

STATE EMPLOYMENT
RELATIONS BOARD

Jan 23 10 23 AM '93

IN THE MATTER OF CONCILIATION
BETWEEN
CITY OF NORTH CANTON
AND
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

BEFORE: Robert G. Stein

SERB CASE NOS. 97-MED-07-0722 Chief Dispatcher ✓
97-MED-07-0723 Dispatch
97-MED-07-0724 Patrol

PRINCIPAL ADVOCATES FOR THE UNION:

S. Randall Weltman, Esq.
The Halle Bldg. 9th Floor
1228 Euclid Avenue
Cleveland OH 44115

and

Nick Corea, Staff Representative
Ohio Patrolmen's Benevolent Association

and

PRINCIPAL ADVOCATE FOR THE CITY:

Robert J. Tscholl, Esq.
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220 Market Avenue South
Canton OH 44702

INTRODUCTION

The three bargaining units are comprised of approximately 18 Patrol Officers, 6 Dispatchers, and 1 Chief Dispatcher. The other police classifications are represented by a different bargaining agent. The parties conducted five (5) bargaining sessions and went to fact-finding before Dr. Nels Nelson on September 22, 1997. During fact-finding some issues were resolved, yet 13 remained unresolved. The Union accepted the Fact-finder's report and the City rejected it. The parties subsequently bargained and narrowed the issues to the ones before this Conciliator.

On December 22, 1997, a conciliation hearing was held and the parties presented to the Conciliator two (2) unresolved issues. The issues deal with wages and a differential for Dispatchers who perform the duties of the Chief Dispatcher.

CRITERIA

OHIO REVISED CODE

The Award of the Conciliator is based upon the criteria set forth in SERB Rule 4117-9-06(H) and Section 4117.14 © (4) (e) of the Ohio Revised Code :

1. Past collective bargaining agreements, if any, between the parties;
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 employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. 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 private employment.

The recommendations of the Fact-finder should be carefully considered in matters of conciliation, provided they are based upon the same set of facts, follow the statutory guidelines listed above, are free of error, and represent sound reasoning in the collective bargaining context.

- ISSUE 1 a Article 26 WAGES (Patrol)**
- 1 b WAGES (Dispatchers)**
- 1 c WAGES (Chief Dispatcher)**

Union's position

The Union proposes the following:

	<u>9/4/97</u>	<u>9/4/98</u>	<u>9/4/99</u>
Patrol 1 st 180 days	\$13.91	14.40	14.90
Patrol 2 nd 180 days	\$14.60	15.11	15.64
Patrol Top Rate	\$16.92	17.51	18.13
Dispatcher A	\$12.49	12.93	13.38
Dispatcher B	\$11.53	11.93	12.35
Chief Dispatcher*	\$14.83	15.42	16.04

*The wage scale proposal for the Chief Dispatcher maintains the same rank differential Chief Dispatcher/Dispatcher as the rank differential Lieutenant/Patrol.

*The rank differential is called for in the current Agreement. The \$990 annual payment, currently in Article 26, would be eliminated under the above proposal.

The Union proposes that the current \$990.00 annual payment (= \$.48 per hr.) contained in Article 26 be deleted and rolled into the wage at its true value. The Union's proposal then provides for a 3.5% General wage increase for 1997, 1998, and 1999.

Union Arguments for Patrol and Dispatchers

The Union contends that the bonus of \$990.00 has become a part of the wage package for bargaining unit members and if given up should be rolled into the base as its true value. The bonus was awarded by a Conciliator in 1992 and was increased by the same percentage as the base wage in 1993 and 1994. In the 1994-1997 contract the bonus was continued by the City and again was increased each year by the same percentage as the base.

The Union argues that its wage proposal of 3.5% for each of the three years of the Agreement is reasonable in light of the average increase given to the other patrol officers in 207 jurisdictions in Ohio. These averages (supplied by the State Employment Relations Board) are 3.47% in 1997, 3.57% in 1998, and 3.61% in 1999.

The Union points out that the most comparable local jurisdiction to North Canton is Louisville. Currently, patrolmen in North Canton receive only 89.77% to 96.64% of the amount received by patrolmen in Louisville. The Union argues that the City's offer would increase this gap to a lower range of 88.00% to 95.69%.

Arguments for Chief Dispatcher

The union proposes the new wage rates for the Chief Dispatcher as listed above. The language of the Agreement 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. The Union's proposal maintains the same rank differential between Chief Dispatcher/Dispatcher as exists between Lieutenant/Patrol.

Employer's position

Patrol and Dispatchers

The City proposes eliminating the bonus and increasing wages by 5% in 1997, 4% in 1998, and 3% in 1999. The City argues that the Unions representing the other employees (including the union representing police Lieutenant) in the City accepted this wage increase and gave up the bonus. The City maintains that a wage pattern has been established and all the unions have followed it. Additionally, the City argues its wage offer keeps it competitive with other comparable jurisdictions. Without the bonus, the City asserts it would still be ranked third among the comparable jurisdictions of Alliance,

Canton, Jackson Township, Louisville, Massillon, Perry Township, and the Stark County Sheriff's Department.

The City points to the Conciliation Report of Conciliator Nicholas Duda as a foundation for its argument that the bonus was never part of the wage package. The Duda Award was preceded by Fact-finder Rowland H. Strasshofer's recommendation which called for a bonus for 1992, 1993, and 1994. The Union rejected Strasshofer's recommendations in 1992. The City points to a quote in the Conciliator's Award which supports its position:

"An increase in hourly wage rate has cost impacts in addition to the direct hourly cost in a standard 40 hourly work week. The major additional costs involve higher charges for pension, overtime, and workers' compensation. Clearly, one of the City's reasons for offering a bonus separate from the wage rate increase—instead of the straight 6% hourly increases of the past—is to minimize the impact of wage rate increases on other related costs and avoid substantial wage structure increases in the past."

The issue of ability to pay was not raised by the City.

Chief Dispatcher

The City offers to increase the chief dispatcher's wage rate by 5% in 1997, 4% in 1998, and 3% in 1999. The City does not address the wage differential issue in its proposal.

Discussion

The Fact-finding report issued by Fact-finder Nels Nelson preceded this conciliation. The recommendations of Fact-finder Nelson were accepted by the Union and rejected by the City. Great deference should be afforded to fact-finding reports, providing such reports are based upon sound and rational analysis and are free of substantive error.

I found the Nelson report to be a thorough analysis of the issue of wages and a well reasoned decision. I find it must be given great weight in this matter.

The City raised a compelling argument regarding patterned bargaining and its fear that if the Union's position would prevail, future bargaining with all of the unions in the City would be problematic. I am sympathetic to this reasoning given the complexities and pressures of running a city. However, the problem is somewhat mitigated by the fact that both parties have proposed to eliminate the bonus. Patterned bargaining is a well accepted concept and is an influential factor for employers with multiple bargaining units. However, the Union's argument that no particular pattern has previously existed is significant.

By way of analogy, the auto workers patterned bargaining is not only a strategy but is a well accepted practice in the American auto industry. However, the City offered no evidence of past patterned bargaining. The Patrol Unit is certainly one of the major unions in the city (to continue the auto analogy, it's at least one of the "big three"). Major bargaining units set patterns in bargaining, as is true of bargaining between the state of Ohio and its unions. AFSCME/OCSEA represents some 40,000 workers and a settlement with this union always sets the pattern for the other smaller unions. In the instant matter, the City argues that the pattern must be followed, yet there was no evidence of past patterned bargaining or which unions have established the pattern.

In their proposals both parties are agreeing to the elimination of the \$990.00 or .48 cents per hour bonus. The difference between the parties is how this is to be accomplished. I agree with Fact-finder's Nelson's analysis that the bonus has become an

expected and customary part of compensation for the bargaining unit. It has been increased at the same percentage as wages and has been continued for five years by mutual agreement of the parties. One would imagine this bonus money has been a factor for employees in making more than a few car, or house purchases.

The proposal by the City, while above average, would result in a "net" substandard compensation adjustment for employees. Hypothetically, if an employee is currently making \$12 per hour, plus his bonus, his overall compensation is \$12.48 per hour. Once the bonus is eliminated, his overall wage compensation would be reduced to \$12.00 per hour. If you then apply the 5% increase proposed by the city, his salary in the first year of the contract would be \$12.60 per hour. This represents a net difference of .12 cents per hour (or 1%) over his previous compensation level. If the bonus remained in place and this same employee got a 3% increase in his overall compensation, he would be making approximately \$12.85 per hour. I agree with Fact-finder Nelson when he stated there is "no justification" for elimination of the bonus without adding the bonus money back into the base.

On the other hand, the union's wage proposal of 3.5% represents an increase within the "ballpark" of other wage settlements in the public sector. Union Exhibit 7 defines the "park" as being in the mid-to upper-3% range for 1997, 1998, and 1999. Many years ago the distinguished Arbitrator, Harry Graham, identified the influence of other wage settlements or the "going rate of increase" to be a powerful factor in deciding wage disputes.

The conciliator's decision regarding the Chief Dispatcher's wages is restricted by the requirements of the Ohio Revised Code. I agree with Fact-finder Nelson's analysis of this issue; however, I am required to select between the final settlement offers of the parties. Based upon the reasons previously articulated regarding the need for the bonus to be included in the salaries of employees, I find the City's settlement offer regarding the position of Chief Dispatcher to be untenable.

Award (1. Patrol and Dispatcher; 2. Chief Dispatcher)

1. The \$990 bonus shall be converted to a .48 cents per hour and added to each bargaining unit employee's wage. The resulting wage shall then be increased as follows: a 3.5% wage increase effective (retroactive) September 4, 1997, a 3.5% wage increase effective September 4, 1998, and a 3.5% wage increase effective September 4, 1999.

2. The wage scale proposed by the Union for Chief Dispatcher is hereby awarded:

<u>1997</u>	<u>1998</u>	<u>1999</u>
\$14.83	\$15.42	\$16.04

The \$990 annual bonus would be eliminated as proposed by the Union in its settlement offer.

ISSUE 2 Dispatcher Differential

Union's position

The Union proposes that a new section 2 be added to Article 26 Wages as follows:

Section 2 When a Dispatcher performs duties of the Chief Dispatcher, in the absence of the Chief Dispatcher, said Dispatcher shall be compensated an additional \$.50 per hour worked in this capacity.

The Union argues that the Dispatchers, when filling in for the Chief Dispatcher, have to assume all responsibilities of the chief dispatcher including such things as scheduling and the handling of money for the court. The Union maintains that such a differential is no different in concept to the differential that is paid to a patrol officer who acts in the capacity of a Lieutenant.

Employer's position

The Employer rejects this proposal and the need for such a differential. It argues that the Dispatcher does not assume all of the duties of the Chief Dispatcher in her absence.

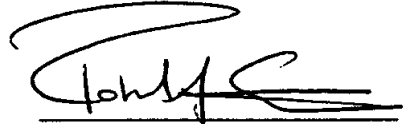
Discussion

The concept of being paid for working at a higher level is a common practice in the public sector. However, said practice is based upon an employee assuming all or certainly the majority of duties of the higher position, often for an extended period of time. While I found the testimony of the Union's witness to be sincere, it did not provide a convincing basis for the Union's position in this matter.

Award

The settlement offer of the City to add no new language is awarded.


The Conciliator respectfully submits the above Award to the parties this 26th day of January, 1998 in Summit County, Ohio.



Robert G. Stein, Conciliator

SERVICE

Copies of this Award and invoice were mailed this 26th day of January, 1998 to G. Thomas Worley, Robert J. Tscholl, Esq., and S. Randall Weltman, Esq.



Robert G. Stein, Conciliator