

**STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDING REPORT**

**In The Matter of Fact-Finding
Between**

**Fraternal Order of Police/Ohio labor Council, INC
And**

City of North Canton

Re: Case No. 2014-MED-05-0767

FACT-FINDER: John Babel Jr.

APPEARANCES

FOR THE UNION

Chuck Choate
FOP/OLC, Inc.
2721 Manchester Rd.
Akron, Ohio 44319

FOR THE CITY

Timothy L. Fox
Director of law
145 North Main Street
North Canton, Ohio 44720

In attendance were two union and two management personnel. It was an informal session and members of both parties under the direction of their representative contributed to the discussion. At the second hearing the financial consultant for the union was also in attendance.

INTRODUCTION

The fact-finder was contacted under the auspices of SERB to assist in the negotiated procedures between The City of North Canton (City) and The Fraternal Order of Police, Ohio Labor Council (union). The bargaining unit consists of one (1) lieutenant and five (5) sergeants. The lieutenant is planning to retire and the City has tentative plans to vacate that position and add a sixth sergeant position. The current agreement expired on July 31, 2014. The parties met on August 4 and 25 and with no progress the union declared an impasse. The fact-finder was appointed by SERB and both parties agreed to hold a hearing on November 14 at North Canton City Hall and agreed that the fact-finder report would be issued January 15, 2015. Due to a calendar challenge for the Fact-Finder both parties were notified on January 5th that the report would be e-mailed to all parties on January 9th, 2015.

At the first hearing the City Director of Finance provided city financial data. The union stated that they hired an outside consultant to review the financial status of the City but due to a medical emergency the consultant was unable to be at the hearing. Both parties agreed to accept the report if a conference call between the consultant, both parties and fact-finder was arranged to provide time for questions and challenges. The conference call was unsuccessful and all parties then agreed to extend the hearing to December 8 in which the report was presented with opportunity for discussion and challenges.

The fact-finder was impressed with the skill and ability of those in attendance and compliments them on their professionalism and the high regard they have for the performance of the North Canton police department.

In reporting the conclusion of this hearing the fact-finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in 4117.14(4)(e) and Rule 4117-9-05(a) past collectively bargained agreement between the parties: (b) 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 considerations to factors peculiar to the area and classification involved: (c) 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 adjustment on the normal standard of public service: (d) the lawful authority of the public employer: (se) stipulations of the parties (f) 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.

City's Financial Status

The union submitted a copy of a recent fact-finder report between the City and OPBA patrolmen in which the fact-finder after reviewing the report from Sargent and Associates took the position that the City had adequate funds to support salary increases for the patrolmen, that fact-finder report was rejected by the City.

This union employed Ms. Linda Wilker, MBA Financial Consultant to review the City's financial status and her report stated that the City's finances can meet future economic needs and challenges. The City challenged this report and pointed out incorrect figures such as the City's General Fund Revenues for 2012 was - 0.07% yet the figures indicated a -7.2 % and for 2013 the stated decrease was -0.04% but the figures showed a - 4.4%.

The City's financial position is that the majority of the unresolved issues in this negotiations deal with some form of compensation. As with other Ohio municipalities, the City receives significantly less in local government funds each year, no inheritances taxes (a loss of nearly a million dollars of annual revenue) for 2014 and beyond, and reduced property and income taxes. Moreover, the City is still reeling from the loss of its major source of revenue of 2,400 manufacturing jobs from the Hoover Company moved to Mexico in 2006. 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 City stated that many sections of the contract were agreed to during the early 90's when the City enjoyed a brighter economic outlook. There must be changes due to the City's decreases in revenue and the constant increase in expenses and inflation. The City's prepared five year forecast does indicate minimal increase in property tax collection, a small increase in City income tax and no growth in intergovernmental support, and no increases in charged services, fees, investment and other incomes.

A review of these reports and discussions at both hearings has led this fact-finder to the position that the City's finances have to a degree stabilized, the questions are, will local revenue (property and income taxes) increases to meet future labor and material increases and to what degree will the State of Ohio increase or decrease its financial obligation to the City's dollar needs. The argument from both parties is how much carryover revenue is necessary to allow the City to meet the resident needs.

ISSUE 1 ARTICLE 12.01

Both parties agreed to the City's proposal for Article 12.01 and requested be included in this report

Article 12.1 The Employer and the Union agree not to discriminate against any employee on the bases of race, religion, color, ancestry, national origin, age, sex, military status, or disability.

ISSUE 2 – ARTICLE 16.3 OVERTIME

Current provision: All time worked in excess of forty (40) hours in one (1) calendar week shall be compensated at one and one-half (1 ½) times the hourly rate. Employees have the choice of any combination of either overtime pay or compensatory time off.

Union Proposal

Add the following language:

“time worked,” shall mean all time in positive pay status; such as, but not limited to, vacation, comp-time, and/or sick time.

City Proposal

Current language

Discussion:

The union position is that the added language would clarify what time worked in this contract. The City opposes this added language in that the present language for overtime work is clear and understood by all parties.

Fact-Finder Recommendation

Current language

Discussion:

The present language to determine overtime is common in most contracts.

ISSUE 3 – ARTICLE 16.4 OVERTIME

Union Proposal

Current language

City Proposal

Delete from contract

Discussion:

The City position is that an employer shall 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 and more than eight hours in a single workday. R.C. 4111.03(A). The City asks that Article 16.04 which reads that employee of the Police department be compensation at one and one-half (1 ½) times hourly rate for hours worked on Sunday be deleted from the Agreement. The Union sees this as a compensation issue that should be in the contract.

Fact-Finder Recommendation

City’s proposal to delete the Article 16.04 Overtime.

Discussion:

In that the City must provide police service to the City 24 hours per day, 7 days per week, 12 months per year it seems unusual that if the individual sergeant or lieutenant 40 hour workweek

falls on a Sunday, they be compensated at one and one-half times their hourly rate for Sunday even though it is not in excess of forty hours in a workweek.

ISSUE 4 – ARTICLE 18.14 VACATION

Union Proposal

Add Section 18.14:

Each Bargaining Unit Member shall be permitted to sell back to the Employer up to eighty (80) hours of accrued but unused vacation. Bargaining Unit Members shall complete and deliver a sell back form (provided by the Employer) no later than December 1 of each year of this Agreement in order to sell back vacation time. Any vacation sell back pay out shall be in a separate check from regular payroll and shall be paid with the first full pay period after December 1st of each year of this Agreement. Vacation sell back shall be at the employees current rate of pay.

City Proposal

City rejects the proposal.

Discussion:

The Union sees this as a new economic benefit to the employee at minimal economic effect on the City because of the small size of the unit and only a portion of the unit would cash this in and vacation days has a relative cash value. The city opposes this proposal in that it is not in a financial position to be purchasing back vacation time. In addition, this bargaining unit is made up of law enforcement officers. Given the nature of their duties, the City desires that the members – and all City employees – make full use of their vacation time to rest, recreate, and remove themselves as much as possible from the stress of their profession.

Fact-Finder Recommendation

Current language – do not add 18.14

Discussion:

This is an economic issue but more important the City's argument that the nature of their duties all employees need to make use of vacation time to rest, recreate, and remove themselves from the high stress of their profession.

ISSUE 5 – ARTICLES 19.10, 19.11, AND 19.12 – SICK LEAVE

City Proposal

The City's position regarding sections 19.10 and 19.11 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 the City, should be at the rate provided by R.C. 124.39(B), as may be amended from time to time. Therefore, those provisions should be deleted from the Agreement.

The City's position regarding section 19.12 is to remove the provision from the Agreement and encourage members to utilize sick time as needed for health benefits to members and their families.

Union Proposal

Current language

Discussion:

The City is proposing to delete these articles and calculate this payment at the rate provided by R.C. 124.39(B). The union sees this as an economic decrease to the employee and these Articles should be left in the contract.

Fact-Finder Recommendation

Current language – leave these articles in the contract.

Discussion:

There was not enough data to support this proposal and has been in the contract for many years.

ISSUE 5 – ARTICLES 25.03 PERSONAL LEAVE

City Proposal

Delete Article 25.03 from the contract.

Union Proposal

Current language; keep the Article in the contract.

Discussion:

The current provision: 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.

The City's position regarding this section is that "personal time" is intended to be used by an employee to address issues of a personal nature and that this provision be deleted from the Agreement because it is misleading and as a result, has led to a consistent pattern of abuse and is a cost factor to the City. This was arbitrated in 2004 and the arbitrator ruled that this was current practice and can only be changed during negotiation. This is an economic factor from \$675 to \$732 per employee per year.

Fact-Finder Recommendation

Current language.

Discussion:

This has been in the contract for many years and at the present time would be a financial challenge for each employee.

ISSUE 6 – ARTICLE 26.01, 26.02, 26.03 WAGES

City Proposal

Revise 26.01 – wages to be effective the first pay period following the enactment of this collective bargaining agreement, the wages for Bargaining Unit Members shall be as follows:

Probationary Sergeants:	\$27.62
Non-probationary Sergeants:	\$28.13
Probationary Lieutenants:	\$30.20
Non-probationary Lieutenants:	\$30.51

26.02 Wages

Each Bargaining Unit Member not on a probation shall receive an annual stipend equal to one present of the product of the employee’s hours worked for the prior six months (November – May) and (June – November) multiplied by the Member’s current hourly rate, and such stipend shall be paid in semi-annual installments during the first pay in June and December.

Delete 26.02 and 26.03

Union Proposal

26.01 Effective the first full pay period which includes August 1st of each year of this Agreement, there shall be established a rank differential for all members of the Bargaining Unit. The rank differential for Lieutenants will be set at 18.2% above patrolman's base salary as defined below in subsections (a), (b), and (c) for non-probationary Lieutenants of the Bargaining Unit. A rank differential of 17.0% shall be established for all Lieutenants in their probationary status.

The rank differential for Sergeants shall be as follows:

Promoted to 90 days -	7%
90 days to 1 Year -	9%
1 to 3 Years -	12%
Over 3 Years -	15%

Said Sergeant rank differentials shall be above Patrolman's base salary as defined below in subsections (a), (b), and (c). The base salary used for this rank differential shall be the sum of (a), (b), and (c).

The base salary of a patrolman as defined by the Patrolman's Collective Bargaining Agreement for the Patrolman fourth year;

Senior Patrol Officer's stipend as defined by the Patrolman's Collective Bargaining Agreement, reduced to an hourly rate.

Subsequent to August 1, 2006, in the event any current monetary benefit(s) is increased for patrolmen or a new monetary benefit is granted to the patrolmen (whether or not said benefit or compensation appears in the Patrolman's Collective Bargaining Agreement) that is considered taxable income to the patrolmen and the same is not granted to the Bargaining Unit Members in a similar manner or fashion. Other than the Senior Patrol Officer Stipend as recited in paragraph (b) above, as of July 31, 2006, there are no current monetary benefit(s) which would be added to the patrolman's base rate for purposes of computing the rank differential.

26.02 All employees shall receive a shift differential in the amount of thirty-five cents (\$0.35) per hour for afternoon shift and fifty cents (\$0.50) per hour for midnight shift, for hours actually worked.

Delete 26.03

Discussion:

The City's position is that 80% of the Union's personnel are "over 3 years," and 100% shall be "over 3 years" within approximately four months, the Union's proposal to amend paragraph 26.01 provides an immediate 6% salary increase to 80% of the Sergeants together with a 3% salary increase for 20% of the Sergeants with an additional 3% increase in approximately four months.

Moreover, the Union's proposal for deleting paragraph 26.01 (D) will provide each member with nearly a 1% additional increase in salary. In addition, although the Union's proposal for removing the \$500 stipend provided in paragraph 26.03 appears to be a concession, paragraph 26.01 mandates that the \$500 stipend shall be added back into the members' salaries by increasing their hourly rate in an equivalent amount. Thus, in addition to the Union's proposed salary increases of six and three percent, it proposes a less visible additional two percent wage increase.

The City's position is that when compared to local municipalities, current salaries reflected herein are more than attractive. Moreover, because the City is in a period of deficit spending, the dramatic wage increases proposed by the Union are not only unwarranted, but are fiscally unwise and reckless.

The Union's proposal provides for a graduated increase in the percentage of the rank differential for the purpose of setting the pay rate for this unit.

Currently the rank differential is set at 9% over the highest paid patrolman. The average in this area is between 10% and 15%. In addition to comparables as evidences, the City has recently

modified its position on the first line supervisor rank differential by increasing the differential for the dispatch supervisor to 15%.

This action by the City in support of the dispatch supervisor is the reason the unit proposed the increase.

Fact-Finder Recommendation

Article 26.01

	1 st year of <u>Contract</u>	2 nd year of <u>Contract</u>	3 rd year of <u>Contract</u>
Probationary Sergeants:	\$27.62	\$27.90	\$28.18
Non-probationary Sergeants:	\$28.13	\$28.42	\$28.70
Probationary Lieutenants:	\$30.20	\$30.50	\$30.81
Non-probationary Lieutenants:	\$30.51	\$30.82	\$31.13

Article 26.02

Each Bargaining Unit Member not on probation shall receive an annual stipend equal to one percent of the product of the employee’s hours worked for the prior six months (November – May) and (June – November) multiplied by the Member’s current hourly rate, and such stipend shall be paid in semi-annual installments during the first pay in June and December

Delete Article 26.03

Discussion:

This, to the fact-finder, is a two part issue. The City in their proposal is removing the concept that the members of this union’s base salary is based upon a percentage above the salary that the patrolmen union has negotiated with the City. The City’s proposal is eliminating that relationship (me-too clause) and negotiating the total salary and not a percentage above what the patrolman have negotiated. Comparable salaries of Canton, North Canton, Massillon, Alliance, and Stark Cities indicated that North Canton was second highest.

The concept that the supervisor’s salary be based on a a percentage of the salary negotiated by union of the members they supervise does seem in this day and age appropriate. An increase the second and third year provide the City time to adjust district budget.

ISSUE ARTICLE 27.01 LONGEVITY PAY

City Proposal

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.

Union Proposal

Current language

Discussion:

The City’s position is that longevity payments do not provide employee incentives and that a one time payment be made and then eliminate this yearly payment. The Union provided evidence that some local cities have this type of payment.

Fact-Finder Recommendation

Current language – Union proposal

Discussion:

Many contracts have longevity paid plans.

ISSUE 9 – 30.02, 30.03 AND 30.08 HOSPITALIZATION

City Proposal

30.01 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.

30.02 Bargaining Unit members shall contribute, via payroll deduction, 15 percent 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 per-tax basis.

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

<u>Medical Benefits</u>	<u>Network Provider</u>	<u>Non-Network Provider</u>
Annual Plan Maximum		Unlimited
Annual Deductible	\$500/person* \$1,000/family	\$500/person** \$1000/family
Out-of-Pocket Maximum (includes deductible and..)	\$2,400/person \$4,000/family	\$3,500/person \$7,000/family

(Medical Copay)
Prescription Plan Out Of -Pocket
\$4350/person
(Separate from Medical) \$8700/family

30.08 Delete

Union Proposal

Current language

Discussion:

City’s position regarding costs associated with Network providers has increased greatly since the last negotiations – more than 22 percent. The increases requested from members will help cover a portion of the increased costs paid on behalf of Union members and their families. Provisions 30.04 through 30.07 have been renumbered as former provisions 30.03 and 30.04 have been merged. North Canton’s position regarding provision previously numbered 31.08 is that it should be removed as the parties’ negotiations are independent of what may be negotiated between the City and other bargaining units.

The Union proposed current language in regard to member contributions of 8% percent and keep out-of-pocket expenses to \$1,500 for single and \$3,000 for family and section 30.8, and Me Too language.

Fact-Finder Recommendation

City proposal but do not delete 30.8

30.01 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.

30.02 Bargaining Unit members shall contribute, via payroll deduction, 15 percent 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 per-tax basis.

30.3Employer shall adopt a standardized PPO benefit plan with network/non-network deductive and coinsurance as follows:

<u>Medical Benefit</u>	<u>Network Provider</u>	<u>Non-Network Provider</u>
Annual Plan Maximum		Unlimited
Annual Deductible	\$500/person* \$1,000/family	\$500/person** \$1000/family

Out-of-Pocket Maximum	\$2,400/person	\$3500/person
(includes deductible and..)	\$4,000/family	\$7000/person
Medical Copay		
Prescription Plan Out of Pocket	\$4350/person	
(Separate From Medical)	\$8700/family	

30.08 The increased deductible amounts effective in this contract described in Section 30.03 shall not apply if the City provides the same or similar health insurance benefits to any other City employees or official and the City requires a lesser deductible amount unless the City is required to by means of: (1) a conciliator's award; or (2) a contractual obligation existing at the time this Agreement is executed (including obligations that exist by operation of law during the pendency of collective bargaining negotiations following an expired collective bargaining agreement)

Discussion:

The cost for hospitalization has increased over 22 percent and due to the finance status of the district it is not unreasonable for staff to meet part of those increases.

ISSUE 10 – ARTICLE 37.01 DURATION OF AGREEMENT

City Proposal

This Agreement is effective for three calendar years from the date of its enactment between the parties herein. This Agreement shall continue from year to year after the date of its enactment unless a party to this Agreement gives sixty days written notice of intent to negotiate a new Agreement. In the event such notice is given by a party herein, the procedures for negotiations contained in OHIO REVISED CODE 4117 shall apply.

Union Proposal

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

Discussion:

The Union's proposes that the Agreement be backdated to begin August 1, 2014 through July 31, 2017. The City's position is that the duration of the agreement should be for a period of three years effective from the date the parties finalize an agreement.

Fact-Finder Recommendation

This Agreement is effective for three calendar years from the date of its enactment between the parties herein. This Agreement shall continue from year to year after the date of its enactment

unless a party to this Agreement gives sixty days written notice of intent to negotiate a new Agreement. In the event such notice is given by a party herein, the procedures for negotiations contained in OHIO REVISED CODE 4117 shall apply.

Discussion:

This has been a very difficult negotiation session lasting over six months and probably will continue for another month or two. Making agreed changes back to August 1, 2014 seem unreasonable.

Respectfully submitted and issued this 9th day of January, 2015

John Babel Jr.
Fact-Finder