

**Before the State Employment Relations Board
State of Ohio**

In the matter of

City of North Canton

Employer

Case No. 17-MED-10-1312

And

Sandra Mendel Furman,
Conciliator

Ohio Patrolmen's Benevolent Association

Union

Conciliation Award

Procedural Matters

The parties had engaged in multiple bargaining sessions for a successor agreement.¹ Many articles were resolved or unchanged. The parties had several issues that were unresolved.

The fact finder was appointed under SERB processes. Fact finder Thomas Nowel conducted a hearing on the one contested issue remaining after in-session mediation resolved numerous others. The contested issue remaining was Medical Marihuana. Factfinder Nowel issued his report on January 18, 2018 recommending language on medical marihuana. His report recommended and incorporated the in-session mediated resolutions for all other outstanding issues.

The City timely rejected the report; the Union accepted the report.

SERB appointed the conciliator by email dated February 16, 2018.

¹ The current three-year contract expired 12-31-17. Both parties presented a copy of the current contract as an exhibit.

The matter was scheduled for hearing by agreement. Pre-hearing statements were timely received by the conciliator and served by each party upon the opposing party prior to the hearing.

There was substantial compliance with OAC 4117-9-05 (F).

The hearing was held as agreed on May 23, 2018 at the City of North Canton City Hall. The City was represented by Tim Fox City Attorney. Patrick De'Orio, City Administrator and Laura Brown were the City's bargaining representatives.

The Union was represented by Mark Volcheck OPBA counsel. Union bargaining committee members Randy Freas, Megan Scheffer and Anita Caldwell were present.

The bargaining unit consists of seven (7) Dispatchers including one (1) Lead Dispatcher.

City Council is the legislative body.

The parties stipulated that no transcript needed to be prepared. Notes of the conciliator and parties' exhibits constitute the record.

The report is submitted within dates agreed to by the parties.

HEARING:

The pre-hearing statements indicated that there were eight (8) issues remaining for consideration by the conciliator under the terms of the statute and OAC:² overtime; longevity pay; wages; stipends [communications training; TAC Officer and Senior Communications Officer] health insurance and duration.

Upon exchange and receipt of the pre-hearing statements it was clear that the parties had re-considered positions previously deemed acceptable as incorporated in Nowel's report. In regard to certain matters the parties were attempting gains/give backs not previously discussed/proposed.

The matter was convened in mediation pursuant to SERB rules and procedures. The conciliator considered all arguments made and evidence presented.

² The three stipends at issue are contained within the Wages article.

ISSUES DETERMINED BY THE PARTIES/CONCILIATOR

I. Section 17.04 Overtime Pay Allowance

Discussion: The Union proposed as did the City elimination of the effects of Section 17.04 effective the date of execution of the collective bargaining agreement. The parties in effect stipulated the resolution of this Article by submitting identical final offer language.

AWARD: The following language be adopted:

Section 17.04. Employees 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 Compensatory Time Bank and paid once each quarter in cash.

This section shall be void and without effect upon the date this collective bargaining agreement is signed by the parties, or July 1, 2018, whichever is later.³

II. ARTICLE 27 WAGES

Discussion: The parties agreed to a new wage schedule mediated at the conciliation hearing. Language incorporating the wage agreements was signed at the conciliation hearing. It appears below.

Wages were made retroactive to January 1, 2018 except that changes related to the new step for Dispatcher A will be effective on July 1, 2018. As part of the bargaining process, the stipend for Basic Communications Training was eliminated. The parties waived in writing the provision in RC 4117.14(G) (11).

AWARD: The following language be adopted:

Section 27.01. Effective the full pay period following 1/1/2018, and thereafter, the full pay period that includes January 1, all employees shall be paid in accordance with the following schedule:

	Effective 1/1/2018	Effective 1/1/2019	Effective 1/1/2020
Lead Dispatcher	1.15 times greater rate than Dispatcher A (After 2 Years)	1.15 times greater rate than Dispatcher A (After 2 years)	1.15 times greater rate than Dispatcher A

³ **BOLDED** language represents new language in the Award sections.

			(After 2 Years)
Dispatcher A (After 2 Years)	\$21.69	\$22.34 (3%)	\$23.01 (3%)
Dispatcher A (After 1 Year)	\$20.66 (3%)	\$21.18 (2.5%)	\$21.71 (2.5%)
Dispatcher B (2 nd 6 months)	\$18.47 (3%)	\$18.93 (2.5%)	\$19.40 (2.5%)
Dispatcher B (1 st 6 months)	\$17.50 (3%)	\$17.94 (2.5%)	\$18.39 (2.5%)

Note: The position of Lead Dispatcher is properly subject to SERB's jurisdiction and that the bargaining unit of full-time Dispatchers and Lead Dispatcher is lawfully and properly comprised under R.C. 4117. The Lead Dispatcher is not a supervisor as that term is defined by R.C. 4117.

The Dispatcher A (After 2 Years) Step shall be effective July 1, 2018.

Section 27.02. All employees shall receive a shift differential in the amount of thirty-five cents (\$.35) per hour for afternoon shift and fifty cents (\$.50) per hour for midnight shift, for hours actually worked.

Section 27.03. Each employee assigned the duties of Communications Training Officer shall receive an additional one dollar (\$1.00) per hour, for each hour in which these duties are performed.

Section 27.04. Each Dispatcher A, not on probation, shall receive a Senior Communication Officer stipend of \$350.00, annually. Each Dispatcher A must have completed at least three years of service to be eligible for the stipend.

Section 27.05. One bargaining unit member shall be assigned to be the TAC Officer. This person shall receive a stipend in the amount of \$450.00, annually.

Section 27.06. All stipends will be paid during the first half of August of each year.

III. **Article 28 Longevity Pay**

Discussion: The parties have in years past eliminated longevity for employees hired after a certain date. This provision is in place city-wide. The Union's final offer proposed elimination of this bar to new hires [and presumably those

previously affected by the current language]. As part of mediation, the OPBA withdrew its proposed modification in favor of current contract language.

AWARD: The following language be adopted: [Current language; City Final Offer]

Section 28.01. Subject to Article 28.02, employees shall receive a longevity pay at the rate of seventy dollars (\$70.00) dollars per year of full-time employment with the Employer. Annual longevity payments shall be made during the first half of the month of December to all employees who have completed at least five (5) years of continuous service and who are employed by the Employer on November 30 of the year in which the longevity payment is made. Determination of longevity pay shall be from December 1st to November 30th.

Section 28.02. Employees hired after August 1, 2011, shall not receive longevity pay.

IV. Article 31 HOSPITALIZATION AND MAJOR MEDICAL INSURANCE, DENTAL, OPTICAL & PRESCRIPTION PROGRAM

Discussion: The conciliator has taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f) and has followed the guidelines set forth in OAC 4117-9-05(K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability.

As final offers, the parties proposed to incorporate the TA language from the Patrol Officer negotiations. The parties stipulated the resolution of this Article by submitting identical final offer language.

AWARD: The following language be adopted:

31.01 The Employer shall provide hospitalization, major medical, dental, optical and a prescription drug program with coverage levels effective with the 12/01/2017 – 11/30/2018 plan renewal. Other plan design features are set forth below.

31.02 Bargaining unit members shall contribute via payroll deduction eleven percent (11%) of the monthly COBRA amount established in December of the immediately preceding year. The Employer will provide the Union Director 30 days' notice of any rate change. Said deductions shall be prorated and deducted on a bi-weekly pay period basis. The Employer will continue the Internal

Revenue Service Section 125 Plan so that employee participation as expressed in this section shall be on a pre-tax basis.

31.03 The Employer shall adopt a standardized PPO benefit plan with network/non-network deductible, coinsurance, and other benefits and coverages at levels as provided by the Aultcare City-wide plan effective December 1, 2017. A summary of the benefits and coverages provided may be viewed at:

<http://northcantonohio.gov/wp-content/uploads/2018/01/City-of-North-Canton-2017-SBC.pdf>

The Employer shall update the link as the plan is renewed from year-to-year.

31.04 In network physician's office visits shall have a co-pay of \$25, which shall be applied against the maximum out-of-pocket. Non-network office visits will be subject to the co-insurance and deductible.

31.05 If an employee and spouse are both employed by the City of North Canton, only one shall be entitled to the coverages set forth above, that being the family plan.

31.06 In the event of a change of insurance carrier, the current benefits of major medical and hospitalization, dental, optical and prescription drugs shall not be reduced.

31.07 The increased deductible amounts effective December 1, 2017, described in Section 31.03 shall not apply if the City provides the same or similar health insurance benefits to any other City employee or official and the City requires a lesser deductible amount unless the City is required to do so by means of: (1) a conciliator's award; or, (2) a contractual obligation existing at the time this Agreement is executed (including such continuing obligations that exist by operation of law during the pendency of collective bargaining negotiations following an expired collective bargaining agreement).

V. **Article 36, Drug Testing**

Discussion: The Fact finder made a proposal on drug testing that was accepted by the Union and rejected by the City. In the interim period between fact-finding and the conciliation hearing, a TA was reached with the Patrol Officer bargaining unit. The OPBA and City stipulated to that language.

AWARD: The following language be added to current Article 36 and adopted:

Section 36.06 Despite Ohio’s medical marijuana law, Ohio Revised Code Chapter 3796, the federal government regulates drugs through the Controlled Substances Act, which classifies marijuana as a Schedule I drug with no currently accepted medical use, together with a high potential for abuse. 21 U.S.C. 812. Accordingly, the Employer shall neither permit nor accommodate an employee’s use, unlawful possession under Ohio law, or illegal distribution of medical marijuana under Ohio law. Any alleged violation of this article/section, however, is subject to the employee protections of this collective bargaining agreement. Such employee protections include but are not limited to the “reasonable suspicion” provision of Article 38, and the “just cause” provision of Article 9. This section shall be effective upon the execution of this agreement.

VI. Article 37 Duration

Discussion: The City argued for a one-year agreement. It cited a too rich CBA and indicated that consideration of shared services for dispatch was trending, particularly in this geographic area. It posited a general resistance to paying retroactively for terms that are not aligned with dates of execution.

The Union argued for a three-year agreement, the contract term traditionally used by the parties and all other comparable internal units. As part of mediation, the City withdrew its one-year offer in favor of a three year agreement.

AWARD: The following language be adopted: [Union Final Offer]

Section 37.01. This Agreement is effective from January 1, 2018 through December 31, 2020. This Agreement shall continue from year-to-year after January 1, 2021, unless a party to this Agreement gives sixty (60) days written notice of intent to negotiate a new Agreement. In the event such notice is given by a party, the procedures for negotiations contained in R.C. 4117 shall apply.

AWARD

The parties stipulated that the above issues represent the only modifications to the CBA and that such are awarded and made as part of their collective bargaining agreement retroactive to January 1, 2018 **except as otherwise specifically set forth above.** All pre-existing terms of the collective

bargaining agreement not changed herein shall be incorporated into the 2018-20 agreement.

The provisions of RC 4117.14(G) (11) were eliminated as a bar to retroactivity at hearing by a signed waiver as previously noted.

Respectfully Submitted,

 S/Sandra Mendel Furman

Sandra Mendel Furman, Esq.

Issued in Columbus, Ohio this 8th day of June, 2018

Certificate of Service

An electronic copy was also sent to the parties' representatives and SERB. The parties waived overnight transmission of the Award at the hearing.

 S/Sandra Mendel Furman

Sandra Mendel Furman, Esq.