

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of)
Fact-Finding Between:)
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)
CITY OF NORTH ROYALTON) **Case No. 2017-MED-09-1050**
)
)
)
)
-and-)
) **Jonathan I. Klein,**
) **Fact-Finder**
)
INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, AFL-CIO, LOCAL 2156)
)

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For the Union:

Tom Hanculak, Esq.
Attorney for Union
Scott Maynor, President
Northern Ohio Fire Fighters
Christian Sary, President of Local 2516

For the Employer:

Thomas A. Kelly, Esq., Law
Director & Chief Prosecutor
Donna M. Vozar, Esq., Asst. Law
Director & Prosecutor
Robert A. Stefanik, Mayor

Date of Issuance: March 5, 2018

I. PROCEDURAL BACKGROUND

This matter came on for a mediation session on February 27, 2018, 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 January 16, 2018. The mediation was conducted between the City of North Royalton (“Employer”), and International Association of Fire Fighters, AFL-CIO, Local 2156 (“Union”), at 14600 State Road, North Royalton, Ohio 44133-5120. The Union is currently the sole and exclusive bargaining representative for all full-time employees occupying the positions of fireman and lieutenant. The bargaining unit is comprised of approximately 32 employees.

As of February 27, 2018, the open proposals dealt with the following articles:

1. Article XVI - Holidays
2. Article VII - Probationary Period
3. Article XXI - Jury Duty
4. Article XXIV - Workweek (section numbering only)
5. Article XXVII - Uniform Allowance
6. Article XXVIII - Education Pay
7. Article XXXII - Salary Schedule
8. Article XXXIII - Insurance
9. Article XXXV - Personnel Files
10. Article XLV - Duration
11. Article XLVI - Disciplinary Procedure
12. Article XLVII - Grievance Procedure

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement not otherwise modified during negotiations and this fact-finding process.

During mediation, the parties engaged in mutual discussion over the disputed proposals from both sides. As a result of good faith negotiations, the parties reached a mediated settlement of all outstanding issues. While the settlement reached precluded the fact-finder from any in-depth analysis of the resolutions agreed upon, based on the positions asserted during mediation, the settlement appears reasonable and consistent with the fact-finding criteria listed below. The current contract language shall be modified consistent with the recommendations for each of the following articles, and the terms and conditions of the collective bargaining agreement shall be retroactive to January 1, 2018.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein in the absence of settlement reached by the parties, the fact-finder would have considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed 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. FINAL RECOMMENDATIONS

The following recommendation on holidays represents a clarification to Section 16.04 (a) and (b) as to when payment of personal time will be made and forfeited, if not used.

ARTICLE XVI HOLIDAYS

The personal day shall equal twenty-four (24) hours off in compensatory time, which shall be taken off and not paid for. Any personal days not used in the calendar year shall be forfeited.

(b) Employees will have the option of exchanging 24 hours personal time for cash, payment to be made 2nd pay in February in the following year.

The following recommendation increases the probationary period for promoted employees from 6 to 12 months.

ARTICLE VII PROBATIONARY PERIOD

7.02 All newly promoted employees will be required to serve a promotional probationary period of 12 months. During such period, the Employer shall have the sole discretion providing such discretion is not exercised in an arbitrary or capricious manner, to demote such employee(s) to his previous position and any such demotion shall not be appealable through any grievance or appeal procedure contained herein or to the Civil Service Commission.

The italicized language on jury duty shall be added to Article XXI.

ARTICLE XXI **JURY DUTY**

21.01 Any employee who is called for jury duty shall be allowed to perform such duty without loss in pay, providing the employee turns in to the Employer all payments received by the employee for such duty. *The employee shall report for jury duty and be excused for the balance of his or her shift. The employee shall be paid for the entire 24 hours shift. Employees who are scheduled to work shall receive relief 12 hours before the start of jury duty.*

The following represents a correction of the paragraph number referenced therein:

ARTICLE XXIV **WORKWEEK**

24.02 The reduction in hours pursuant to paragraph 24.01 above, shall be accomplished by allowing each employee one (1) twenty-four (24) compensatory day each cycle the employee exceeds 192 hours of work. This time may then be used as an additional time off with pay. The normal starting time for each tour of duty during the workweek shall be between 6:00 a.m. and 8:00 a.m., except that such time shall not be changed in an indiscriminate manner.

The following recommendation represents a modification of the current language contained in Article XXVII, Section 27.04.

Article XXVII UNIFORM ALLOWANCE

27.04 The Employer shall order (buy) a full complement of uniforms and order (buy) or supply a full set of “turn out” gear to each newly hired employee within thirty (30) days of hire, unless unavailable for delivery.

- Uniform allotment to be issued within thirty (30) days of hire:
 - 3 Class B Shirts (Short sleeve)
 - 3 Class B Pairs of trousers
 - 1 Car duty jacket with zip out lining/winter-Summer
 - 1 Uniform hat
 - 3 Name plates
 - 3 Badges
 - 1 Hat badge

Reference to EMT pay in Article XXVIII shall be eliminated, together with the deletion of paramedic pay and its addition to the salary schedule. Current paragraphs 28.05 and 28.07 shall be deleted, and a new paragraph 28.05 shall be contained in Article XXVII as provided, below.

Article XXVIII **EDUCATION PAY**

28.05 Employees are required to maintain paramedic certification as a condition of employment. Each employee certified as a paramedic shall maintain their certification through the term of this agreement, or any extension thereof. As used in this section, ‘qualified paramedic’ shall mean a firefighter who has successfully completed a Paramedic course, certified by the State of Ohio, and under the standards established by the State of Ohio, that govern said certifications, including any continuing education requirements.

ARTICLE XXXII **SALARY SCHEDULE**

32.01 All full-time employees shall receive salary payments and appropriate overtime work payments in accordance with the following schedule. The full-time employee salary increase shall be 2018 – 2.5%; 2019 – 2% and 2020 –2% as more fully reflected in the schedule below: [The parties will create a new salary schedule for each year of the new contract containing these salary increases].

Paragraphs 33.01 and 33.02 of Article XXXIII shall be deleted, and the following language will appear in their stead:

ARTICLE XXXIII **INSURANCE**

The Employer shall provide each full time employee with either individual or family coverage, as appropriate, with medical, vision, or dental coverage as selected by the Employer. In the event that in 2019 or 2020 only¹, the employee’s medical coverage exposure increases from the current 2018 medical coverage exposure, the parties agree to a wage reopener for that year. Employees’

¹ *Employer specifically retains the sole right to select the health care coverage offered to its employees, including setting deductibles, co-payments, and/or out of pocket limits or plan designs.*

medical coverage exposure is defined as in network deductible, in network co-pay, and/or in network out of pocket maximum, or other plan design as offset by other payments, including but not limited to HSA employer contributions.

Only in the event of an increase in the employee's medical coverage exposure, the Union shall have the right to invoke mutually alternative dispute resolution (MADR), on the issue of wages, alone.

In the event that MADR provision is invoked, and pursuant to CBA Article XLVIII, the parties agree to conclude conciliation on or before December 17 of the year preceding the anticipated increase in employee's medical coverage exposure before Arbitrator Jonathan Klein or other agreed upon arbitrator.

Effective January 1, 2018 and thereafter employees' contribution for family or individual coverage shall be 12% of the health insurance premium or the city's cost with the following monthly employee contribution not to exceed:

In 2018 family: \$199.36
Individual \$74.17

2019 family: \$210.00
Individual: \$ 79.00

2020 family: \$220.00
Individual: \$83.00

Current contract language in violation of public records law shall be deleted so that

Article XXXV shall read:

ARTICLE XXXV

PERSONNEL FILES

35.01 An employee shall have the right, upon request, to review any and all of his personnel files and add relevant memoranda to the file clarifying any documents contained in the file and may have a representative of the Union present when reviewing the file, along with an Employer representative. A request for copies of items included in the file shall be honored. An employee may request removal of specific items in his file, which request would be subject to review and Employer approval on a case by case basis.

Article XLV

DURATION

45.01 This Agreement shall become effective at 12:01 a.m. on January 1, 2018, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2020.

References in Article XLVI to “attorney” shall be deleted and certain time limits shall be increased from five to seven days:

ARTICLE XLVI

DISCIPLINARY PROCEDURE

46.01 This procedure shall apply to all non-probationary employees covered by this Agreement.

46.02 All employees shall have the following rights:

- A. An employee shall be entitled to representation by a Union representative at each step of the disciplinary procedure.
- B. An employee shall not be coerced, intimidated, or suffer any reprisals either directly or indirectly that may adversely affect his hours, wages, or working conditions as the result of the exercise of his rights under this procedure.

46.07 The Notice of Discipline served on the employee shall be accompanied by written statement that:

- 1. the employee has a right to object by filing a grievance within seven (7) days of receipt of the Notice of Discipline;
- 2. the Grievance Procedure provides for a hearing by an independent arbitrator as its final step;
- 3. the employee is entitled to representation by a Union representative at every step of the proceeding;

46.08 If a grievance is filed and pursued within the time frames provided below, no penalty can be implemented, except as provided in paragraph 46.12, until the matter is settled or the arbitrator renders a determination.

46.09 The following administrative procedures shall apply to disciplinary action:

- A. The appointing authority and the employee involved are encouraged to settle disciplinary matters informally. Each side shall extend a good faith effort to settle the matter at the earliest possible time. The appointing authority is encouraged to hold an informal meeting with the employee for the purpose of discussing the matter prior to the formal presentation of written charges. The specific nature of the matter will be addressed, and the appointing authority may offer a proposed disciplinary penalty. The employee must be advised before meeting that she/he is entitled to representation by the Union during the initial discussion.
- B. If a mutually agreeable settlement is not reached at this informal meeting the appointing authority will, within ten (10) days, prepare a formal Notice of Discipline and present it to the employee. If no informal meeting is held, the appointing authority may just prepare a Notice of Discipline and present it to the employee. The Notice of Discipline will include advice as to the employee's rights in the procedure, and the right of representation.
- C. Upon receipt of the Notice of Discipline, the employee may choose to accept the proposed discipline or to appeal by filing a grievance with the appointing authority, pursuant to Step 3 of the Grievance Procedure. The appeal must be filed at Step 3 within seven (7) days from receipt of the Notice of Discipline.

46.10 A failure to submit an appeal within the above time limit shall be construed as an agreement to the disciplinary action by the affected employee and Union. All subsequent appeal rights shall be deemed waived.

46.11 A disciplinary matter may be settled at any time. The terms of the settlement shall be agreed to in writing. An employee executing a settlement shall be notified of the right to have a Union representative as a representative or to decline any such representation. A settlement entered into by an employee shall be final and binding on all parties. The Union shall be notified of all settlements.

46.12 An employee may be suspended with pay at any time during the process if the appointing authority, at its sole discretion, determines the employee's continued presence on the job represents a potential danger to persons or property, or would interfere with the Employer's operations. A suspension without pay may be imposed concurrent with or subsequent to the decision at Step 3 of the Grievance Procedure.

46.13 The Union on behalf of all the employees covered by this Agreement and its own behalf, hereby waives any and all rights previously possessed by such employees to a Safety Director's inquiry or to appeal any form of disciplinary action (e.g., suspensions, demotion or

discharge) to any Civil Service Commission.

46.14 Records of disciplinary action shall cease to have force and effect or be considered in future disciplinary matters twelve (12) months after their effective date for counseling and written reprimands; twenty-four (24) months after their effective date for suspensions of three (3) days or less providing there is no intervening discipline during these times frames. Suspensions of more than three (3) days or more will not be considered in future disciplinary matters after forty-eight (48) months providing there is no intervening disciplinary action. In the event there is intervening disciplinary action, the original record of disciplinary action shall be extended for another term from the date of the intervening disciplinary action.

Certain time limits contained in Article XLVII shall be increased from 5 to 7 days:

ARTICLE XLVII **GRIEVANCE PROCEDURE**

Step 1:

An employee or the Union who believes there may be a grievance shall notify the Chief of the Fire Department of the possible grievance within seven (7) days of the occurrence of the facts giving rise to the grievance. The Chief shall schedule an informal meeting with the employee and his Union representative within seven (7) of the date of the notice by the employee. The Chief and the employee, along with the employee's Union representative, will discuss the issues in dispute with the objective of resolving the matter informally. The Chief shall respond to the possible grievance verbally, within seven (7) days of the meeting.

Step 2:

If the dispute is not resolved informally at Step 1, it shall be reduced to writing and presented as a grievance to the Chief within seven (7) days of the Chief's verbal answer. The Chief shall then respond to the grievance in writing within seven (7) days.

Step 3:

If the aggrieved party is not satisfied with the written decision at the conclusion of Step 2, a written appeal of the decision may be filed with the Safety Director within seven (7) days from the date of the rendering of the decision at Step 2. Copies of the written decision shall be submitted with the appeal. The Safety Director shall convene a hearing within ten (10) days of the receipt of the appeal. The hearing will be held with the aggrieved party and his Union representative, if he requests one. The Safety Director shall issue a written decision to the employee's Union representative with a copy to the employee if the employee requests one,

within fifteen (15) days from the date of the hearing. In the event the Mayor has not appointed a Safety Director, this step shall not apply and the grievance shall be appealed directly to the Mayor.

Step 4:

If the aggrieved party is not satisfied with the written decision at the conclusion of Step 2, of Step 3 if applicable, a written appeal of the decision may be filed with the Mayor within seven (7) days from the date of the rendering of the decision. Copies of the written decisions shall be submitted with the appeal. The Mayor or his designee shall convene a hearing within ten (10) days of the receipt of the appeal. The hearing will be held with the aggrieved party, his Union representative and any other party necessary to provide the required information for the rendering of a proper decision. The Mayor or his designee shall issue a written decision to the employee's Union representative with a copy to the employee within fifteen (15) days from the date of the hearing. If the Union is not satisfied with the decision at Step 4, the Union may proceed to arbitration pursuant to the Arbitration Procedure herein contained.

/S/ Jonathan I. Klein
Jonathan I. Klein, Fact-finder

Dated: March 5, 2018

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served on Thomas M. Hanculak, Esq. Attorney for Union at tmhanculak@aol.com; Thomas A. Kelly, Esq., Law Director & Chief Prosecutor for the City at Tkelly@northroyalton.org; Scott Maynor, President of Northern Ohio Fire Fighters Association at smaynor@noff.org; Donna M. Vozar, Esq., Asst. Law Director & Prosecutor for the City at dvozar@northroyalton.org; Donald Collins, General Counsel & Administrator, Bureau of Mediation, State Employment Relations Board at donald.collins@serb.state.oh.us and Bureau of Mediation at SERB.Mediation@serb.state.oh.us, each by electronic mail this 5th day of March 2018.

/S/ Jonathan I. Klein
Jonathan I. Klein, Fact-finder