

FACTFINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

OCT 20 11 12 AM '97

STATE EMPLOYMENT RELATIONS BOARD

October 16, 1997

In the Matter of :

City of North Canton)

and)

Ohio Patrolmen's Benevolent Association)

Case Nos.: 97-MED-07-0722

97-MED-07-0723

97-MED-07-0724

APPEARANCES

For the City:

Robert J. Tscholl, Attorney
John M. Boyajian, City Manager
David Lindower, Chief of Police

For the Union:

S. Randall Weltman, Attorney
Nick Codrea, Staff Representative
Patricia L. Yagielski, Chief Radio Dispatcher
Dennis J. Lindower, Dispatcher
Ronald S. Mizner Jr., Patrolman
Shawn C. Bates, Patrolman
Scott Dennis, Patrolman
John R. Minock, Patrolman

Factfinder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the City of North Canton and the Ohio Patrolmen's Benevolent Association. The city is located in Stark County and has a population of approximately 15,000. The union represents three separate bargaining units -- patrolmen, dispatchers, and the chief dispatcher.

The dispute relates to successor collective bargaining agreements to the agreements which expired on September 3, 1997. The parties met to negotiate on five occasions but were unable to reach an agreement. As a result the Factfinder was appointed on August 4, 1997.

The factfinding hearing was held on September 22, 1997. At that time the Factfinder attempted to settle the dispute by mediation. Although a number of issues were resolved, an overall agreement was not possible. A brief hearing was held for the remaining issues.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, 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 consideration to factors peculiar to the area and classification involved;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

Issues

Thirteen issues were presented to the Factfinder. For each issue the Factfinder will state the positions of the parties, summarize the arguments presented, offer a brief analysis of the issue, and where appropriate provide recommended contract language.

1) Article 7 - Employee Rights, New Section (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract has no language requiring notice to an employee when the city receives a request to inspect his or her personnel file.

Union Position - The union proposes a new section that would require the city to notify an employee of any request by a civilian to view his or her personnel file. It acknowledges that newspaper reporters and other members of the media have the right to inspect an employee's personnel file but maintains that employees should be notified of such requests.

City Position - The city did not oppose the union's demand.

Analysis - The Factfinder recommends that the union's demand be granted. He believes that when a reporter wishes to examine an employee's personnel file, the employee has a right to know about it.

Recommendation - The Factfinder recommends the following contract language:

An employee will be notified of any requests by civilians to view his/her personnel file. Such notification(s) shall be provided within 24 hours of any such request(s).

2) Article 15 - Hours of Work, Section 3 (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract provides for steady shift assignments based on seniority.

City Position - The city wishes to reserve its right to schedule officers for any shift with the proviso that employees have the right to specify their shift preference.

Union Position - The union proposes the retention of current contract language. It maintains that there is no basis for the city's demand and complains that the issue was not raised prior to factfinding.

Analysis - The city agreed to drop this demand.

Recommendation - The Factfinder recommends the current contract language.

3) Article 16 - Overtime Pay Allowance, Section 3 (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract provides for time and one-half in pay or compensatory time for all time worked over 40 hours per week.

City Position - The city proposes restricting the granting of compensatory time to cases which do not result in overtime. It claims that it should not have to grant compensatory time when it leads to the payment of overtime.

Union Position - The union rejects the employer's demand. It maintains that the employer failed to show any problem with the current language. It also complains that the employer did not raise the issue until factfinding.

Analysis - The Factfinder cannot recommend any change in this long-standing provision.

Recommendation - The Factfinder recommends the current contract language.

4) Article 17 - Holidays, Section 4 (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract provides that if a holiday falls on an employee's regular day off, the employee receives another day off or eight hours of pay.

Union Position - The union proposes that an employee who is scheduled off on a holiday receive eight hours pay at time and one-half or compensatory time at the same rate. It points out that the previous two collective bargaining agreements for the lieutenants have included time and one-half for a holiday which falls on an employee's day off. The union maintains that equity demands that its proposal be granted.

City Position - The city opposes the union's demand. It acknowledges that lieutenants enjoy time and one-half for a holiday which falls on their day off but stresses that the union rejects the parity argument with respect to the wage increases agreed to by the lieutenants.

Analysis - The Factfinder must grant the union's demand. If an employee opts for pay for an unworked holiday, he or she is already paid time and one-half for eight hours during the week of the holiday. The Factfinder does not believe an employee who chooses compensatory time rather than pay should be forced to accept only eight hours of compensatory time.

Recommendation - The Factfinder recommends the following contract language:

If any of the aforementioned holidays should fall on a Bargaining Unit member's regular day off, the employee, at his option, shall receive eight (8) hours pay at time and one-half in either pay or compensatory time to be taken consistent with any applicable Federal regulations.

5) Article 26, Wages (Patrolmen and Dispatchers) - The current contract provides for a top rate of \$15.87 per hour for patrolmen and \$11.59 per hour for dispatchers. It also grants patrolmen and dispatchers a bonus of \$990.

Union Position - The union seeks to roll the bonus into the wage and then to increase wages by 4% in 1997, 1998, and 1999. It argues that the full amount of the bonus should be rolled into the base wage. It points out that the bonus was awarded by a Conciliator in 1992 and was increased by the Conciliator in 1993 and 1994 by the same percentage as the base wage. The union notes that the bonus was continued in the 1994-1997 contract and again was increased each year by the same percentage as the base wage. The union stresses that the bonus has become a regular part of compensation.

The union contends that its demand for 4% wage increases is supported by a comparison to increases granted in other Ohio jurisdictions. It reports that average gross wage increases for patrolmen in 207 jurisdictions was 3.74% in 1997, 3.57% in 1998, and

3.61% in 1999. The union indicates that the data used in the calculation was supplied by the State Employment Relations Board.

The union maintains that its position is reasonable considering compensation in Louisville. It states that patrolmen in North Canton currently receive only 89.77% to 96.64% of the amount received by patrolmen in Louisville. The union claims that if the city's offer is accepted, compensation of patrolmen will fall to 88.00% to 95.69% of patrolmen in Louisville. The union observes that under the city's proposal dispatchers will fair only slightly better than patrolmen.

The union asserts that the city can afford its wage demand. It observes that data from the Ohio Department of Taxation show that in 1996 the average federal adjusted gross income in the North Canton City School District was \$42,212. The union indicates that this ranks 65th out of 612 school districts and places North Canton ahead of nearby school districts.

City Position - The city proposes eliminating the bonus and increasing wages by 5% in 1997, 4% in 1998, and 3% in 1999. It indicates that the unions representing clerical employees, service employees, and emergency medical technicians accepted its wage proposal. The city emphasizes that the pattern was followed by the police lieutenants who are represented by another police union.

The city contends that its wage offer results in wages which are consistent with comparable Stark County jurisdictions. It states that when the bonus is included, its wages rank third among Alliance, Canton, Jackson Township, Lake Township, Louisville, Massillon, Perry Township, and the Stark County Sheriff's Department. The city maintains that if its wage offer is accepted, its will still rank third among the comparable jurisdictions.

The city contends that the bonus was never intended to become part of the base wage. It indicates that the purpose of the bonus was to reflect increases in the cost of living. The city claims that the bonus was also intended to reflect its financial ability.

Analysis - The Factfinder must address two issues. First, he must consider the union's demand that the bonus be rolled into the base wage. Second, the Factfinder must consider the wage increases to be granted over the life of the agreement.

The Factfinder believes that the bonus should be rolled into the base. The bonus was awarded by a Conciliator in 1992 and was increased by the Conciliator by the same percentage as wages in 1993 and 1994. In 1994 the parties agreed to continue the bonus and to increase it by the same percentage as wages in each year of the contract. Thus, the bonus became an expected and customary part of compensation. The elimination of the bonus without adding the money to the base would result in a significant cut in employees' compensation for which there appears to be no justification.

The second issue is the wage increase during the term of the agreement. The Factfinder believes that wages should be increased 3.5% in 1997, 1998, and 1999. This conclusion is supported by data submitted by the union which shows that patrolmen in 207 jurisdictions received increases of 3.74% in 1997, 3.57% in 1998, and 3.61% in 1999. It is also consistent with the 3.59% average wage increase for police unit in 1996 that was reported in the SERB Quarterly for the first quarter of 1997.

The Factfinder's recommendation is also supported by the wage increases granted by the city's comparables. The union's data indicates that in 1997 four departments in Stark County -- Alliance, Jackson Township, Canton, and Louisville -- got wage increases averaging 3.88%, in 1998 Alliance and Canton granted an average wage increase of 3.5%, and in 1999 Alliance agreed to a wage increase of 3%. No data were supplied for wage increases in Perry Township, Stark County Sherriff's Department, Massillon, or Lake Township.

The Factfinder recognizes that the city's other unions accepted its wage offer. While this fact must be considered, it does not bar the Factfinder from recommending a somewhat greater wage increase in the instant case. The clerical employees, service employees, and emergency medical technicians involve small numbers of employees represented by independent unions. The five police lieutenants, who are members of

another police union, have duties and responsibilities which differ from the patrolmen, dispatchers, and the chief dispatcher and enjoy some privileges not available to the other police department employees. Under these circumstances the Factfinder cannot recommend the settlement accepted by the other units.

Recommendation - The Factfinder recommends the following contract language:

The \$990 bonus shall be added to each employee's wage. The resulting wage shall be increased by 3.5% effective September 4, 1997, 3.5% effective September 4, 1998, and 3.5% effective September 4, 1999.

6) Article 26 - Wages, Section 1 (Chief Dispatcher) - The current contract establishes a rate of \$13.32 for the chief dispatcher. It also indicates that the wage for the chief dispatcher is to be the greater of 15% more than dispatchers or the differential between patrolmen and lieutenants.

Union Position - The union proposes that the wage for the chief dispatcher be \$14.83 in 1997, \$15.42 in 1998, and \$16.04 in 1999. It also complains that the chief dispatcher has not been paid the proper differential under the prior contract and proposes that the Factfinder require the city to pay the chief dispatcher the money she should have received.

City Position - The city offers to increase the chief dispatcher's wage rate by 5% in 1997, 4% in 1998, and 3% in 1999. It points out that these increases were agreed to by the other bargaining units and were offered to the patrolmen and dispatchers. The city maintains that its alleged failure to pay the chief dispatcher the proper amount under the prior agreement is not a matter for factfinding.

Analysis - The first issue is the wages to be paid under the new contract. The current contract has a provision that requires the chief dispatcher to be paid 15% more than the dispatchers or the differential between the patrolmen and the lieutenants if it is greater. Since the city did not propose changing this language, the wages for the chief

dispatcher are determined by the wages for the dispatchers or the differential between the patrolmen and the lieutenants.

The second issue is the union's charge that the chief dispatcher was not paid the proper differential under the prior agreement. Despite the strong efforts by the union on her behalf, the Factfinder cannot provide the relief she seeks. The city is correct that the issue of whether the chief dispatcher was paid the correct amount under the prior agreement is a matter for the grievance procedure.

Recommendation - The Factfinder recommends the following contract language:

The chief dispatcher shall be paid 15% more than the top rate for dispatchers unless the differential between patrolmen and lieutenants exceeds 15% in which case the chief dispatcher will receive the same differential as between patrolmen and lieutenants.

7) Article 27 - Longevity, Section 1 (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract establishes longevity pay of \$60 per year of service for employees with at least three years.

Union Position - The union demands an increase in the longevity payment to \$70 per year of service.

City Position - The city wishes to retain the current payment.

Analysis - The union agreed to drop its demand to increase longevity.

Recommendation - The Factfinder recommends the current contract language.

8) Article 28 - Uniform Allowance (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract provides for a \$1000 uniform allowance to be paid to employees in cash.

City Position - The employer seeks to require employees to submit proof of purchase prior to requesting reimbursement.

Union Position - The union opposes the city's demand.

Analysis - The city agreed to drop its demand.

Recommendation - The Factfinder recommends the current contract language.

9) Article 31 - Hospitalization & Major Medical Insurance;

Article 32 - Dental Insurance; and Article 33 - Prescription Drug Program

(Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract provides for hospitalization, dental, and prescription drug insurance.

City Position - The employer proposes a number of changes.

Union Position - The union agreed to accept the employer's proposal as part of an overall settlement.

Analysis - The Factfinder believes that the proposed changes are appropriate.

Recommendation - The Factfinder recommends the city's proposed changes which are shown in Appendix A of this report.

10) Article 39 - Miscellaneous, Section 1 (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract requires employees to live within four miles of the center of the City of North Canton or the North Canton School District.

Union Position - The union seeks to increase the allowable distance from the city or the school district to ten miles. It contends that the four-mile limit is inappropriate because employees cannot find housing consistent with their incomes.

City Position - The employer wishes to retain the current contract language. It claims that there is ample housing in all price ranges within the four-mile limit. The employer charges that employees complain about their incomes but then many turn down overtime.

Analysis - The Factfinder must deny the union's demand. He is not convinced that appropriate housing is not available under current restrictions. Furthermore, other employees in the city are subject to the same restriction.

Recommendation - The Factfinder recommends the current contract language.

11) Article 39 - Miscellaneous, Section 4 (Patrolmen) - The current contract establishes a probationary period of one year for all permanent appointments as patrolmen.

City Position - The city seeks to increase the probationary period to 18 months. It asserts that a longer period is needed to evaluate patrolmen.

Union Position - The union opposes the city's demand.

Analysis - The Factfinder recommends the city's proposal be adopted. He believes extending the probationary period will help insure the quality of the city's patrolmen.

Recommendation - The Factfinder recommends the following contract language:

All permanent appointments as a police patrolman shall be for a probationary period of 18 months. Appeal rights of terminated probationary patrolmen shall be pursuant to the Ohio Revised Code.

12) New Article - Acting Chief Dispatcher (Dispatchers) - The current contract makes no provision for dispatchers to receive extra compensation when the chief dispatcher is off work.

Union Position - The union argues that dispatchers are entitled to officer-in-charge pay when the chief dispatcher is off. It contends that the chief dispatcher performs a long list of duties not normally done by dispatchers. The union maintains that when dispatchers are responsible for the extra work, they are entitled to acting pay just as a patrolman who receives acting officer pay when a lieutenant is absent.

City Position - The city argues that the union's demand should be denied. It points out that it is very unusual for a city to have a chief dispatcher. The city further maintains that when the chief dispatcher is off, other dispatchers do not assume all of her work but the work waits for her return.

Analysis - The Factfinder must deny the union's demand. While the absence of the chief dispatcher results in the senior dispatcher performing duties he or she does not

normally perform, the full range of the duties of the chief dispatcher are not done. The tasks that are done do not appear to justify a higher rate of pay.

Recommendation - The Factfinder recommends that the union's demand be denied.

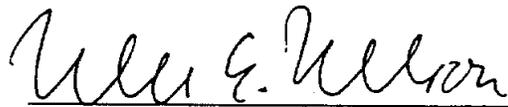
13) New Article - Implement Section 207(K) of the Fair Labor Standards Act (Patrolmen, Dispatchers, and Chief Dispatcher) - The current contract makes no specific reference to this provision of the FLSA.

City Position - The city proposes implementing Section 207(K) of the FLSA.

Union Position - The union opposes the city's proposal.

Analysis - The city agreed to drop this demand.

Recommendation - The Factfinder recommends current contract language.



Nels E. Nelson
Factfinder

October 16, 1997
Russell Township
Geauga County, Ohio

ATTACHMENT A

CITY OF NORTH CANTON
 COST OF PROPOSED CHANGES IN EMPLOYEE BENEFITS
 JUNE 1997

	CURRENT AMOUNT	UCR PROPOSED AMOUNT	AMOUNT OF INCREASED BENEFITS
DENTAL ON YEARLY BASIS:			
MAXIMUM PAYMENT	\$1,000.00	\$1,500.00	\$500.00
CLEANINGS OF TEETH	100.00	174.00	74.00
MEDICAL ON YEARLY BASIS:			
GYNECOLOGICAL EXAM	50.00	76.00	26.00
PREVENTATIVE PROSTRATE TEST	0.00	80.00	80.00
MAMMOGRAPHY TEST	150.00	143.00	(7.00)
OPTICAL ON YEARLY BASIS:			
MAXIMUM YEARLY PAYMENT	0.00	250.00	250.00
OPTICAL COVERAGE WILL INCLUDE AT UCR AN ANNUAL EYE EXAM, AND 1 PAIR OF CONTACT LENSES OR GLASSES EVERY 3 YEARS.			
PRESCRIPTION DRUG BENEFITS:			
GENERIC DRUGS	1.00	5.00 4.00	(4.00) 1.00
NAME BRAND DRUGS	3.00	10.00 7.00	(7.00) 4.00

NUMBER OF INDIVIDUALS COVERED UNDER THE CITY'S POLICY

- EMPLOYEES:**
 7 SINGLE FEMALE EMPLOYEES
 19 MARRIED FEMALE EMPLOYEES
 8 SINGLE MALE EMPLOYEES
 78 MARRIED MALE EMPLOYEES
- SPOUSES:**
 16 MALE SPOUSES
 73 FEMALE SPOUSES
- DEPENDENTS:**
 108 MALE AND FEMALE DEPENDENTS
- 309 TOTAL INDIVIDUALS COVERED