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STATE EMPLOYMENT
RELATIONS BOARD

June 2, 1997

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the Matter of Fact-finding]	
Between:]	
]	
]	
CITY OF NORTHWOOD,]	
Employer]	Case No. 96-MED-11-1096
]	Raymond J. Navarre
and]	Fact-finder
]	
Ohio Patrolmen's Benevolent]	
Association,]	
Employee Organization]	

**FACT-FINDING REPORT
and
RECOMMENDATIONS**

Date of Issuance: June 18, 1997

Date of Hearing: June 10, 1997

Location of Hearing: Northwood City Building
6000 Wales Rd.
Northwood, Ohio

Present for the Fact-finding: E.P. Nevada
Clemans, Nelson &
Associates, Inc.
Representing the City of Northwood
Douglas P. Breno
Chief of Police, City of Northwood

Jon Heineman
Business Agent
Ohio Patrolmen's Benevolent Association
Representing OPBA
Michael F. Kutchenriter, President OPBA
Wayne L. Phillips, Secretary OPBA

Note that for purposes of identification in this document, The City of Northwood and their representatives will be referred to as the **City** and representatives of Ohio Patrolmen's Benevolent Association (OPBA) and their representatives will be referred to as the **Union**.

Time: The Fact-finding was scheduled for 8:00 AM and concluded about 10:30 AM.

BACKGROUND

The collective bargaining unit in this matter consists of all full-time Police Patrolmen. As of June 4, 1997 there were twelve (12) employees.

There is no current collective bargaining agreement with the OPBA. However, due to the change in bargaining unit representatives in 1996, the City has continued to honor various sections of the prior agreement with IUPA. When a reference is made to current language, the reference should be taken in respect to the prior agreement with IUPA.

Prior to the Fact-finding, as well as during it, a number of the unresolved issues were resolved. The representatives of the City as well as the Union initialed those issues and the copy so initialed contains the wording of the articles in question. These articles are as follows:

Article 2 Dues Deduction

Article 20 Funeral Leave

Article 27 Uniforms

Article 29 Vacation

Article 31 Pay Day

Article 32 Credit Union

The unresolved issues left were as follows:

Article 9 Corrective Action

Article 18 Overtime

Article 19 Sick Leave

Article 35 Compensation

Article 36 Educational Reimbursement

Article 39 Duration

Unnumbered Longevity

The City and the Union presented the Fact-finder with statements regarding their positions on the unresolved issues.

FACT-FINDING CRITERIA

In determining the facts and making the recommendations contained in this document, the fact-finder considered the applicable criteria as required by the Ohio Revised Code Section 4117.14 and the Ohio Administrative Code Section 4117-9-05. These criteria are:

- (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.

FINDING of FACT and RECOMMENDATIONS

The unresolved issues submitted by the City and the Union to the Fact-finder will be considered in what follows.

Below, the finding of fact will be presented for each issue, followed by the Fact-finder's recommendation in respect to that issue and when applicable, the language recommended for the bargaining agreement. The Fact-finder's report needs to be considered in its entirety as to the overall effect on the parties and their bargaining positions.

OPEN ISSUES

Issue 1. Article 9 CORRECTIVE ACTION

The City proposes two additions to the current language:

- (1) termination of officers who, as a result of court action, lose their right to carry firearms

and

(2) language that would prohibit an employee who is on sick leave from engaging in outside employment during the shift for which such leave was approved.

The rationale offered by the city for proposal (1), termination of officers, is that the "Brady Bill", 18 USC 921 and 922 made it unlawful for a police officer to carry a firearm, if he has been convicted of a "domestic violence". Therefore, the City feels its proposal, (1), termination of officers...., avoids a conflict with federal law.

The rationale offered for the proposal (2), prohibiting employees on sick leave...., is to remedy a situation that previously existed wherein an officer when denied a vacation day, called in sick and went immediately to work at an outside job.

The Union proposal is to maintain the current language.

The rationale for the Union's position is that the City's proposal is giving away individual's right.

The Fact-finder feels that in respect to the City's proposal (1), termination of officers...., there is a need to bring the collective bargaining agreement into agreement with federal law but should not in any way infringe on or limit any subsequent arbitration. It is felt that individual's rights are not without limitation and in the case being considered, the safety and rights of citizens must be protected. However, in respect to the City's proposal (2), prohibiting an employee on sick leave...., the Fact-finder feels the current language in Article 9 adequately addresses the situation as outlined by the City.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective bargaining agreement include the following wording:

Section 9.2.1

"Any employee who, as a result of the action of any court, loses his/her ability to carry a firearm may be charged with serious misconduct, and discharged without progressive discipline."

Issue 2. Article 18 Overtime

The Union proposes the current language for this article.

The City proposes the addition of an amendment to Section 18.1 as follows:

"For the purpose of this Section, paid vacation, paid holidays, paid personal leave days, and compensatory time off shall not be considered 'performed work' ". Sick leave and other absences from work, paid or unpaid, shall not be considered 'performed work'.

The rationale offered by the city is that under the Fair Labor Standards Act (29 USC 201) employers are only required to pay overtime for hours "worked" in excess of 40 hours of "work" in a week. Under federal law "paid leave" does not count toward the 40 hours.

The Union noted that the current language has been in place for a long time and this has not been taken away from any other employees of the city.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective bargaining agreement remain the same as to the current language of Section 18, a continuation of the IUPA agreement in force now.

Issue 3. Article 19 Sick Leave

The City proposes a continuation of the IUPA language.

The rationale for the City's position is that the current language is sufficient to meet all needs. The City believes that "days off" in lieu of a bonus would defeat the purpose of encouraging attendance. Finally, the City maintains that "days off" in lieu of cash would have a financial impact on the City requiring it to pay an officer who was off duty overtime to cover for the officer taking sick leave bonus days. This would also complicate scheduling.

The Union modified its proposal to add bonus days in lieu of the bonus dollars and is as follows:

<u>Sick Leave Hours Used</u>	<u>Sick Leave Bonus</u>
0-8	\$400.00 or three (3) bonus days off
9-16	\$300.00 or two (2) bonus days off
17-24	\$200.00 or one (1) bonus day off
25 or more	zero

The Union noted that in the local area a number of units have the option of taking days off in lieu of the bonus dollars. The Union gave Oregon, Bowling Green and Sylvania as examples of units that have that option.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective agreement remain the same as to the current language of Article 19, Sick Leave, of the IUPA agreement now in force.

Issue 4. Article 35 Compensation

The Union's proposal is that effective October 13, 1996, the wage rates for bargaining unit employees shall be as follows:

Patrolman (Probationary)	
First 26 weeks	\$578.24
Next 12 consecutive weeks	\$608.67
Next 14 consecutive weeks	\$640.71
Permanent Patrolman (after 52 weeks)	\$674.43

It was noted that these wage rates represent an increase of eight (8) percent. The Union also noted that this proposal is to be taken with their proposal that the collective bargaining agreement have a duration of one year.

The rationale offered by the Union, using 1996 SERB figures, is that a Northwood Police Patrolmen's wage rate is 91.82 % of the state average. State figures also showed a Northwood laborer' (AFSCME) wage rates to be 120.97 % percent of the state average and for police sergeants, the wage rate was 95.12% above the average.

The union also offered SERB figures showing that cities of a population of 5000 to 9000 and a suburb of a larger city, average \$39,085 for a Police Patrolmen. Northwood wage rate is 83.08% of that average. The Union also presented wage rates for cities with a population of 5000 to 9000. In addition to these figures, the Union presented figures showing a compounded wage rate increase over the past three years to be 11.92% for Northwood Police Sergeants and for Northwood Police Officers to be a 8.58%. The Union presented other wage rate figures for the same three years for Northwood Police Dispatcher and Police Secretary to be 11.96% and 13.6% respectively. To rectify this disparity of the Patrolmen's wages to the Sergeant's, as well as the rest of the city, the Union proposes the 8% increase for a one year contract to make the wage rate of Northwood Police Officers more comparable to the other employees of Northwood, especially in the Police Department.

The Union also stated that physical fitness should not be tied to wages. There are other means available to handle that issue.

The City proposed annual increases of 2.75% in 1997, 1998 and 1999 to be given only to those officers who pass an annual fitness test. Employees who fail two (2) tests would be precluded from voluntary overtime and outside law enforcement/security employment. Employees who fail three (3) consecutive tests would be fired.

The rationale offered is that the City desires to maintain a police force composed of physically fit officers and feels fitness should be tied to compensation and tenure. The City feels an eight (8) percent increase is not justified by SERB Comparables and it exceeds the annual consumer price index. Also, AFSCME accepted the Fact-finder's report of 3.0% in 1997, 3.25% in 1998 and 3.5% in 1999. The City notes it is not persuaded by the Union's arguments as to percentages agreed to in prior contracts because the prior Union agreed to the prior contracts and the increases. Also it signed a "zipper". Finally, the SERB Comparables prove past raises were not out of line.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, it is the Fact-finder's recommendation that the collective bargaining agreement include a wage increase for the OPBA employees covered by the collective bargaining agreement of three and one half (3.5) percent Effective March 1, 1997, three and three quarters (3.75) percent Effective March 1, 1998 and four (4) percent Effective March 1, 1999.

Issue 4. Article 36 Educational Reimbursement

It was decided at the Fact-finding that the Fact-finder would place in his report the results agreed on by both the City and the Union concerning Educational Reimbursement.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, it is the Fact-finder's recommendation that the collective bargaining agreement Article 36, Educational Reimbursement be amended to raise the reimbursement to sixty (60) percent for up to \$750 per calendar year and to have the reimbursement cover tuition, fees (including laboratory) and books.

Issue 5. Article 9 Duration

The City proposes a three year contract. It views a one year contract as too short of a period and considering the present negotiations of over six months, a one year contract would require perpetual negotiations.

The Union proposes a one year contract effective October 14, 1996. The Union included the duration of one year for the agreement with their proposal of an 8% increase.

The Fact-finder feels the duration of the contract needs to be viewed with the compensation package. The compensation recommended by the Fact-finder was over a three year period.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, it is the Fact-finder's recommendation that the collective bargaining agreement be for a duration of three years, effective March 1, 1997.

Issue 6 Unnumbered Longevity

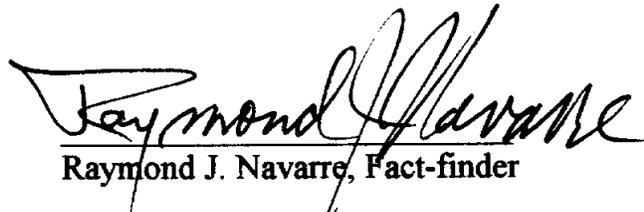
The Union proposes a longevity payment of two (2) percent of the annual base pay after five (5) years of service with an additional one quarter (1/4) percent each year thereafter with a limit of seven (7) percent. The longevity payment shall be made in a separate check to be distributed to the employees on the first pay period in December.

The City rejects the Union's longevity proposal. The City views this as not justified based on current wage comparables. It feels the cost would be excessive and the AFSCME agreement provides \$250.00 after twelve (12) years.

RECOMMENDATION

After considering the findings of fact above and the statutory criteria, the Fact-finder's recommendation is that the collective bargaining agreement contain the following longevity program.

"Employees shall receive a lump sum payment of \$250.00 on the first pay period in December, each December after their Twelfth (12th) Anniversary. The longevity payment is to be rolled into the base pay as part of the salary compensation."

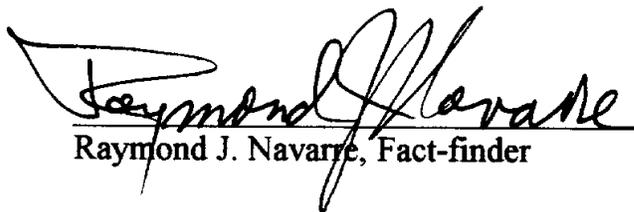


Raymond J. Navarre, Fact-finder

Dated June 18, 1997

CERTIFICATE OF SERVICE

Originals of the foregoing Fact-finding Report and the Recommendations were served upon E.P.Nevada, Director of Research, Clemans, Nelson & Associates, Inc., 355 East Campus View Blvd., Suite 125, Columbus, Ohio 43235, and upon Jon R. Heineman, Business Agent, Ohio Patrolmen's Benevolent Association, 10 Beech Street, Berea, Ohio 44017, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, each by United States mail, sufficient postage prepaid, this 18th day of June, 1997.


Raymond J. Navarre, Fact-finder