

State Employment Relations Board
Conciliation Report
February 5, 2015

In the Matter of:)
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Shawnee Township)
)
)
and) SERB Case No. 14-MED-03-0456
) (Patrol Officers)
)
)
Ohio Patrolmen's Benevolent)
Association)
)

Appearances

For the OPBA:

Kevin Powers: OPBA Staff Representative
Randy Manse, OPBA Director and North Canton Patrolman
Matthew Rohde, OPBA Director and North Canton Patrolman

For Shawnee Township:

Gust Callas, Attorney for the City of North Canton
Karen Alger, Finance Director for the City of North Canton
Time Fox, Law Director for the City of North Canton
Mike Grimes, City Administrator for the City of North Cantor

Conciliator: Dennis M. Byrne

Introduction:

This Conciliation involves the seventeen members of the patrol unit of the City of North Canton Police Department represented by Ohio Patrolmen's Benevolent Association (OPBA/Union) and the North Canton Police Department (Employer). The parties engaged in a number of bargaining sessions and a Mediation/Fact Finding hearing, but they were unable to reach a final agreement. According to the Fact Finder Jonathan Klein's report there were fifteen (15) issues at impasse. The number of disputed issues was greater than the fifteen (15) listed by the Fact Finder because two articles had more than one section with suggested changes. Consequently there are seventeen (17) items still open according to the parties' position statements.¹ However, there are a few salient issues that divide the parties. These issues are 1) Wages, 2) Sunday Pay, Personal Time, and 4) Insurance.

Fact Finder Klein conducted a hearing on October 16, 2014, and issued his report on October 20, 2014. The City rejected the report, and a Conciliation Hearing was scheduled for January 23, 2015. The Hearing commenced at 10:00 A.M. at the North Canton City Hall and concluded at approximately 3:30 P.M.

CRITERIA:

The Ohio Revised Code enumerates the criteria to be considered by a Conciliator when making recommendations.

¹ A complete listing of the open issues will not be give because the parties agreed to delete a number of open issues before and during the Conciliation Hearing.

The criteria are found in ORC 4117-9-06-H (1) to ORC 4117-9-06-H (6). The criteria are:

1. Past collectively bargained agreements, if any, between the parties
2. Comparisons with other employees public and private doing the same or similar work
3. The interests and welfare of the public and the ability of the public employer to finance the settlement
4. The lawful authority of the public employer
5. The stipulations of the parties
6. Such other factors not itemized above, which are normally or traditionally used in disputes of this nature.

Background:

ORC 4117 requires a Conciliator to select one of the parties' final positions on an issue-by-issue basis. However, these negotiations presented an unusual problem for the Conciliator. In order to understand the situation, some background is necessary. The parties went through a fact finding procedure and hearing. The Fact Finder attempted to mediate the dispute, but was unsuccessful in finding mutually acceptable language for the open issues. The main reason was a procedural dispute. ORC 4117 requires the parties to present their respective positions on the issues to the Fact Finder by five P.M. on the day preceding the hearing. Because of an email address problem, the Employer did not meet that requirement. The Union raised this procedural point; and the Fact Finder correctly found that the City could not present its positions on the issues, present data and exhibits, and testimony in support of its positions. However, he also found that the City could cross-examine the Union on its positions.

The City's representatives, believing that they could not adequately make their arguments and explain their positions, left the meeting. Consequently, the

fact-finding process did not proceed to a normal conclusion. The Fact Finder recommended the Union's positions on the issues. The City rejected the Fact Finding report. Subsequently, the parties proceeded to conciliation. However, from the Conciliator's first contact with the parties to set a date for the hearing, the City requested a mediation effort in order to try to find a mutually agreeable resolution to many (all) of the outstanding issues.

Initially, the Union was against a mediation effort and wished to proceed directly to the hearing. However, when the parties submitted their prehearing statements, the Union found that the City had modified many of its original positions. Consequently, the Union was agreeable to a wide-ranging discussion of all of the open issues. Therefore before the hearing, the Conciliator tried to mediate the dispute.. That effort was very successful, and the parties were able to come to a final agreement on all of the open issues, with one exception.

The report will list the entire list of unresolved issues and indicate the final settlement. The Conciliator acknowledges that the final settlement was not determined by his selection of one party or the other's final offer on an issue-by-issue basis. However, given the circumstances surrounding these negotiations, the Conciliator believes that an agreement reached by the parties is better than any agreement that he could craft.

Issue: Article 17.02 Overtime Pay Allowance

City Position: The City demands that employees who are called out for duty shall receive one hour (1) of pay rather than two hours (2) of pay.

Union Position: The Union demands current contract language.

Fact Finder Recommendation: The Fact Finder recommended current language on this issue

Discussion: The City withdrew this demand in its prehearing statement.

Conciliator's Recommendation: Current Language.

Issue: Article 17.04 Overtime Pay Allowance

City Position: The City wished to delete this provision from the contract. The current language allows all employees who work on a Sunday to be paid time and one-half (1 ½) for all hours worked on Sunday.

Union Position: The Union demanded that the current language remain in the contract.

Fact Finder Recommendation: The Fact Finder recommended current language

Discussion: This was one of the more contentious issues dividing the parties. The Union argued that this benefit amounted to approximately five (5%) percent of a patrolman's pay. The City believes that the number is closer to four (4%), but agreed that it was a substantial benefit. The parties both agree that the language codifies an operational procedure that predates the passage of ORC 4117.

Apparently it was put into the contract sometime in the past because the Police Department management believed that working on a Sunday was a hardship on the patrolmen. Regardless it is a significant benefit, and the patrolmen were unwilling to delete the language from the contract.

After discussions, the parties agreed that the City will pay the officers their hourly rate for hours worked on Sunday unless an officer works more than eight hours. In addition, each officer shall receive four (4) hours of compensatory time for each Sunday worked. That compensatory time will be placed in a Sunday Compensatory Time Bank and paid to the officers quarterly in cash.

Conciliator's Recommendation: Article 17.04 Overtime Pay Allowance

Suggested Language: Classified civil service employee of the police department shall be compensated at their hourly rate of pay for hours worked on Sunday. In addition, each officer shall receive four (4) hours of compensatory time for each Sunday worked. The compensatory time shall be held in a special Compensatory Time Bank and paid once each quarter in cash.

Issue: Article 18.03 Holidays

City Position: The City demanded that Holidays be paid at the regular rate plus straight time for all hours worked, i.e. double time. The City currently pays the regular hourly rate plus time and one-half for an officer who works on a holiday, i.e., double time and one-half.

Union Position: The Union countered with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language on this issue.

Discussion: The City withdrew this demand in its prehearing statement.

Conciliator's Recommendation: Current Contract Language

Issue: Article 18.04

City Position: The City demands that any patrolman who does not work on a holiday because he is not scheduled to work be paid his regular rate of pay or some combination of compensatory time and pay, i.e., double time v. double time and a half.

Union Position: The Union countered with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: After some negotiation, the Employer dropped this demand.

Conciliator's Recommendation: Current Contract Language

Issue: Article 19.06 and 19.07 Vacations

City Position: The City demanded that the sixth (6th) week of vacation be deleted from the contract. This would require changes to the language of 19.06 and the deletion of 19.07.

Union Position: The Union countered with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language

Discussion: The Employer withdrew this demand in its prehearing statement.

Conciliator's Recommendation: Current Contract Language

Issue: Article 20.10 and 20.11

City Position: the City demands that Section 20.10 and 20.11 be deleted from the contract and that the sections be replaced with applicable Ohio Law.

Union Position: The Union demand is for current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: The discussion on this issue centered on the fact that section 20.11 was added to the contract during the last round of negotiations. That is, the City' sick leave buyout liability was reduced for anyone hired after August 31, 2011.

After these discussions, the Employer dropped its demands on this issue.

Conciliator Recommendation: Current Contract Language.

Issue: Article 20.12 Sick Leave Conversion

Employer Position: The City demands that Article 20.12 be deleted from the contract.

Union Position: The Union counters this demand with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: Section 20.12 allows an employee with a sick leave bank of at least 400 hours to receive twenty-four (24) hours of personal leave charged against sick

leave per year with the permission of the Police Chief. After discussions on this issue, the Employer withdrew its demand.

Conciliator Recommendation: Current Contract Language

Issue: Article 27.01 Wages

City Position: The City is offering two percent (2.0%) in the first year, two percent (2.0%) in the second year, and one percent (1.0%) or a wage reopener in the third year of the prospective contract.

Union Position: The Union is demanding two percent (2.0%) in each year of the contract, and a four hundred and fifty dollar (\$450.00) payment at the contract signing as a payment for the lack of any pay adjustment from the end date of the prior contract to the inception date of the successor agreement.

Fact Finder Recommendation: The Fact Finder recommended the Union's position on this issue.

Discussion: The difference between the parties' positions on the wage issue is one percent (1.0%) in the third year or a wage reopener. In addition, the parties' original positions differed on the four hundred and fifty dollar (\$450.00) "retroactivity" payment. After some discussion, the parties were able to come to an agreement on this issue.

Conciliator Recommendation: The Conciliator recommends that the wage scale in the prospective contract show a base rate increase of two percent (2.0%) in each year of the agreement. In addition, each member of the bargaining unit shall receive

a four hundred and fifty dollar (\$450.00) payment within one month of the signing of the new agreement.

Issue: Article 27.03 Shift Differential

City Position: The City demanded the deletion of this section of the contract.

Union Position: The Union countered with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: The City withdrew its proposal on this issue.

Conciliator Recommendation: Current Contract Language.

Issue: Article 27.04 Senior Patrol Officer Pay

City Position: The City demanded the deletion of this section of the contract..

Union Position: The Union countered with current contract language.

Fact Finder recommendation: The Fact Finder recommended current contract language.

Discussion: After some discussions, the City dropped this demand.

Conciliator Recommendation: Current Contract Language.

Issue: Article 27.07 Wages "Me too" Provision

City Position: The City demands that Article 27.07 be deleted from the contract.

Union Position: The Union countered with current contract language.

Fact finder Recommendation: The Fact Finder recommended current contract language.

Discussion: During discussions on this issue, the City presented two Fact Finding reports from two different Fact Finders that recommended removing similar language from other City Bargaining Unit's prospective contracts. That is, during other negotiations that were occurring contemporaneously with these negotiations, other Fact Finders recommended "Me Too" language be deleted from two other contracts. The Union after some discussion agreed to the City's demand on this issue.

Conciliator's Recommendation: Article 27.07 shall be deleted from the parties' new contract.

Issue: Article 28.01 Longevity Pay

City Position: The City demanded that Article 28.01 be deleted from the contract.

Union Position: The Union rejected the City's demand and countered with current language.

Fact Finder Recommendation: The Fact Finder recommended current contract language

Discussion: The City withdrew this demand in its prehearing statement.

Conciliator's Recommendation: Current Contract Language

Issue: Article 29.01 Uniform Allowance

City Position: The City demanded that the payment of the uniform allowance be spread out throughout the year.

Union Position: The Union countered with current contract language that states that the allowance will be paid by January 20th of each contract year.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: The City withdrew its demand on this issue.

Conciliator's Recommendation: Current Contract Language.

Issue: Article 31.01 Officer in Charge Pay Adjustment

City Position: The City proposes to delete this article from the contract.

Union Position: The Union rejects the City's demand and counters with current language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: The City withdrew this demand on this issue.

Conciliator's Recommendation: Current Contract Language.

Issue: Article 32 Insurance

City Position: The City proposed a) changes to the City's Health Plan, and b) changes to the employee's contributions to their health coverage cost.

Union Position: The Union accepted the changes to the health plan. However, the Union rejected the Employer's demand that the union membership pay more for their health coverage.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: There was no discussion about the new plan design, i.e., coverage, providers, etc. However, the City demanded that the employees pick up seventeen percent (17.0%) of the cost of the plan. Currently, the Union membership pays eight percent (8.0%) of the premium cost. The Union argued that a doubling of the employee's payment was unreasonable. The parties discussed the issue at length and finally came to an agreement that the employee's cost share would rise to eleven percent (11.0%). This figure is approximately the average cost share for similarly situated employees according to SERB data.

Conciliator's Recommendation: The new plan shall be added into the contract as Article 32. The employee's share of the premium cost shall be eleven percent (11.0%).

Issue: Article 39.01 Duration

City Position: The City demanded that the new contract expiration date be the same as the date that the new contract is signed.

Union Position: The Union demanded that the new contract become effective on the expiration date of the prior contract, i.e., September 1, 2014.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: In this instance both parties realized that the unusual timing of the contract's expiration caused problems. Consequently, they agreed that the contract should start on January 1, 2015 and expire on December 31, 2017. That is, the agreement shall be effective for three (3) years.

Conciliator's Recommendation: The contract shall run from January 1, 2015 through 12:00 PM on December 31, 2017.

Note: There is other language in the Duration Clause that shall remain in the agreement.

Issue: Article 26.03 Personal Time

City Position: The City demands that Section 26.03 be deleted from the contract.

Union Position: The Union rejects the City's demand and counters with current contract language.

Fact Finder Recommendation: The Fact Finder recommended current contract language.

Discussion: This was the only issue that remained unsettled from the conciliation/mediation. The language in question reads:

36.03: Classified civil service employees of the Police Department, because of the nature of the work to be performed requires that 24 hour service be maintained seven (7) days per week, shall be eligible to designate their two (2) personal days per year as holidays.

This policy predates the passage of ORC 4117 and was put in place sometime around 1980 by the City (Police) Administration. The Union stated that this move

to a personal day as a holiday was a quid pro quo for the deletion of Veteran's Day as a City holiday. This language has always been interpreted to mean that an employee can designate any day that he/she chooses as a holiday, and if he/she works that day, then the day is paid at double time and a half (2 ½). That is, the employee is paid for five (5) days for working two (2) days. Another way to analyze this language is to note that the "original deal" was a trade of one (1) holiday for two (2) personal days. However, the way the language was administered one (1) holiday became three (3) personal days.

Patrolmen work a set schedule, and only some of them work the holiday as part of their weekly schedule. The result is that under the current scheduling pattern any employee *who decides to work* (emphasis added) on his/her personal days receives five days of pay. If Veteran's day remained a named holiday in the contract, only those patrolmen scheduled to work would receive two and one-half days of pay. All other patrolmen would receive holiday pay at time and one-half their hourly rate. Consequently, this is an extremely costly clause to the City and an extremely lucrative benefit to the employee because under the current scheduling practice, all patrolmen receive two (2) personal/holidays paid at double time and one-half as opposed to a system where only some patrolmen (those scheduled to work the holiday) are paid double time and one-half for one (1) holiday.

What this means is that one (1) personal day, used following the current scheduling practice, was a legitimate trade for Veterans Day. Two personal days as a trade for Veterans Day was excessive in the sense that the cost of the benefit was greater than the cost of having Veterans Day as a named holiday.

The process used to administer the personal days further exacerbates the problem. Allowing the employees to schedule a personal day as a holiday with no input from the Department Administration led to what appears to be an abuse of the benefit. At the very least, it is hard to understand how the Department allowed an officer to report for work, state he/she was taking a personal day, and then get paid double time and one-half. This, in effect allows the employees to schedule their own personal (Veterans Day) holiday(s) with no input from the Department Administration. In this situation, the Employer is somewhat captive to the vagaries of the employee's work preferences.

During the hearing, the Employer argued that the reason that it made so many economic demands is that the City's financial outlook is bleak. According to the City, the end of the inheritance tax, the cut in State funding to local governments, the passage of House Bill 5, etc., all mean that City revenues will fall in the coming years. The City contends that it must cut (control) costs. The Union objected to this analysis, but there are some questions about the City's financial condition in the coming years.²

The Conciliator is aware that this is a long-standing benefit that the Employees have enjoyed for longer than the City has employed any of the current patrolmen. However, it is an extremely unusual benefit. The Conciliator is unaware of any other jurisdiction that has a similar benefit. Moreover, it was not a negotiated benefit. That is, it was not subject to the give and take of negotiations. Rather, it

² The parties presented voluminous data on this issue. After reading the information, the Conciliator finds that there is uncertainty in both sides' projections. However, there are some reasons for the City's concerns about the coming years.

appears to have been conceived and implemented by one or two individuals who worked for the City.

Consequently, the Conciliator cannot recommend keeping this language in the contract. The benefit essentially allows the employees to receive a week's pay for working two days, or to put it in a different way the policy gives the employees three personal days rather than two. Moreover, one of the reasons that the City agreed to the extra one percent (1.0%) in the third year of the prospective agreement was as a partial payment for the change in the way personal days are paid. That is, the City saw the entire agreement as a package deal. The Union did not agree to the City's position on this issue.

The employees have enjoyed a unique, very costly benefit for over thirty-five years. While the Conciliator understands the employees' position on this issue, times have changed. The City must find way to control costs in a changing fiscal environment. Consequently, the Conciliator finds that there is a reason to recommend changing this contract provision in an economic environment that no longer resembles the situation found in North Canton thirty-five years ago. However, there is a question of what is a reasonable tradeoff for a holiday in terms of personal time.

Given all of the factors involved, the Conciliator finds that the original tradeoff of two (2) personal days is a reasonable tradeoff for a holiday with the proviso that the personal days cannot be used as holidays. That means that the officers will get sixteen (16) hours of paid time off rather than twenty-four hours (24) of paid time. The Conciliator also finds that the benefit is of such long

standing that the patrolmen should be able to work on their personal days as regular workdays, not premium-pay days. That means that the patrolmen can work a personal day at straight time and also collect personal day pay. This will amount to two (2) days of pay rather than three (3) days.

The City was adamant that it could no longer afford to pay the personal days as holidays. That is a reasonable position especially in light of the history of this benefit. The Conciliator understands the City's position, but the over thirty-five year (35) history of this benefit must also be considered. If the City's financial condition worsens in the future, then future negotiations are the time to revisit this question.

Conciliator's Recommendation: Article 26.03 Personal Time

26.03 All Classified civil service employees of the Police Department, because of the nature of the work to be performed requires that 24 hour service be maintained seven (7) days per week, shall be eligible to receive two (2) personal days. All employees shall be able to work on a designated personal day at their usual hourly rate of pay. The employee must inform the Police Chief or his designee at least forty-eight hours in advance of the intention to use a personal day. Permission to use the personal days shall not be unreasonably denied. All personal days must be used in the year in which they are accrued.

Signed the 5nd day of February 2015 at Munroe Falls, Ohio

/Dennis M. Byrne/

Conciliator

