

STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDERS REPORT AND RECOMMENDATIONS

APR 21 8 53 AM '97

April 17, 1997

In the Matter of Fact-finding Between:

THE CITY OF NORTON)	Case Nos. 96-MED-09-0818
)	96-MED-09-0819
and)	96-MED-09-0820
)	
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	

APPEARANCES

For the City:

Robert T. Tscholl	Attorney
John Morgan	City Administrator

For the Union:

Nicholas Codrea, Jr.	OPBA Staff Representative
Everett A. Justham	Police Sergeant
Michael C. Williams	Patrolman
Steven A. Davis	Patrolman
Rodger Ramsthaller	Dispatcher

Fact-finder:

Virginia Wallace-Curry

Introduction

The Ohio Patrolmen's Benevolent Association (the "Union") represents three bargaining units employed by The City of Norton (the "City"): Police Sergeants, Patrolmen, and Dispatchers. The parties have agreed to multi-unit bargaining with one hearing and one fact-finding report.

On November 29, 1996, the State Employment Relations Board appointed the undersigned as fact-finder to this matter. The parties filed for an extension of time. A fact-finding hearing was held pursuant to O.R.C. §4717.14 on March 17, 1997, and a previous mediation session was held before the fact-finder on March 10, 1997. The parties filed post-hearing position statements on April 2, 1997 and agreed that the fact-finder's report would be due on or before April 21, 1997.

As a result of the mediation session, some issues were resolved. The following reflects the parties' positions and the fact-finder's analysis and recommendations which were reached after consideration of the evidence presented and the criteria listed in SERB Rule 4117-9-05(J).

Issues Presented and Fact-finders Recommendations

1. Article IX - ASSOCIATION REPRESENTATION

Union's Proposal - The Union proposes a new Section 3 to this Article to provide 16 hours of paid "Director's Time" to allow attendance at OPBA meetings and/or training sessions. The Union would provide the City with 15 calendar day notice. The Union

asserts that according to Montgomery County Joint Vocational School District, SERB 89-017 (7-14-89) and In re Transportation Department, SERB 93-005 (4-29-93), that Union leave, paid or unpaid, is a mandatory subject of bargaining. It argues that these clauses are in many Ohio PBA contracts.

City's Position - The City opposes the Union's proposal. The City asserts that O.R.C. §4117.11(A)(2) prohibits the City from providing financial aid to the Union other than that which is specifically listed. The City already provides for no lost time when Union members are engaged in negotiations or other meetings with the City. The Union's proposal seeks financial aid outside that mentioned in the statute and is, therefore, illegal.

Recommendation - The Union's proposal is not recommended. The cases cited by the Union, regarding paid union leave, do not refer specifically to paid leave for Union meetings or training sessions, and are, therefore, not strictly precedent for this proposal. The City's position regarding the legality of such a paid leave is a reasonable interpretation of the statute. Therefore, the Fact-finder will not recommend that the City adopt a position is arguably illegal and could expose the City to a taxpayer lawsuit.

2. Article XVI - DUTY HOURS

Union's Proposal - The Union proposed to add a Section 2 which states: "Once the work week has been established, an employee's

schedule will not be changed to avoid paying daily or weekly overtime." The Union asserts that the City is making changes to fill officers' schedules just prior to working, which is extremely disruptive on the family life of the officers. The Union contends that there are two vacancies that have remained unfilled which have caused the problem. It asserts that the schedule changes should not be used to avoid paying overtime or hiring more personnel.

City's Position - The City opposes the Union's proposal. The City argues that the two existing vacancies will be filled very soon, which will eliminate some of the problem. It argues that the problem of working double shifts back to back has been eliminated. Fill officers are the least senior officers and their schedules are changed when other more senior officers request time off or are sick. The City asserts that the Union is trying to manipulate overtime and this provision should not be added. The City's duty is to run the department efficiently, and this proposal would add significant costs.

Recommendation - The Union's proposal is not recommended. The City recognizes the concerns of the officers and has asserted that the vacancies which have caused much of the problem are being filled. The exam has been given and the pool of potential candidates will be available soon. Even though last minute schedule changes can be very disruptive to everyone, especially those officers with families and children, predictability in

scheduling is not a sufficient reason for this change to the Contract. The Union's proposal is an attempt to force the City to utilize overtime. The use of overtime will not necessarily cure the problem of predictability and is not a cost effective-way of running the department.

3. Article XVIII - HOLIDAYS

Union's Proposal - The Union has withdrawn its original proposal of adding the employee's birthday as a holiday.

City's Proposal - The City proposes no net increase in the number of holidays, but it proposes that the half day allotted for Election Day be combined with the half day for Christmas Eve, making it a full holiday on Christmas Eve. The City has made these changes in other departments due to media flack regarding the Election Day holiday.

Recommendation - The City's proposal is recommended. The half day holiday for Election Day should be eliminated and Christmas Eve Day should be made a full day holiday. Since employees in the police department cannot always take their holidays on the appointed day, this change should make little difference to them. It would relieve the media scrutiny regarding the Election Day and put the police department employees in the same position as other City employees.

4. Article XIX - VACATIONS

Union's Proposal - The Union proposes a change in the date on which the second tier of the two tier vacation system becomes effective. It proposes the following schedule for bargaining unit members hired before February 1, 1997:

After 1 year	-	80 hours
After 5 years	-	120 hours
After 10 years	-	160 hours
After 15 years	-	200 hours
After 20 years	-	240 hours

Employees hired after February 1, 1997 would be on the following schedule:

After 1 year	-	80 hours
After 8 years	-	120 hours
After 15 years	-	160 hours

The Union argues that this proposal reflects the terms of the City Council's recently passed ordinance for non-bargaining employees.

City's Position - The City argues that no changes be made to the current two tier system. The City contends that the Union now seeks to eliminate what it agreed to two contracts ago without offering anything else to replace what the City gained through negotiations. Furthermore, the City asserts that in the past political entities gave employees much vacation time in lieu of wages. However, since the inception of the collective bargaining statute, public sector wage increases have far exceeded private sector wages. There is no longer a need to offer employees a six week vacation to justify inadequate wages.

Recommendation - The Union's proposal is not recommended. Changing the date on which the second tier of the two tier system becomes effective, emasculates any gains that the City might enjoy from this negotiated provision, and the Union has offered no incentive to the City to agree to this change.

Employees hired after 1/1/92, the current effective date of the second tier, feel that the system is unfair. Yet they are willing to impose this "inequitable system" on employees hired after 2/1/97. In doing so, the Union is attempting to postpone the inevitable inequity to which it agreed years ago. Consistently seeking to move the effective date as new employees are hired will make this negotiated provision merely illusory.

5. **Article XXI - FUNERAL LEAVE**

Union's Proposal - The Union proposes adding a new Section 3 which allows an employee who has had a death in his immediate household to extend his or her funeral leave by three days, utilizing sick leave, without the necessity of medical verification. The Union feels that this time should be available to employees and that the necessity of obtaining medical verification is an undue burden on employees already going through a traumatic time.

City's Position - The City contends that no new contract language is necessary in this instance. It argues that employees already have the ability to extend funeral leave by two days using

sick leave. The City argues that the current contract language is generous and in line with current practices in other contracts.

Recommendations - The Union's proposal is recommended. The extension of funeral leave by three days, utilizing sick leave, does not place any new financial burdens on the City. The Union's proposal merely eliminates the necessity for obtaining medical verification for needing more time to grieve and recuperate from a significant loss.

Recommended Contract Language:

ARTICLE XXI

Section 3. In the event of the death of a member of the Employee's immediate household the Employee may extend his/her funeral leave by 3 days, utilizing sick leave, without the necessity of medical verification.

6. Article XXVI - COMPENSATION

Union's Proposal - The Union proposes a 5% across the board general wage increase each year for 1997, 1998, and 1999. The Union argues that Norton Police employees have received lesser wage increases than the statewide averages since 1991. Documentation from SERB and the Union's assessment of general wage increases illustrate this point:

<u>Year</u>	<u>Ohio Police Average General Wage Increase</u>	<u>Norton General Wage Increase</u>
1991	4.51%	
1992	4.26%	3%
1993	3.64%	3%

1994	3.66%	4%
1995	3.66%	3%
1996	3.59%	3%

The Union also argues that the Norton Dispatchers are the lowest paid city dispatcher in Summit County. Norton Dispatchers also suffer internal inequities. Dispatcher earnings as a percentage of Patrol earnings is 67.4%, while the overall average for Summit County is 73.24%, nearly 6% less.

The Employer's proposal of a "3% weighted average" increase would totally destroy the hard-bargained rank differentials. Furthermore, the Union argues that the Employer's comparable evidence is neither reliable nor relevant. The City has included townships in their data. Township police officers earn less than city officers because townships must rely solely on levies passed by the voters. Cities have the power to pass levies and income tax issues.

City's Proposal - The City proposes a 3% weighted average wage increase for each year, 1997, 1998, and 1999. The City argues that the Union's proposal of 5% is unreasonable and based on selective data that fails to consider comparable units in Summit County, such as Franklin Township, Sagamore Hills Township, and Springfield Township, who comparable work under similar circumstances.

The City contends that when township wage rates are factored into the comparables submitted by the Union, the County average salary is reduced to \$36,849, as compared to Norton's \$38,667. When factoring in the salary for an Akron police officer, \$37,273,

also omitted by the Union, the average salary becomes \$37,532, which is over \$1000 less than Norton's. It is unrebutted that Akron police work is more dangerous on a daily basis, despite the fact that they have two man patrols.

The City states that it has negotiated a 3% weighted average wage increase with other City bargaining units and sees no reason that the police unit should receive a superior raise.

Recommendation - It is recommended that the patrol officers and sergeants receive a 3.5% wage increase across the board for each year of the contract, 1997, 1998, and 1999.

The City refuses to agree to increases in longevity and in longer vacation time for newer hires based on the reasoning that these types of compensation are no longer needed because wages are more adequate than in earlier times when longevity pay and long vacations were given. Therefore, the City must believe in sustaining the wages that the Norton Police Department has gained. A 3% weighted average would actually erode some of the wages gained. It would be especially detrimental to police sergeants, because it would significantly erode the rank differential between patrolmen and sergeants.

Over the past six years, the general wage increase in Norton Police wages has been below the Ohio average. For all except one year, the increases were 3% for Norton, but for Ohio they have ranged from a high of 4.5% to a low of 3.59%. While Norton is not the lowest paid community in its geographic area, the City has

admitted that it has fallen from the ranks it used to enjoy. Therefore, an increase greater than the weighted 3% average is necessary to maintain Norton's position relative to other communities in this area.

There is no dispute that the Norton Police Dispatchers are among the lowest paid in the immediate labor market. Therefore, it is recommended that the dispatchers receive a 5% increase across the board for each year of the contract, 1997, 1998, and 1999. This increase is necessary to bring the dispatchers up to an adequate wage comparable to other communities and would lessen the widening gap between the dispatchers and patrolmen. By the end of the three year contract, dispatchers would earn 70% of patrolmen wages, up from its current rate of 67% and closer to the 73% average in Summit County.

7. Article XXVII - LONGEVITY

Union's Proposal - The Union proposes the following schedule to replace that in the current Article XXVII:

Section 1. All employees shall receive longevity payments as follows after the completion of the required length of continuous full-time service:

Years of Completed Service	But less than	Longevity payments
5	6	\$300
6	7	\$330
7	8	\$360
8	9	\$390
9	10	\$420
10	11	\$450
11	12	\$480
12	13	\$510
13	14	\$540

14	15	\$570
15	16	\$630
16	17	\$690
17	18	\$750
18	19	\$810
19	20	\$870
20+		\$1,000

The Union's proposal would increase longevity payments by 50%. The Union argues that this increase is necessary to cover the increase in the CPI-U that has occurred since the last increase in 1984. In 1984 the annual average CPI-U was 103.9 versus 155.8 for 1996, which is a 50% increase. It argues that employees are long overdue for an increase.

City's Position - The City opposes the Union's proposal and states that the Union has offered no rationale to justify the increase it proposes. Longevity was a method of giving raises prior to the collective bargaining statute. It is now an anachronism that exists by force of inertia. The City argues that the Union's argument was rejected by the Fact-finder and the Conciliator three years ago and should be rejected by this Fact-finder.

Recommendation - The Union's proposal is not recommended. Longevity pay is a tool from the past which was used to increase compensation to employees when giving raises was not a viable option. The Union has given no other justification than that the longevity pay has not been increases since 1984. It gave no justification for the concept of longevity pay and why it should be

increased over the years. The Fact-finder believes that employees are better served by increases in wages rather than in lump sum payments.

8. Article XXIX - UNIFORM ALLOWANCE

Union's Proposal - The Union proposes and increase in the uniform allowance under Section 2 to provide \$600 in 1997, \$700 in 1998, and \$800 in 1999 for Police Officers and \$400 in 1997, \$475 in 1998, and \$550 in 1999 for Dispatchers.

The Union would also propose a new Section 5 to provide for a "ruined on duty" clause to replace watches, optics, dentures and uniform items ruined in the line of duty up to a \$100 limit per occurrence. Additionally, the Union would agree to remit any amount recovered to the City.

The Union argues that the City's proposal for an "exchange system" would not work. It would be too cumbersome and a bureaucratic nightmare and a basis for conflict.

City's Proposal - The City proposes a replacement policy. For the first five years of employment, a newly hired police officer will be given \$500 annually. After five years of employment, the officer will be eligible to participate in the full replacement program of all items contained in the uniform list submitted by the Union, with the exclusion of the duty weapon. Replacement of the item would be at the Chief's discretion. The Union has conceded that the police administration has high standards for uniform

appearance of police officers. The City argues that the Chief would, therefore, not be arbitrary or capricious regarding an item needed to be replaced.

Recommendation - The Union's proposal is recommended in part. Although the City attempted to assure the Union and the Fact-finder that the Chief would be able to administer the replacement policy fairly, the program would be a bureaucratic nightmare, as mentioned by the Union. It would open up the department to conflicts as to when an item was sufficiently worn out to be replaced. Furthermore, the amount proposed by the City for the newly hired officers is less than the amount that it is estimated it would cost yearly to maintain a complete uniform, \$754.08.

Therefore, the Union's proposal to raise the uniform allowance is more workable and more in line with the actual cost of maintaining a uniform.

However, the Union's proposal for a "ruined on duty" clause is not recommended because it too would be a bureaucratic nightmare, just like the replacement policy proffered by the City.

Recommended Contract Language:

ARTICLE XXIX

Section 2. All non-probationary patrol officers and sergeants shall receive an annual uniform allowance of \$600 in 1997, \$700 in 1998, and \$800 in 1999, payable prior to February 10 of each year. All non-probationary dispatchers shall receive an annual uniform allowance of \$400 in 1997, \$475 in 1998, and \$550 in

1999, payable prior to February 10 of each year.

9. Article XXXIII - MISCELLANEOUS

Union's Proposal - The Union proposes a change to Section 7 of this Article to read as follows:

Section 7. Part-time patrol officers shall not be scheduled to work more than sixteen shifts per week collectively, except in cases of emergency.

The Union argues that the over reliance on part-time employees undermines the bargaining unit and reduces overtime opportunities for full-time employees.

City's Position - The Union's attempt to limit the use of part-time officers would only aggravate the problem with fill officers that the Union has complained about. Part-time officers are used to fill shifts where regular officers are not available or to avoid the payment of overtime. These are legitimate goals of the City and the Union has offered no credible justification for the restrictive language it has proposed.

Recommendation - The Union's proposal is not recommended. The Union has not given a sufficient justification for denying the City the right to avoid the payment of overtime by using part-time officers. The Union is also concerned about the schedule changes of fill officers which would be exacerbated by the restriction on part-time officers. As stated earlier, the filling of two vacancies in the department should ease the use of part-time

officers as well.

10. Article XVII- OVERTIME PAY AND COURT TIME and APPENDIX A

City's Proposal - The City proposes changing the schedule for the records clerk from Sunday through Thursday to Monday through Friday, daylight. The City also proposed to eliminate the right of first refusal for overtime for full-time dispatchers. This proposal would better enable the City to utilize dispatchers. The City is willing to pay each dispatcher (except for the records clerk dispatcher) a one-time lump-sum payment of \$500 upon execution of the contract for these changes.

Union's Position - The Union questions the priority of this proposal and argues it should not be before the fact-finder. This proposal was not mentioned in any of the negotiations prior to the fact-finding hearing; therefore, the proposal was not at impasse. It was proposed during the impasse hearing.

That notwithstanding, the City seeks to wipe out long-standing, hard-bargained provisions from the parties Agreement, without, at least at the fact-finding hearing, offering any inducement in exchange.

Recommendation - The City's proposal is recommended. Although this issue was not presented until the fact-finding hearing, the Union had time to discuss and consider the option. There was ample opportunity, even at the fact-finding hearing, to

settle any issues that parties felt they could. The Union considered and rejected the offer.

One of the reasons it was rejected was because the City did not offer any inducement to make the changes requested. At this time, the City is offering a one time lump-sum inducement of \$500 for all dispatchers except the records clerk. This seems an adequate inducement. The elimination of the first right of refusal will not eliminate all overtime for the dispatchers, but will give the City more flexibility in resolving staffing issue. Part-time dispatchers would just be factored into the overtime list. The records clerk will be able to work a more normal schedule Monday through Friday schedule. The Sunday shift will be filled with a part-time dispatcher.

Recommended Contract Language:

ARTICLE XVII

In Section 4, delete the sentence: "Dispatchers shall have first right of refusal for all overtime that replaces a dispatcher."

APPENDIX A

RECORDS DISPATCHER SHIFT

Sunday	Off
Monday	8:00 a.m. to 4:00 p.m.
Tuesday	8:00 a.m. to 4:00 p.m.
Wednesday	8:00 a.m. to 4:00 p.m.
Thursday	8:00 a.m. to 4:00 p.m.
Friday	8:00 a.m. to 4:00 p.m.
Saturday	Off

11. NEW ISSUE - DRUG POLICY

Union's Proposal - The Union, at the City's request, has proposed language for a drug policy for Norton to be included in Article 6, EMPLOYEE RIGHTS. The basic language proposed by the Union calls for a reasonable suspicion standard and provides safeguards for employees when a test result is positive.

City's Proposal - The City also proposed a drug policy based on the drug policy implemented in Akron. This policy is similar to the one proposed by the Union in that it provides for a reasonable suspicion standard. The policy proposed by the City has many details and safeguards as well.

Recommendation - Because the two policies proposed by the Union and the City are basically in agreement with each other, and because there was very little discussion or negotiation on the policies at the mediation session or the fact-finding hearing, it is recommended that the parties continue to negotiate this issue. The Union and the City appear to be in agreement on the most difficult issue of any drug policy, that is, when may a drug test be required. Both have proposed a reasonable suspicion standard. The remaining issues in each policy consist of details in collecting the samples and/or the consequences of a positive result. The fact-finder is confident that the parties will be able to reach agreement on these issues with further negotiations.

Conclusion

The above listed issues were the only ones submitted to the Fact-finder for a recommended resolution. The remaining articles of the parties' Contract have already been resolved by mutual agreement.

Respectfully submitted,


Virginia Wallace-Curry, Fact-finder

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing fact-finding report was duly served by overnight mail on April 17, 1997 upon:

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