Positions of the Parties

The Employer's position regarding sections 20.10 and 20.11 is that the payment of the value of any employee's accrued but unused sick leave credit at the time of an employee's retirement from active service with North Canton should be at the rate provided by R.C. 124.39(B), as may be amended from time to time. The Employer's position regarding section 20.12 is to remove the provision and encourage employees to utilize sick time as needed.

The Union proposed the retention of current contract language

Discussion

This issue is one of many in the instant negotiations that represent a potential loss of economic benefit to the bargaining unit employees. The Union noted that the issue was addressed in bargaining for the last contract, and future employees will no longer have this benefit. It considers the issue to have been dealt with, and should be left alone for the current employees.

Without any kind of quid pro quo being offered, and considering the Recommendations found elsewhere in this Report for wages and health care, the Fact-finder cannot find a compelling reason to change this provision.

Findings and Recommendation

The Fact-finder finds no compelling reason for changes to this Article.

Therefore the Fact-finder recommends the retention of current contract language for Article 20.

Issue: Article 26 – Personal Time

Positions of the Parties

The Employer position regarding section 26.03 is that "personal time" is intended to be used by an employee to address issues of a personal nature. The Employer argued that this provision should reflect that personal days must be used during the year that they are earned. Further, the Employer argued that personal time should not be used to convert into cash or into additional compensatory time.

The Union proposed the retention of current contract language which provides that classified civil service employees of the Police Department, because of the nature of the work to be performed requires that 24 hour service be maintained seven (7) days per week, shall be eligible to designate their two (2) personal days per year as holidays.

Discussion

There is no question that this is a generous economic benefit for the employees. However, as the Union argued, this is a benefit that was gained through the give and take of previous bargaining and should not be unilaterally removed from the agreement at this time.

Findings and Recommendation

The Fact-finder finds no compelling reason for a change in this Article at this time.

Therefore the Fact-finder recommends the retention of current contract language for Article 26.

Issue: Article 27 – Wages

Positions of the Parties

The Union proposed that Section 27.01 be amended to reflect an annual general wage increase of three percent (3%) for each year of the agreement, retroactive to August 1, 2014 (in concert with its proposal for Article 37 – Duration of Agreement). The Union proposed the retention of the stipends provided for in Sections 27.04 (senior communications officer stipend of \$350) & 27.05 (completion of basic communications training stipend of \$250) found in the current agreement. The Union also proposed the retention of current contract language in Section 27.10 which contains a “me too” clause relative to greater compensation granted to other City employees.

The Employer proposed that Section 27.01 be amended to provide an annual stipend equal to one percent of the product of the employee's hours worked for the prior six months times the employee's current hourly rate and paid in semi-annual installments during the first pay in June and December. The Employer proposed the removal of the stipends provided for in Sections 27.04 (senior communications officer stipend of \$350) & 27.05 (completion of basic communications training stipend of \$250). The Employer also proposed the removal of Section 27.10 which contains a “me too” clause relative to greater compensation granted to other City employees.

As noted above, the parties did agree to remove Sections 27.08 and 27.09 from Article 27 – Wages in the new agreement, as they deal with issues no longer relevant.

Discussion

The Employer argued that its compensation for dispatchers is higher than that for dispatchers in surrounding communities, and thus are very attractive. The City also made its economic arguments, as noted in the General Discussion section above, that it must rein in expenditures so that it does not continue to experience operational deficits over the next three years.

The Union noted that while the Employer was proposing an elimination of the stipends provided for in Sections 27.04 & 27.05 of the current agreement, it was proposing a new stipend of \$1,000 be paid to these employees in lieu of a general wage increase.

The Fact-finder agrees with the Union that adding a new stipend while at the same time eliminating existing stipends makes no sense. While the Fact-finder may be sympathetic to the Employer's argument that there are too many hidden pieces of compensation in the current agreement, the reality is that the elimination of them all would represent a very large concessionary agreement, for which there is no compelling evidence.

What does make sense in the current economic conditions is a continuation of the current stipends provided for in Sections 27.04 & 27.05, and a modest wage increase to offset Recommendations found elsewhere in this Report for Uniform Allowance and Health Care.

As to the Employer's proposal to remove Section 27.10, the "me too" provision, from the current agreement, the Fact-finder see merit in it. Employers with multiple bargaining units can find themselves unable to effect necessary cost reductions when conditions warrant, due to the constraints "me too" clauses can present.

The Fact-finder is mindful of the forecasts of the City and the State Auditor's Report regarding the possible decline of general revenue in future years. For this reason, and due to the Recommendation for the elimination of the "me too" provisions in Section 27.10, a wage re-opener for the last year of the agreement makes sense, as it will enable the parties to reach a fair wage determination with current economic data in 2016 and with knowledge of what the City's other bargaining unit agreements contain.

Findings and Recommendation

The Fact-finder finds that a 2.5% wage increase effective August 1, 2014; an additional 2.5% wage increase effective August 1, 2015; and a wage re-opener for wages only effective August 1, 2016 is the most reasonable outcome for the parties. The effective dates are in concert with the Fact-finder's Recommendation for duration found elsewhere in this Report.

Therefore the Fact-finder recommends that the tables in Section 27.01 be amended to provide for a 2.5% general wage increase effective retroactively to August 1, 2014.

Further, the Fact-finder recommends that the tables in Section 27.01 be amended to provide for an additional 2.5% wage increase effective August 1, 2015.

Lastly, the Fact-finder recommends that the tables in Section 27.01 be amended to reflect a wage re-opener, for wages only, effective August 1, 2016.

Issue: Article 28 – Longevity Pay

Positions of the Parties

The Employer's position is that the current longevity payments do not provide employee incentives. The Employer recommends the current longevity provisions should be amended to the following: employees shall receive a one-time longevity pay payment at the rate of thirty-five (\$35.00) dollars per year of full-time employment with the Employer. The longevity payments shall be made during the first half of the month of December 2014 to all employees who have completed at least five years of continuous service and who are employed by the Employer on November 30, 2014. Longevity pay shall cease as of December 31, 2014.

The Union proposed the retention of current contract language

Discussion

This issue is yet another in the instant negotiations that represent a potential loss of a previously bargained economic benefit to the bargaining unit employees. The current language provides that employees hired after August 2011 do not qualify for longevity. However, for the employees hired prior to that date, longevity has been an integral part of their compensation, and rewarded them for continued service.

Without any kind of quid pro quo being offered, and given the Recommendations found elsewhere for wages and health care, the Fact-finder cannot find a compelling reason to change this provision.

Findings and Recommendation

The Fact-finder finds no compelling reason for the elimination of this provision at this time.

Therefore the Fact-finder recommends the retention of current contract language for Article 28.

Issue: Article 29 – Uniform Allowance

Positions of the Parties

The Employer's position is that uniform requirements for dispatch Union personnel are unnecessary, and that it shall no longer require uniforms for dispatch personnel. Therefore there is no need for a uniform allowance and the Employer proposes that this article be deleted.

The Union proposed the retention of current contract language

Discussion

The Employer is correct when it asserts that a \$1,000 uniform allowance for these employees is unnecessary. The work is performed in an office setting, with any face to face contact with the public taking place in a setting that leaves no doubt as to the position and authority of the dispatcher. A uniform, whether for identification purposes or for a sense of authority, is simply not needed. Additionally, there is no real "wear and tear" to the employees clothes such as is experienced by patrol officers. The Employer made it clear that it intends to remove the uniform requirement for these employees, further rendering this allowance unnecessary.

Having said that, there is also no doubt that this has been a longstanding form of compensation for this bargaining unit, having appeared in contracts spanning many negotiations and undoubtedly subject to the normal give and characterized by contract negotiations. To unilaterally remove it now would clearly be a major concession from these employees.

Findings and Recommendation

The Fact-finder finds that, while the uniform allowance is unnecessary, it has been a long-standing form of compensation for this bargaining unit. As such, it cannot be removed with some equal consideration being returned to the employees. A fair and reasonable approach to the removal of this allowance is to phase it out over the life of this new agreement, allowing the wage increases provided elsewhere in this Report to offset the removal of the allowance.

Therefore the Fact-finder recommends that Article 29 – Uniform Allowance be amended to read in its entirety:

Article 29 – Uniform Allowance

29.01 A uniform allowance shall be paid for the position of dispatcher as follows: an employee shall be entitled to receive a one thousand dollar (\$1,000) uniform allowance by January 20, 2015; an employee shall receive a five hundred dollar (\$500) allowance by January 20, 2016; and thereafter there shall be no uniform allowance.

Issue: Article 31 – Hospitalization & Major Medical Insurance, Dental, Optical & Prescription Program

Positions of the Parties

The Employer proposed a number of changes in this article and Appendix A to be effective with the December 2014 plan renewal. These changes call for a greater level of employee contributions toward their health care. Included in the proposal is that bargaining unit members contribute 15% of the monthly COBRA amount, and that the maximum In-Network out of pocket expense rise to \$2,000 for single and \$4,000 for family. It also calls for the In-Network physician office visit co-pays of \$25 to now be applied against the maximum out-of-pocket costs. The Employer also proposed that Section 31.08, a “me too” provision, be removed from the Article.

The Union proposed the retention of current contract language, except that it agreed with the Employer's proposal for the change in Section 31.05. Section 31.05 deals with the application of physician office visit co-pays being applied against the maximum out of pocket costs, as that provision is mandated by the PPACA.

Discussion

The Employer noted that when it put together its proposals it was anticipating a 9% increase in health insurance premiums. However, it received only one bid and that calls for an increase of 22.7% over the current cost. It argued that with the forecasted declines in General Revenue sources over the next several years, it cannot continue to absorb the rising health care costs in the same proportion as it has in the past.

The Union argued that the employees can only afford so much, and that the Employer's proposal shifts too great a share of the burden to the employees.

The reality is that it is unfair to either party for one party to be immune to health care cost increases while the other party is completely at risk for the absorption of same. The proposals put forth by the Employer are reasonable in today's environment, even with the added burden it places on the bargaining unit members. Public sector employers and employees need to be mindful of the shifts in the sharing of health care costs being faced by their taxpayers in their respective private sector workplaces, and be willing to share similar burdens.

Another reality is this: it is unfair for one segment of a municipality to have significant differences in what it pays for health care compared to the municipality's other employees. Therefore, the "me too" clause in Section 31.08 should be retained, except for the minor change to reflect the collective bargaining agreements recommended August 1, 2014 effective date.

Findings and Recommendation

The Fact-finder finds the Employer's proposal for Sections 31.01, 31.02, 31.03, and 31.05 to be fair and reasonable, based on compelling evidence presented at the hearing. However, the Fact-finder finds the Union's proposal for the retention of Section 31.08 to also be fair and reasonable.

Therefore the Fact-finder recommends that Sections 31.01, 31.02, 31.03 and 31.05 should be amended to reflect the Employer's final proposal presented at the hearing, and should read as follows:

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 the December, 2014 plan renewal. Other plan design features are set forth below.

31.02 Bargaining Unit members shall contribute, via payroll deduction, fifteen percent (15%) 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 Service 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, 2014 through November 30, 2014

Network - \$250 single/ \$500 family deductible; 90%/10% coinsurance to a maximum annual out of pocket expense of \$1,500 single/ \$3,000 family.

Non-Network - \$500 single/\$1,000 family deductible; 70%/30% coinsurance to a maximum annual out of pocket expense of \$3,000 single/ \$6,000 family.

Effective December 1, 2014

Network - \$500 single/ \$1000 family deductible; 90%/10% coinsurance to a maximum annual out of pocket expense of \$2,000 single/ \$4,000 family.

Non-Network - \$500 single/\$1,000 family deductible; 70%/30% coinsurance to a maximum annual out of pocket expense of \$3,000 single/ \$6,000 family.

31.05 In network physician's office visits shall have a co-pay of \$25, which shall be applied against the maximum out-of-pocket. Non-Network office visits will be subject to the co- insurance and deductible.

Further, the Fact-finder recommends that Sections 31.08 should be retained with current contract language.

Lastly, the Fact-finder recommends that Appendix A be amended to reflect the \$2,000 per Individual and \$4,000 per Family Out-of-Pocket Expenses provided for in Article 31.

Issue: New Article – Discontinuance of Dispatcher Services

Positions of the Parties

The OPBA proposes language that provides terms and conditions of the bargaining unit's treatment if the City decides to cease dispatch operations.

The Employer proposed that the new article not be added into the agreement.

Discussion

The Employer argued that it has no current plans to outsource the dispatcher function at this time, but acknowledged that it receives overtures from other entities offering to contractually assume the dispatching function from the City of North Canton. It also acknowledged that if the cost of performing the dispatch function internally becomes significantly higher than the cost of contracting the service out, it would be in the taxpayers' best interest for the City to do so.

The Union argued that it is simply attempting to protect its bargaining unit members in the event the City does, in fact, contract out dispatching services.

Findings and Recommendation

The Fact-finder agrees that the Employer has an obligation to its taxpayers to consider outside offers to assume the City's dispatch function. Likewise, the City has an obligation to its current employees to treat them fairly and humanely should it decide at some future time to move in that direction. The language recommended below gives the employees some protection, while not unduly tying the City's hands relative to contracting out dispatch.

Therefore the Fact-finder recommends a new article in the agreement, to read in its entirety as follows:

NEW ARTICLE – DISCONTINUANCE OF DISPATCH SERVICES

In the event that the bargaining unit employees are laid off as a result of the City discontinuing the provision of dispatch services, each such employee shall be paid and/or provided, in addition to all other payments and/or provisions that would be due under this agreement, the following:

- A) A severance payment equal to one week of pay at the employee's regular rate for each full year of employment with the City of North Canton;
- B) The provision for each employee and his/her spouse and dependents, of three (3) full months of health insurance per the terms of this agreement from the time of separation.

The City shall provide bargaining unit employees 90 days notice prior to any layoff resulting from the discontinuance of dispatch services. In addition, the City shall also offer open and permanent full-time employment position(s) in the City existing prior to and/or at the time of the planned layoff date, to qualified bargaining unit members, to the exclusion of any other applicant(s), in order of their departmental seniority (first-hired, first offered). If a bargaining unit employee accepts such a position and such offering provides the opportunity for an employee to not have any lapse of employment with the City, the employee shall not receive severance pay identified in paragraph A above and the employee shall receive those health care benefits for himself/herself, and his/her family as received according to such new position. In the event an employee refuses an offer of employment from the City he/she shall not be entitled to severance or insurance benefits outlined in Paragraphs A & B above. If an employee accepts an offer from the City that would result in a lapse of employment, he/she shall still be entitled to severance pay and health insurance as provided in paragraphs A and B above.

This article shall not diminish any employee rights under article 33 of this agreement.

Issue: Article 37 – Duration of Agreement.

Positions of the Parties

The Employer proposed that the duration of the agreement should be for a period of three years effective from the date the parties finalize an agreement.

The Union proposes a three year agreement effective August 1, 2014 through July 31, 2017.

Discussion

The Employer offered no compelling reason to change the cycle of collective bargaining for this contract. Retaining the August 1 effective date and July 31 expiration dates will allow the parties ample opportunity complete negotiations for future contracts without the end-of-year pressures and without disturbing this contract's place in the rhythm of the City's negotiations with its other bargaining units.

Findings and Recommendation

The Fact-finder finds no compelling reason to change the established pattern of three year agreements effective on an August 1 and expiring on a July 31.

Therefore the Fact-finder recommends that Article 37 – Duration of Agreement read in its entirety:

This Agreement is effective from August 1, 2014 through July 31, 2017. This Agreement shall continue from year to year after August 1, 2017, 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 4117 shall apply.

The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.



Martin R. Fitts
Fact-finder
November 28, 2014

Certificate of Service

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: OPBA representative Mark J. Volcheck (markvolcheck@sbcglobal.net), City of North Canton representative Timothy L. Fox (tfox@northcantonohio.com) and the Bureau of Mediation, State Employment Relations Board (med@serb.state.oh.us)



Martin R. Fitts
Fact-finder
November 28, 2014