

2008 DEC 15 A 11: 39

IN THE MATTER OF CONCILIATION  
BETWEEN

CITY OF NEWTON FALLS

)

SERB CASE NUMBERS:

)

07-MED-09-0907, 0908, 0909

)

AND

)

)

OPINION AND AWARD

FRATERNAL ORDER OF POLICE

)

OHIO LABOR COUNCIL, INC.

)

JAMES M. MANCINI, CONCILIATOR

APPEARANCES:

FOR THE CITY

John N. Barkan, Jr.

FOR THE FOP

Charles L. Wilson

## SUBMISSION

This matter concerns conciliation proceedings between the City of Newton Falls (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. Conciliation proceedings were held on November 21, 2008.

The conciliation proceeding was conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation proceeding, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report.

There are three bargaining units involved in this matter consisting of sergeants, dispatchers and patrol officers. All are full time employees of the City of Newton Falls Police Department. There are approximately fifteen employees in the combined bargaining units.

Following mediation, the parties amended their final offers and agreed that this conciliator could issue his Opinion and Award based on the discussions which took place during mediation. The parties further agreed that this conciliator could render his decision in summary fashion without any need for detailed explanation. The parties waived their right to have an evidentiary hearing held in this case.

This conciliator in rendering the following awards on the outstanding issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). This conciliator after carefully reviewing all of the arguments presented by the parties hereby submits his Opinion and Award with respect to each of the outstanding issues presented.

**1. ARTICLE 17, SECTION 2 - OVERTIME**

The City in its amended final offer has proposed that “hours worked” for overtime purposes is to include all hours in a paid status. However under the Employer’s proposal sick leave time would be included provided that the employee does not exceed five sick leave occurrences in a calendar year. At the sixth occurrence, the Police Chief shall have the discretion to include or exclude sick leave from the “hours worked” for overtime calculation purposes. The FOP in its amended position proposes to adopt the Employer’s position.

This conciliator therefore finds that the Employer’s amended position on Article 17, Section 2 is to be adopted as more fully set forth in the award herein.

**A W A R D**

This conciliator hereby awards the Employer’s position with respect to Article 17, Section 2 pertaining to the definition of “hours worked” for overtime calculation purposes. The “hours worked” language found under Section 2 of Article 17 is to be modified as more fully set forth below:

**ARTICLE 17, SECTON 2**

**“Hours worked” shall include all hours in a paid status. Sick leave time will be included, provided the employee does not exceed five (5) sick leave occurrences in a calendar year. At the sixth (6<sup>th</sup>) occurrence, the Police Chief shall have the discretion to include or exclude sick leave from the “Hours worked” for overtime calculation.**

**2. ARTICLE 17, SECTION 4 - OVERTIME**

The Employer in its final offer proposed to accept the fact-finder's recommendation which was to retain current contract language. The FOP in its amended position also proposes to keep current contract language.

Therefore, this conciliator finds that the current language set forth in Section 4 of Article 17 pertaining to overtime is to be retained without any change.

**AWARD**

This conciliator hereby awards the positions which both parties have agreed to take in this matter which was that the current language set forth under Article 17, Section 4 is to be retained with no change.

**ARTICLE 17, SECTION 4**

**Current language, no change.**

### **3. ARTICLE 17, SECTION 5 - OVERTIME**

The Union initially proposed to compensate employees who are mandated to work in an emergency by paying them at two and one-half times their hourly rate for all hours worked. However in its amended position, the FOP proposes to keep current contract language.

The position of the City is to accept the fact-finder's recommendation which was to retain current language and maintain the status quo.

This conciliator finds therefore that based upon the FOP's amended position and that of the City's, the current contract language set forth in Article 17, Section 5 should be retained.

### **A W A R D**

This conciliator hereby awards the positions which both parties have now taken in this matter which is that for Article 17, Section 5, the current contract language is to be retained with no change.

### **ARTICLE 17, SECTION 5**

**Current language, no change.**

#### **4. ARTICLE 17, SECTION 6 - OVERTIME COMP TIME-CASH OUT**

The FOP in its amended final offer proposes that both the employee and the Employer have the ability to cash out comp time. This basically is a position to retain the current contract language which provides that the Employer or employee may cash out any and all unscheduled compensatory time of employees at any time by providing two weeks notice. The City has proposed to retain this current language for the cashing out of compensatory time.

This conciliator finds that the parties' final positions are in basic agreement that the current language set forth in Article 17, Section 6 of the Agreement pertaining to the cashing out of compensatory time should be retained without any change. It should be noted that this award does not follow the recommendation of the fact-finder which does appear to contain clear error because contrary to his holding, the current language pertaining to the cashing out of compensatory time is allowable under FLSA.

#### **AWARD**

This conciliator hereby awards the position of the Employer which essentially was agreed to by the FOP in its amended offer which is to retain the current language in Article 17, Section 6 of the Overtime Provision pertaining to the cashing out of compensatory time.

#### **ARTICLE 17, SECTION 6**

**Cashing Out of Compensatory Time – Current language, no change.**

## **5. WAGES**

The City in its final offer proposes to increase wages 2.75% in each year of the Agreement for the patrol officer unit. Likewise under the City's proposal, dispatcher wages would be increased by 2.75% in each year of the Agreement. The City also proposes that the current 8% rank differential between sergeant and patrol officer wages be retained.

The FOP in its amended position proposes that the wages for patrol officers be increased by 4% in 2008, 4% in 2009, and 4% in 2010. The FOP further proposes that effective January 1, 2009, the sergeant rank differential be increased to 10% above the patrol officer wage. In its amended wage proposal, the FOP also proposes that the wages for additional dispatching duties contained in the 2007 Agreement are to be adjusted by \$1.65 per hour effective January 1, 2009. The wages for dispatchers are to be increased 4% on January 1, 2008 for all steps; a \$1.65 per hour is to be added to all steps on January 1, 2009 then increased by 4%; a final increase of 4% effective January 1, 2010.

This conciliator finds that it would be appropriate to increase the wages for patrol officers, dispatchers and sergeants as proposed by the FOP in its amended final offer. Comparable wage data which was cited by the fact-finder shows that the wages for patrol officers "lag significantly behind" that paid to other police units in the area. Therefore, it would be reasonable to provide the police officers' unit with 4% wage increases for 2008, 2009 and 2010 in order to bring their wages more into line with those provided in comparable jurisdictions.



With respect to the sergeant rank differential, it was shown through comparable wage data that the sergeants' pay in Newton Falls also falls well below the average pay for sergeants in the area. As a result, it would be reasonable to increase the sergeant rank differential as proposed by the FOP to 10% above the patrol officers' pay.

With respect to the dispatcher unit, as was pointed out by the fact-finder, their wages fall in the "bottom third" of the wages in comparable dispatcher units. SERB's most recent annual wage settlement report shows that the dispatcher wages in Newton Falls fall well below the average in the region. Moreover, the parties currently provide dispatchers with additional pay for performing dispatching for Newton Township, court duties, and for the Fire District. This conciliator finds that it would be reasonable on January 1, 2009 to roll into the dispatcher wage rate the sum of \$1.65 per hour for the performance of these additional duties. As a result, the wage increase for dispatchers would be 4% effective January 1, 2008 for all steps; a \$1.65 per hour is to be added to all steps on January 1, 2009 and then the new steps would be increased by 4%; and a final increase of 4% to all steps effective January 1, 2010.

### **AWARD**

*This conciliator hereby awards the amended FOP position with respect to wages as more fully set forth below:*

**ARTICLE 21, WAGES**

**Patrol Officer**

**Effective January 1, 2008 – a Four Percent (4%) wage increase with the top wage rate becoming \$20.01 per hour.**

**Effective January 1, 2009 – a Four Percent (4%) wage increase with the top wage rate becoming \$20.81 per hour.**

**Effective January 1, 2010 – a Four Percent (4%) wage increase with the top wage rate being \$21.64 per hour.**

**Sergeant Rank Differential**

**Effective January 1, 2009 – Sergeant rank differential to be increased to Ten Percent (10%) above patrol officer wage.**

**Dispatchers**

**Effective January 1, 2008 – a Four Percent (4%) wage increase for all steps.**

**Effective January 1, 2009 – a \$1.65 per hour is to be added to all steps and then a Four Percent (4%) wage increase for all steps.**

**Effective January 1, 2010 – a Four Percent (4%) wage increase for all steps.**

## **6. ARTICLE 29, SECTION 5 - TRAINING**

The Employer proposes to modify Section 5 of Article 29 by providing annually a minimum of \$500 per employee, for training subject to pre-approval by the Police Chief. Police related training will not be unreasonably denied.

The FOP in its amended position has agreed to accept the Employer's proposed change in Section 5 of Article 29 pertaining to training.

This conciliator therefore finds that the Employer's proposal pertaining to Section 5 of Article 29 relating to training should be adopted. Again, the FOP in its amended position accepted the Employer's final proposal.

### **AWARD**

This conciliator hereby awards the Employer's final position with respect to modifying Section 5 of Article 29 with all other sections of this article maintaining current language.

### **ARTICLE 29, SECTION 5 – TRAINING**

**Modification – The Employer will annually provide a minimum of Five Hundred Dollars (\$500) per employee for training, subject to pre-approval by the Police Chief. Police related training will not be unreasonably denied.**

**7. NEW ARTICLE – PENSION PICK-UP**

The Union in its amended position withdrew its initial proposal for a pension pick-up provision. The City opposes any new pension pick-up article.

This conciliator finds that there should be no new article pertaining to a pension pick-up. The FOP withdrew its proposal regarding this matter in its amended position. In that reasonable wage increases previously discussed have been awarded for the term of the parties' three year Agreement, any type of pension pick-up plan would be inappropriate.

**A W A R D**

This conciliator finds that there should be no new pension pick-up provision in the Agreement.

**PENSION PICK-UP – NO NEW ARTICLE**

**CONCLUSION**

In conclusion, this conciliator hereby submits his awards on the outstanding issues presented.

**DECEMBER 13, 2008**

  
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**JAMES M. MANCINI, CONCILIATOR**

**JAMES M. MANCINI**  
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STATE EMPLOYMENT  
RELATIONS BOARD

2008 DEC 15 A 11:39

December 13, 2008

Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

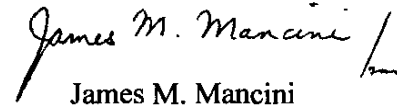
RE: Case Nos. 07-MED-09-0907, 0908, 0909  
City of Newton Falls  
-and-  
FOP / Ohio Labor Council, Inc.

Dear Mr. Turner:

Enclosed herewith is a copy of my conciliator's Opinion and Award in the above referred to matter.

Thank you.

Very truly yours,

  
James M. Mancini

JMM:em  
Enclosure