

North Canton City Council
Personnel and Safety Committee

Resolution No. 9 - 2018

A resolution accepting the Fact Finding Report dated May 30, 2018, regarding the City of North Canton, Ohio, Employer, and Ohio Patrolmen's Benevolent Association, Patrol Officers' Union, State Employment Relations Board ("SERB") Case No. 2017-MED-10-1313, by Fact Finder Robert M. Lustig.

WHEREAS, pursuant to rule 4117-9-05, Fact-finding, of the Ohio Administrative Code, the employer's legislative body shall meet and vote to accept or reject the recommendations of the fact finder, and within 24 hours after the vote, shall serve SERB and the employee organization's exclusive representative by electronic mail, verification of the date of the vote, the vote tally, and the number of members of the legislative body.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:


- Section 1. That the City of North Canton, Ohio hereby accepts the Fact Finding Report dated May 30, 2018, regarding the City of North Canton, Ohio, Employer, and Ohio Patrolmen's Benevolent Association, Patrol Officers' Union, Case No. 2017-MED-10-1313, by Fact Finder Robert M. Lustig.
- Section 2. That if a provision of this resolution is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this resolution.
- Section 3. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 4th day of June, 2018


David Held, Mayor

Signed: 6/04, 2018

ATTEST:


Mary Beth Bailey, Clerk of Council

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

May 30, 2018

OHIO PATROLMEN'S
BENEVOLENT ASSOCIATION

CASE # 2017-MED-10-1313

and

CITY OF NORTH CANTON

FACT FINDING REPORT
& RECOMMENDATIONS

APPEARANCES

For the Union

Mark J. Volcheck, Attorney

For the City

Timothy L. Fox, Law director

ROBERT M. LUSTIG
Fact Finder
526 Superior Avenue, E. Suite 320
Cleveland, Ohio 44114-1964

Introduction

The Collective Bargaining Agreement (“CBA”) between the City of North Canton, (the “City”) and the Ohio Patrolmen’s Benevolent Association (the “OPBA” or the “Union”) in this Fact Finding recognizes a bargaining unit described as “all full time police patrolmen”. Article 4, §4.01.

This CBA between the OPBA and the City expired December 31, 2017. Through negotiations prior to Fact Finding the parties had reached a tentative agreement which was accepted by the Union but was rejected by the City because of the language of the provision relating to drug testing. Subsequent to the City’s rejection of the tentative agreement, the City entered into a CBA with the ranking officers (sergeants and lieutenants) that granted the ranking officers a significant increase in their pay by agreeing to substantially increase the differential in pay between patrolmen and the ranking officers. This led the Union to regard the entire prior tentative agreement as void.

The following six issues remained to be resolved in this Fact Finding:

1. Article 17 - Overtime Pay Allowance
2. Article 27 - Wages
3. Article 28 - Longevity Pay
4. Article 32 - Hospitalization
5. Article 36 - Drug Testing
6. Article 37 - Duration

The undersigned was duly appointed Fact Finder. A hearing was set by agreement of the parties for Thursday, May 10, 2018 and was heard in a conference room at the North Canton City Hall.

Both sides presented such evidence as they desired. No transcript was taken. All documents were received without objection from the other party. This includes the position statements, Union Exhibits A - I and 1-11 and 15-22, City Exhibits A and B, and the verbal statements made at the hearing by parties' respective attorneys. The Fact Finder thanks both parties for their professionalism and courtesy.

In reaching the recommendations made in this report, the Fact Finder considered the criteria set forth in Ohio Administrative Code Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- 4) The lawful authority of the public employer.
- 5) Any stipulation 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 private

employment.

Facts

The CBA covering the Patrolmen was for the period January 1, 2015, to December 31, 2017.

Inability to pay was not an issue in this hearing.

There are 16 Patrolmen in the bargaining unit. There are five sergeants and one lieutenant in the ranking officers unit who are represented by a different union.

At hearing, the issues regarding Article 32 - Hospitalization and Article 36 - Drug Testing, were resolved. Both parties signed contract language which language is to be incorporated into the final CBA.. As to the remaining issues:

Issues

Issue 1. Article 17 - Overtime Pay Allowance.

Union Position

Under the prior CBA, all Patrolmen received four hours of overtime for working on a Sunday which was accumulated as comp time and was paid at the end of each quarter. Under the tentative agreement, the Patrolmen had accepted a 4% increase in base pay for topped out officers (those with more than three years seniority) as a buy out of this benefit. The four hours of overtime pay for working on a Sunday was actually worth 5% of the base pay of a fourth year Patrolman which is the highest seniority in the City for Patrolmen. If this benefit is to be bought out, it should be at its full value which is 5% of base pay.

City's Position

Four bargaining units have the four hour overtime for working on Sunday. The City is buying this benefit out to create a uniform wage base. The Sergeants and Lieutenants and the Water

Treatment Plant units have agreed to this buy out. The Dispatchers agreed to this buy out in a tentative agreement that was rejected by the City due to the marijuana issue in the Drug Testing provision.

Discussion

There appears to be a general agreement that the four hours of overtime for Sunday may be bought out. The issue is the price of the buy out. The Union accepted a buy out at 4% in the tentative agreement on the City's representation that the City Council insisted on limiting the buy out to 4% of base pay. There is no issue as to the City's ability to pay the full value of this benefit. The full value of this benefit is 5% of base pay. This will be reflected in the Recommendation for Wages.

Recommendation

Article 17 remains unchanged except the following shall be added at the end of §17.04:

This section shall be null and void and without further effect upon the date this collective bargaining agreement is signed by the parties.

Issue 2. Article 27 - Wages

Union Position

The Union feels it was sandbagged when, after reaching tentative agreement, the City entered into a new agreement with the ranking officers that included an increase in the differential in the pay scales between patrolmen and sergeants from 9% to 15% and an increase in the differential between patrolmen and the lieutenant to 25%. The increases in differentials are in addition to increases in the ranking officers base pay. The Union seeks a wage increase that would maintain the existing

differences between the patrolmen and the ranking officers.

Further, looking at wages paid in other cities in Stark and surrounding counties, North Canton 's patrolmen pay is about 9% lower than average (Union Ex. 8) and is lower than nearby cities of similar size (Union Ex. 9). An examination of the City's financial condition (Union Exs. 14, 15 and 20) indicates that financial inability to pay is not an issue.

Also the Union urges that the stipend of \$450 provided for in §27.04 be increased to \$2,000 for officers who have completed three years of service and to \$1,000 for officers who have completed one year of service, the rationale being such an increase would help narrow the gap in compensation resulting from the increase in the differential.

City's Position

The City proposes base wages be increased 2% for each year of a three year contract with a 4% additional increase for 4th year Patrolmen if the Sunday Overtime Pay is terminated.

The City justifies its agreeing to the substantial increase in the differential between the pay of a patrolman and that of the ranking officers pointing to a) a Memorandum of Understanding with the FOP (the Union representing the ranking officers) which MOU is dated March 29, 2012 that says that when the parties enter into a new CBA in 2014 the sergeants "should receive an increase in their 9% differential that will still allow the City to enjoy a savings from (having reduced the number of Lieutenants to one)." (City Ex. A); b) a comparison of differentials in other cities in Stark county (City Ex. B); and claiming that the limited differential was a barrier to getting existing patrolmen to apply for the position of sergeant which involved greater responsibilities without the opportunity for overtime.

The City further argued that it had gone to Fact Finding on the issue of the differential but,

in mediation with Fact Finder Jonathan Kline, Mr. Kline had advised that the then existing differential was far below statewide averages for differentials and that 15% for sergeants and 25% for lieutenants would still be on the low side. The City accepted Mr. Kline's advice.

Discussion

The increase in the differential in pay scales between patrolmen and sergeants and lieutenants appears to be a legitimate acknowledgment of an appropriate differential. While City Ex. B seems to overstate at least some of the differentials it cites, reference to SERB's library supports what Fact Finder Kline told the City; the differential of 10% for sergeants over officers and 15% for lieutenants is low. The issue of the differential in pay scales between patrol officers and sergeants and lieutenants was discussed in the following Fact Finding Reports, all issued in the last two years:

OPBA & Wickliffe 15-MED-09-0802 Sgts. 10, 10.5, 11 % over patrol officers over 3 years.
OPBA & Bedford 16-MED-10-1222. Sgts over patrol officers 16%
FOP & Mansfield 16-MED-05-0568. Sgts over patrol officers 18%
FOP & West Chester 16-MED-07-0707. Sgts over patrol officers 15%; Lts over Sgts 15%

The increase in the differential between the pay scales for the officers and the sergeants and lieutenants is not an increase in base wages.

The increase in base wages reached in the tentative agreement, which was 3% for 2018 for all patrol officers, 3% for 2019 and 2020 for officers 4th year and above, and 2.5% for each of 2019 and 2020 for all other officers, appears to be fair and reasonable except the first year increase for officers 4th year and above should be an additional 5%, for a total first year increase of 8% to reflect the true value of the buy out of the elimination of Sunday Overtime Pay. However, to avoid a doubling up as payment for the first quarter of 2018 has already been made and comp time has been accumulated for Sundays worked since the end of the first quarter, the additional 5% for the buy out

of this benefit should not commence until the Sunday Overtime Pay provision is cancelled.

Recommendation

For 4th year patrolmen and above, Wage increases of 8%, for calendar year 2018, 3% for calendar year 2019 and 3% for calendar year 2020, but 5% of the 8% to commence upon termination of the Sunday Overtime Pay provision (§17.04).

Wage increases of 3% for calendar year 2018, 2.5% for calendar year 2019 and 2.5% for calendar year 2020 for 1st, 2nd and 3rd year patrolmen.

No other changes in Article 27.

Issue 3. Article 28. Longevity Pay

Union Position

The Union urges the elimination of §28.02 which denies Longevity Pay to officers hired after August 1, 2011. This denial was agreed to in the previous CBA because the City's financial projections were so dire. Those projections turned out to be overly pessimistic. Otherwise, retain §28.01 with necessary changes in dates.

City Position

The City notes that half of the bargaining unit still receive longevity pay. This benefit is being phased out to bring uniformity to base pay.

Discussion

The present Article 28 was unchanged in the recently resolved CBA with the Dispatchers. Other than changing the dates, Article 28 should remain as is.

Issue 4. Article 31. Hospitalization

Issue 5. Article 36. Drug Testing

The parties reached agreement on these issues and initialed the agreed language. Those agreements are to be incorporated into the final CBA.

Issue 6. Article 36. Duration

The parties were in agreement that the only changes required in this Article are to change the dates to January 1, 2018 instead of 2015 and to December 31, 2020 instead of 2017.

Robert M. Lustig

Robert M. Lustig,
Fact Finder
Cleveland, Ohio
May 30, 2018

A copy of this Fact Finding Report was emailed to the parties' representatives and to SERB this date.