

Background

The parties to this Fact Finding are the employees of the Canal Fulton Water and Streets Departments represented by the Teamsters Local No. 24 and the City of Canal Fulton. Prior to the formal Fact Finding Hearing there were a number of negotiating sessions between the parties. In addition, there was a one-day mediation session before the formal hearing, and a number of issues were settled, including hours of work, holidays, disability pay, leaves of absence, personnel files, health and safety, discipline, waiver of negotiation, bulletin boards, and the duration of the contract. The mediation took place on January 24, 2003. However, in spite of their best efforts, the parties were unable to come to a complete agreement and eleven (11) issues remain unresolved. The issues are 1) wages, 2) contributions to the DRIVE fund, 3) vacation accrual, 4) sick leave, 5) a funeral leave provision, 6) court leave, 7) military leave, 8) insurance, 9) a drug testing provision, 10) layoff and recall language and (11) subcontracting/privatization language. The formal Fact Finding Hearing was conducted on January 25, 2003 at the Canal Fulton City Building. The Hearing was convened at 10:00 AM and adjourned at approximately 3:15 PM. The Fact Finder wishes to state that he appreciates the courtesy with which he was treated by both parties.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria, which are set forth in Rule 4117-9-05, 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 stipulations 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.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

Introduction:

This is the first negotiation between the parties, and both are attempting to craft a contract that will meet their needs. As in any first negotiation there are some problems associated with the change from an informal relationship to a more formal structure codified in a contract that will govern the day to day operations of the Water and Streets Departments. Both sides recognize that the contract will change the way that they interact with each other and they are in the process of defining their new relationship.

The first area of disagreement is related to the Union's desire to change (modify) existing work practices (rules). For example, both the Union's demands relating to 1) Hours of Work and 2) Subcontracting may lead to changes in long standing practices regarding a supervisor's and/or non-union member's right to perform work usually performed by union members. The City sees no reason to make any changes in these provisions because of a feeling that, "If it ain't broke don't fix it." The Union disagrees with this assessment and wants language that protects the membership's job security.

A second major area of disagreement stems from the fact that the Union is suggesting the inclusion of language on a number of issues that is found in many other contracts in both the public and private sectors. The City's position is that this is a first contract and it should take some time for "standard provisions" to be negotiated into a contract. The disagreements over the DRIVE fund, Funeral Leave, and Drug Testing fall into this category.

Finally, the parties disagree over the economic package. The City was concurrently involved in negotiations with a number of bargaining units including the police, and the City asked Local 24 to wait to conclude their negotiations until it came to agreement with the police. The City believed that the police contract(s) would set a pattern for the other bargaining units. In this instance, the police were unable to reach an agreement with the City and availed themselves of the dispute resolution procedures contained in ORC 4117. The Conciliator issued a report that granted the police officers significant wage increases. In the City's view the report recommended excessive increases, and currently, it is trying to decide whether to appeal the award.

The members of Local 24 believe that they are underpaid and are requesting increases that the City believes are unreasonable. On the other hand, the City believes that it is not out of line with other comparable jurisdictions in terms of pay and rejects the Union's contentions on this issue. While the Union never asked for the same percentage wage increases given to the police, it is clear that the specter of the police contract hangs over these negotiations.

While there are a significant number of outstanding issues that divide the parties, there is broad agreement on many of them and both sides indicated that they were willing to compromise on most issues. The major area of disagreement is the wage package. If the parties had been able to come to an agreement on that issue, then they would have been able to find agreement on most other items on the table. However, given their inability to come to

agreement on the size of the wage increase, many of these other issues remained unsettled.

Issue: Article new DRIVE Fund.

Union Position: The Union demand is for a payroll deduction to allow its membership to voluntarily support the Teamsters Democratic Republican Independent Voter Education fund.

City Position: The City rejects this proposal based on the costs of implementing the requested changes in the payroll office.

Discussion: The Union demand is for a voluntary contribution to a Political Action Fund to be automatically deducted from a worker's pay check. The Union believes that if a member of Local 24 wishes to contribute to the fund, then the easiest way to do so is by payroll deduction.

The City's argument against the proposal is based on the fact that the software that the City uses to keep track of its payroll is somewhat limited and can keep track of only a limited number of variables. With the various pension fund contributions, deductions for health insurance, etc., that it must keep track of, the City argued that the real cost of this demand was higher than it appeared.

The City's position is reasonable. Canal Fulton is a small city and there is no reason to expect that it has either the manpower or computer resources needed to keep track of various voluntary deductions from an employee's pay. In addition, this is a first negotiation between the parties, and the Union's demand is not for a central element of a contract. In this instance the Fact Finder does not believe that the Union proved its point that language relating to the DRIVE fund is necessary at this time. If the demand is something that the Union membership desires, then future negotiations can be used to press for its inclusion into the contract.

Finding of Fact: The Union did not prove that its demand should be included in the contract given the City's objections to the proposal.

Suggested Language: None

Issue: Article New: Military Leave

Union Position: The Union demands that the current language in the Ohio Revised Code (ORC) relating to military leave be included in the contract.

City Position: The City rejects the Union's demand.

Discussion: The disagreement on this issue is more apparent than real. The City rejects the Union demand for the inclusion of the ORC language in the contract because the City believes that it is redundant. The City states that it will always follow the law. Consequently, the City believes that adding the language in question into the contract will simply increase the length of the contract for no reason. The City also pointed out that the law on military leave changed a few years ago and it argues that putting the current ORC language in the contract may cause problems if (when) the legislature changes the law in the future. Therefore, the City agrees to follow the law, but does not want specific language in the contract.

The Union believes that putting the language in the contract simply spells out what the parties have agreed to. The Union does not believe that putting language in the contract that spells out the agreements between the parties is unreasonable. The Union agrees that the law may change in the future, but does not foresee any situation where the parties would not follow the law. The Union contends that the parties would surely modify the language in the contract if and when that becomes necessary.

The Fact Finder notes that Military Leave articles are common to most contracts. Furthermore, there is no disagreement between the parties on the issue: both sides agree that they currently do and in the future will obey the law. The discussion on the issue centered on what would happen if the legislature changed the law and the changes contradicted what was in the contract. Because neither side is aware of any legislative intent to change the current law, the discussion was of a theoretical nature.

The Fact Finder believes that there is some benefit to having the contract spell out all of the agreements between the parties. The members of Local 24 are not lawyers; and having the language about military leave in an accessible place, especially given the realities of the situation facing Ohio and the Nation at the present time, may be helpful. The Ohio Legislature may change the law sometime in the future, but any problems that arise if that occurrence comes to pass can be dealt with at that time. Given the fact that there is no real disagreement on the issue, the Fact Finder cannot see that there is any harm to the City by writing down what it agrees to.

Finding of Fact: There is no disagreement on the substance of this issue. In addition, Military Leave articles are common in labor agreements in both the private and public sectors. Consequently, the inclusion of the Union's proposed language into the contract is reasonable.

Suggested Language:**Section 1 – Short Term Military Leave**

A. This leave is granted in accordance with Ohio State Law

B. Employees who are members of the Ohio organized militia, or members of other reserve components of the armed forces of the United States, including the Ohio National Guard, are entitled to a military leave of absence without loss of pay for the time they are performing service in the uniformed services for a period of up to one hundred seventy-six (176) hours within any calendar year. Employees will maintain any compensation received from the military in addition to the full pay from the City.

C. To qualify for the benefits provided, the employee must show his/her field order to his/her supervisor prior to reporting for training or duty.

D. For the purpose of computing vacation or sick leave, Short-Term Military Leave will count as full service with the City of Canal Fulton.

Section 2 – Extended Military Leave

A. Extended Military Leave is given to those employees who are called or ordered to the uniformed services for longer than one hundred seventy-six (176) hours, for each calendar year in which the employee performed service in the uniformed service, because of an executive order issued by the President of the United States or an Act of Congress. During the military service period designated in the executive order or Act of Congress, an employee is entitled to a leave of absence and the lesser of the following:

1. The difference between the employee's gross monthly wage or salary with the City of Canal Fulton and the sum of the employee's gross uniform pay and allowances received that month; or,

2. Five (\$500.00) hundred dollars.

Issue: Article New: Funeral Leave

Union Position: The Union demands a funeral leave provision be inserted into the contract allowing the membership to take three days of paid leave for the death of an immediate family member.

City Position: The City rejects the Union's demand and believes that the current system whereby a City employee can take three sick days for the death of an immediate family member is reasonable and in accord with Ohio law.

Discussion: The City argues that the funeral leave provisions currently in effect have not caused any problems for City employees. The City allows a person to take three days off paid with accumulated sick leave in the event of the death of a family member. The City believes that the Union's demand has some cost considerations; and without a showing that the current system is causing some problems, the City does not believe that any change in the current practice is warranted.

The Union argues that a funeral leave provision is found in almost every labor agreement throughout the nation. The Union agrees that there is some potential cost consideration; but given the size of the unit, the Union argues that the City's potential exposure is limited.

ORC 4117 requires a Fact Finder to look at other workers in both public and private employment doing comparable work when making a recommendation. That is, the law requires a Neutral to look at the evidence from comparable jurisdictions. In practice, Neutrals have come to look at evidence from both external jurisdictions and evidence from other contracts within a jurisdiction when making recommendations about contract language. In this instance, the external comparables show that funeral leave provisions are standard in both the private and public sectors. In fact, funeral leave provisions are almost universal.

However, this is the first contract between the parties, and the City argued that it was against the Union's proposal. Moreover, the City testified that no other Canal Fulton employees enjoy this benefit. Based on this testimony, the Fact Finder was going to recommend the City's position on this issue, i.e., no funeral leave provision be part of the contract. The Union rebutted this testimony by placing the police contract into the record. The Union pointed out that the police agreement contains a funeral leave provision. Therefore, the evidence from both external and internal comparables shows that this benefit is standard both in Canal Fulton and in the surrounding area. Consequently, the Fact Finder believes that the proposed contract should contain a funeral leave provision. This is especially true given the fact that both parties believe that the cost of the provision will be minimal.

Finding of Fact: A funeral leave provision is a standard clause in most labor contracts throughout Ohio and the nation. In addition, the evidence from the police contract, an internal comparable, shows that funeral leave is a provision in contracts within Canal Fulton.

Suggested Language:

Section 1: If a death occurs among members of the employee's immediate family (defined as spouse, significant other, and child), such employee shall be granted three (3) days of funeral leave. The leave shall be consecutive and contiguous to the death without loss of pay, benefits, days off, holidays, vacation time, or sick leave. Funeral leave may be extended, with the permission of the department head.

Section 2: If a death occurs among members of the employer's extended family (defined as mother, father, step-parents, parents-in-law, sister, sister-in-law, grandparents), the employee shall be granted one (1) day funeral leave, consecutive and contiguous to the death without loss of pay, benefits, days off, holidays, vacation time, or sick leave. The funeral leave referenced in this Article may be extended with the permission of the department head.

Issue: Article New: Layoff and Recall

Union Position: The Union demand is for language that would require that the Tax Administrator to be placed in a new position with the same pay if her position is abolished. In addition, the Union also demands language that would preclude Supervisors from performing bargaining unit work if a bargaining unit member is laid off.

City Position: The City rejects both Union demands.

Discussion: The demand that the Tax Administrator be placed in another position with no loss of pay if her position is abolished is unusual. In general, a Union member who is to be laid off has the right to "bump" into another position assuming that he/she has the requisite skills to perform the work in question. In large units this leads to "bumping chains." The Tax Administrator is worried that her position may be abolished and wants some employment and income protection. In response, the City Administrator testified that there were no plans to change the duties of the Tax Administrator. Given this testimony, the Fact Finder is unsure why the Tax Administrator is concerned about her job security.

The City opposes this demand because it believes that the language in question would force it to find work for the Tax Administrator regardless of her qualifications to do the job; furthermore, the City would be forced to guarantee her wages regardless of her job title. This might mean that she would be paid more than other workers performing similar duties. Finally, the City argued that labor agreements should not be used to protect certain individuals.

The Fact Finder agrees with the City on this issue. A contract is not the place to attempt to protect the Tax Administrator or any other individual from a potential problem. All members of a workforce face some probability of being laid off. This is an unfortunate fact of life. The Tax Administrator has the same rights as all other Union members. There is no reason that she should be treated differently than other individuals who will be covered by the proposed contract between Local 24 and the City.

The Union also demands that a supervisor be prohibited from performing bargaining unit work if there are bargaining unit members who are laid off. The City objects to this language because the City has a history of having supervisors work along side bargaining unit members. The City claims that this practice is necessary in order to control costs in the Streets and Water Departments.

The Fact Finder believes that the City's arguments are not on point with respect to the Union's demand. The Union demand does not preclude supervisors working along side of bargaining unit members. Such language would be a departure from long standing practice. Rather, the demand is that supervisors be precluded from doing bargaining unit work under the condition that there are laid off bargaining unit members. The Union's demand in this situation is standard throughout the entire economy. A Union exists in order to insure that its members are treated fairly and to protect the membership's work. This demand is unexceptional.

Finding of Fact: There is no reason that the Tax Administrator should be treated in a different manner than any other union member. The Union's demand that bargaining unit work be performed by bargaining unit members if there are any members laid off is a universally accepted principle.

Suggested Language:

Article: Section 1. Agreed to by the parties.

Article: Section 2. Agreed to by the parties.

Article: Section 3. Agreed to by the parties.

Article: Section 4. Employees who receive a letter of layoff may exercise their seniority to bump a junior employee (to avoid being laid off) in any other department covered by the collective bargaining agreement as long as he/she has the qualifications to perform the work, excluding the Tax Administrator and Utility Clerk positions.

Article: Section 5. Agreed to by the parties.

Article: Section 6. A Supervisor will not perform bargaining unit work while a bargaining unit employee is on layoff.

Issue: Article New: Court Leave

Union Position: The Union demand is that the City's current practice as outlined in the Policy Manual be included in the contract.

City Position: The City originally objected to including the Union's proposed language in the contract. However, the City withdrew its objections based on the fact that the Union was demanding current City policy.

Discussion: There is no disagreement on this issue because the Union demand is for current practice as outlined in the City's policy manual.

Finding of Fact: The Union's demand is for current practice.

Suggested Language:

Article: Section 1. Employees required to perform jury duty or serve as a court witness under summons or subpoena will receive full pay for time away from work. However, payment received for such duty must be submitted to the department head.

Article: Section 2: Employees required to perform jury or other service as defined above will also be reimbursed for parking fees expended to perform such services, provided written receipt of expenses are submitted to the Finance Director's office. Payment will be made from Administrative Expenses Petty Cash Fund.

Issue: Article New: Drug Testing

Union Position: The Union has suggested that drug testing language be inserted into the proposed contract.

City Position: The City does not wish a drug testing provision.

Discussion: This is a somewhat unusual situation. Usually, employers demand that a drug testing provision be added to the contract; and the Union either rejects the demand or only grudgingly goes along with the proposal. In this instance, the Union believes that a drug testing provision will ultimately be included in the contract and believes that sooner is preferable to later.

The City has two reasons for its opposition to the Union's proposal. First, the City has the right to drug test employees based on a "probable cause" standard. The City believes that this covers its needs. Second, the Union's proposal is very detailed with regard to the testing procedures and the City argues that the proposal is more suited to a large employer because of the cost of the testing procedures. That is, the City stated that the cost of the testing procedure suggested by the Union is prohibitively expensive for Canal Fulton. Consequently, the City is not interested in having the drug testing provision placed into the contract at this time.

The Fact Finder believes that sooner or later the parties will include a drug testing article in their agreement. However, the City does have the right to test employees suspected of drug abuse and there was no testimony that there were problems with drug abuse in Canal Fulton. Consequently, in light of the City's opposition to the proposal, the Fact Finder does not recommend that a drug testing provision be added to the contract.

Finding of Fact: The City has the right to test employees for drug abuse at the current time.

Suggested Language: None

Issue: Article New: Subcontracting and Privatization

Union Position: The Union is demanding language be inserted into the contract that will limit the City's ability to have non-bargaining unit workers do the work usually done by members of Local 24.

City Position: The City rejects the Union's proposals on this issue.

Discussion: The parties discussed this issue at length during the mediation session. The City indicated that it understood the Union's concerns on this issue. However, the two sides were unable to come to an agreement on the issue. The Union's fear is that the work usually done by bargaining unit

members is increasingly being done by non-bargaining unit workers. These outside workers include subcontractors, seasonal workers, and community service workers. Much of the discussion focused on community service workers. Throughout Ohio and the nation, the courts can order inmates of County jails or other persons involved in the legal system to perform community service. Given the financial pressures facing Stark County the Union believes that there is a real possibility that the number of persons involved in the community service programs will increase.

The City indicated that it understood the Union's concerns. However, the City argued that because of its financial condition it was forced to look for ways to cut costs. The City Manager testified that she was unaware of any instance in which community service workers were used to perform duties usually performed by bargaining unit members. This statement led to a prolonged discussion about brush removal. The result of this discussion was an admission by both sides that there might have been some misunderstanding about the use of community service workers.

A labor agreement is signed by two parties. In this case the City of Canal Fulton and Local 24 representing the Street and Water Department employees are the signatories. Implicit in this agreement is the idea that there is certain work done by these employees. The work is the reason for the Union members' employment by the City. The Union clearly has an interest in protecting its membership's livelihood and consequently, unions always propose contract language that limits management's ability to have outside contractors perform bargaining unit work. Cities always resist the language proposed by the Union as a violation of the Management Rights Clause. Therefore, both parties are taking the expected positions on this issue.

The City offered a counter proposal to the Union's proposed language. This language meets some of the Union's concerns. It is not clear that there is a problem, although the discussion on this issue shows that the Union's fears are not totally unfounded. Therefore, the Fact Finder does not believe that the language proposed by the Union should be entered into the contract. Of course if the Union sees bargaining unit work being done by non-bargaining unit employees over the life of the agreement, then future negotiations will be the place to strengthen the contract clause(s) dealing with contracting out.

Finding of Fact: The Union has a concern about bargaining unit work; however discussions on this issue did not indicate that the City intended to make a practice of hiring outside agents to do the jobs normally done by Local 24 members.

Suggested Language:

Article New: The Employer shall not use any subcontractor, third party, private company, community service worker or any other method for work regularly performed by Bargaining Unit employees if said use results in the layoff of a Bargaining Unit Employee or leads to the diminution of the Bargaining Unit.

Issue: Article New: Sick Leave

Union Position: The Union demand is for a sick leave cash out of one half (1/2) of accumulated sick leave or one hundred and twenty (120) days whichever is greater upon separation from the City. In addition, the Union also demands that one (1) personal bonus day be given to an employee who does not use sick leave during the course of a year.

City Position: The City rejects the Union's demand for a bonus day for not using sick leave. The City countered the Union's demand for an increased cash out with the status quo, i.e. one quarter (1/4) of accumulated time up to thirty (30) days.

Note: The parties discussed this Article at length and came to an agreement on a number of other issues related to sick leave.

Discussion: The Union's demand as stated is not reasonable. Realistically, the Union demand is for parity with the police department in terms of the cash out provision. The City presently meets the legal requirements for sick leave buy out specified in the ORC. This requires the City to pay for one quarter (1/4) of up to nine hundred and sixty (960) hours of accumulated time, which works out to be two hundred and forty (240) hours or thirty (30) days. The police negotiated a provision that specified that an officer will receive one quarter (1/4) of his accumulated sick leave up to a maximum to three hundred and twenty (320) hours or forty (40) days upon separation from the City. This represents an increase in ten (10) days in the sick leave buyout.

The City argues that it cannot meet either the Union's explicit or implicit demands. It claims that the police contract was the result of a Conciliation Award and that the Conciliator's award, i.e., the police contract, is unreasonable. The City contends that the Conciliator should not have increased the cash out provision. The City claims that if it agrees to the Union's position, then it will be forced to increase the cash out provision for all City employees and that would have a significant financial impact on the City.

The sick leave cash out enjoyed by the employees of Canal Fulton is similar to the benefit enjoyed by many other public sector employees. That is, a cash-out based on the ORC is still the norm in many contracts. It should be noted, however, that contracts guaranteeing a cash-out in excess of thirty (30) days are becoming evermore common. The Fact Finder understands both parties' arguments on this issue. The City's claim that the current practice within Canal Fulton is thirty (30) days is true. However, the precedent has been established that the cash-out is forty (40) days. The Fact Finder believes that the members of Local 24 should be treated in the same manner as other bargaining unit members throughout the City.

The second outstanding issue is the Union's demand for a personal day to be given to any employee who does not use his/her sick leave during the course of the year as a bonus for good attendance. The use of bonus days as an incentive to entice employees not to use sick leave is common in both the

private and public sectors. However, it is often management that proposes the bonus as a way to control spiraling sick leave costs. In this instance there was no testimony that sick leave is being abused by the union membership. Therefore, there is no reason to "bribe" the employees not to abuse sick leave.

Finding of Fact: Other bargaining units within the City have a sick leave buyout that is superior to the buyout enjoyed by the members of Local 24. In terms of the bonus provision; there was no evidence that there is any need for a bonus provision in the contract.

Suggested Language:

Article New:

Section 1: Agreed to by the parties.

Section 2: Agreed to by the parties.

Section 3: Union proposal pulled off the table.

Section 4: Sick leave may be used if an employee or a member of his immediate family is afflicted with a contagious disease and requires the care and attendance of the employee or when, through exposure to a contagious disease, the employee's presence on the job would jeopardize the health of others. Accrued sick leave may also be used for absences due to pregnancy and/or childbirth, and medical, dental or optical examinations or treatment of an employee or a member of the immediate family when such examinations cannot be scheduled during non-work hours.

Section 5: The immediate family or close relationship is defined as: mother, father, sister, brother, wife, husband, son, daughter, grandparent, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, stepmother, stepfather, stepchildren, grandchild or grandparent-in-law.

Section 6: Agreed to by the parties.

Section 7: Upon retirement from the City employees may convert one-fourth (1/4) of their accumulated sick leave to a maximum amount of three hundred and twenty (320) hours at the employee's rate of pay at the time of retirement. Additionally, to be eligible for sick leave conversion at retirement the employee must have worked for the City for at least ten (10) years.

Issue: Article New: Vacations

Note: The parties essentially agreed to all the sections of the proposed article on vacations. The agreement was not signed off because there was no agreement on the other articles of the contract.

Finding of Fact: The parties came to an agreement of the vacation issue.

Suggested Language:

Article New:

Section 1: The parties agreed to the current vacation schedule.

Section 2: Forty (40) hours of vacation time not taken during the year in which it is earned may be carried over from year to year at the employee's discretion.

Section 3: Agreed to by the parties.

Section 4: Vacation time may be taken in one (1) hour increments or more.

Except in an emergency, employees will give the employer one (1) day's advance notice of his/her desire to use vacation time.

Section 5: Agreed to by the parties.

Issue: Article New: Insurances

Note: The parties essentially agreed to all the sections of the proposed article on insurances. The agreement was not signed off because there was no agreement on the other articles of the contract.

Finding of Fact: The parties came to an agreement on the insurance article.

Suggested Language:

Article New:

Section 1: The coverage provided to each bargaining unit employee is incorporated by reference into this contract. The Employer agrees to maintain this or similar coverage during the term of this agreement, but in no way less coverage than is currently in effect.

Section 2: Agreed to by the parties.

Section 3: On the effective date of this agreement, the Employer will pay 85% of the premium(s) to maintain the current level of Health and Welfare benefits. The Employer agrees to pay 100% of the premiums for the Dental and Vision insurances for the duration of this agreement

Section 4: The Employer will continue to make payment directly to each employee in an amount equal to that employee or his/her family's Health and Welfare deductible at the beginning of each year.

Issue: Article New: Wages

Union Position: The Union demands nine percent (9%) for 2002, six percent (6%) for 2002, six percent (6%) for 2003, and six percent (6%) for 2004. In addition, the Union demands an equity increase for the "C" job classification which would affect two employees, and finally, the Union wants an increase in the Certification Pay for all its membership.

City Position: The City offered two and one-half percent (2 1/2%) for all the years of the contract. Additionally, the City agreed to an equity increase for the "C" job classification employees. The City rejected the Union demand for an increase in Certification Pay.

Discussion: The parties discussed the issues surrounding compensation in the mediation session held prior to the hearing. The Union demand was reduced to 4% per year plus an equity adjustment for certain job classifications. The City increased its offer to over 3% per year and agreed on the equity adjustment. Consequently, the parties were within 1% per year of reaching an agreement. If

they had been able to agree to the wage package all of the other issues would have been quickly settled. Therefore, the inability to close the difference in their respective positions on the wage issue led to the failure of the mediation and the need for a formal Fact Finding Hearing.

The parties disagreed on the whether or not the members of Local 24 are paid comparably to other employees doing the same work. In order to support its wage demand, the Union offered comparables from all cities in Northeast Ohio with a population of less than 20,000. The City objected that many of these jurisdictions were in Summit and Cuyahoga counties and were, therefore, not comparable to Canal Fulton.

The City argued that Canal Fulton is a small city in the rural part of Stark County and that the only comparable jurisdictions are other small communities from rural Stark County. The City's list consists of a hodge-podge of jurisdictions of various sizes. The Union objected to the City's list of comparables claiming that many of the jurisdictions were in no way comparable to Canal Fulton. The Union particularly objected to the fact that the City's list was comprised of townships. The Union argues that townships have different sources of funding compared to cities and, therefore, townships are not comparable to cities in any meaningful sense. The City argues that its population just passed 5,000 individuals, the lower limit for designation as a city, and prior to that time it was a township. As a result, the City claims that townships are comparable jurisdictions.

The Fact Finder believes that the Union's list contains a number of cities that are not comparable to Canal Fulton. These jurisdictions are North Canton, (which is the home of the Hoover Company), Macedonia, Bedford Heights (which are fairly affluent suburbs of Akron and Cleveland), and Amherst which is in Lorain County and is not strictly comparable to Canal Fulton in any sense. On the other hand, the City's list contains a number of small townships that are not really comparable to Canal Fulton. These include Beach City, Marlboro, and Osnaberg. These are smaller than Canal Fulton and generally have street departments with only one or two employees.

The result is that the Fact Finder believes that the Canton Township, Navarre, Minerva, New Philadelphia, East Liverpool, Mount Vernon, Cambridge, Shelby, Martin's Ferry, and Newton Falls represent roughly comparable jurisdictions based on the information presented by the parties.

The Fact Finder analyzed the data presented by the parties on these jurisdictions in a number of ways, and the data supports a conclusion that the members of Local 24 are not at the top of the list with regard to wages, but neither are they at the bottom of the list.

The Union also presented evidence based on the Canal Fulton police contract. This Conciliator recommended very large increases in that contract. The Fact Finder notes that the Conciliator found that the police officers were paid much less than other police officers in comparable jurisdictions and that the internal wage structure within the department was inequitable. The data presented by the parties to this negotiation do show that there is an inequality in the wages of some employees, but the data do not support a conclusion that the

members of Local 24 are paid much less than other workers performing the same duties.

The City also presented evidence on its financial condition. The City is not in the best financial condition and the yearly carryover has been decreasing over the last few years. The Fact Finder understands that the City's financial picture is not the brightest, but, the members of the Local 24 deserve a reasonable increase. Moreover, the evidence does not show that the City cannot fund the raises recommended in this report.

The Fact Finder believes that raises of 4.0% for the first year, 3.5% in the second, third and fourth years are reasonable given the entire record. The reason for the 4.0% recommendation for the first year is the fact that the Union membership has not received a raise since January 1, 2001. That is, they received no adjustment in 2002. The recommendation of an extra one half (½%) percent is a type of "interest payment" for the time from January 1, 2001 to the present. A raise of this level is in line with the raises negotiated by other jurisdictions presented by the parties in their comparables.

There are two other parts of the Union's demand. First, there is the equity increase for the two individuals who are in job Classification "C". The parties agreed to a \$.50/hr. increase for these two individuals. The only difference in their positions is when the raise should go into effect. The Union wants the equity payment to be retroactive to January 1, 2002 and the City wants the raise to become effective on January 1, 2003. The Fact Finder believes that the payment should become effective on January 1, 2002. In this instance all the raises discussed by the parties become effective on January 1, 2002, and the Fact Finder believes that this payment should follow the same pattern.

Finally, the Union also demands an increase in the payment for Certifications earned by the Water Department employees and different Commercial Driver's Licenses earned by members of the Streets Department. The Union argues that this is a standard benefit in many contracts and is an incentive to the employees to earn certificates.

The City argues that the requirements for promotion often include a need for certifications. That is, the City contends that it pays the employees for their skills by promotion and correspondingly higher pay. In addition, the City argues that its financial position precludes paying increases in various fringe benefits including more pay for certificates. The Fact Finder believes that the City's position on this issue is reasonable. Increased training is rewarded by promotion and higher wages. The rule is that increased training should be rewarded. There is no standard way to implement the rule, and the system within Canal Fulton is acceptable.

Finding of Fact: The Comparables (evidence) presented by the parties shows that the members of Local 24 are paid similarly to other employees performing the same duties. The parties have agreed that there is a need for an equity adjustment for the two workers who are in job classification "C." Finally, the Union did not prove that its membership needed an increase in their Certification Pay.

Note: The recommendation for Certification Pay concerns an increase in the payment. The Fact Finder is not recommending a decrease in any current payment.

Suggested Language:

<u>Section 1:</u>	Wage increase for January 1, 2002	4.00%
	Wage increase for January 1, 2003	3.50%
	Wage increase for January 1, 2004	3.50%
	Wage increase for January 1, 2005	3.50%

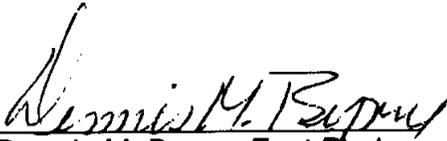
Section 2: Agreed to by the parties.

Section 3: Agreed to by the parties.

Section 4: All employees when on official business for the City shall be reimbursed the IRS rate for travel reimbursement for mileage traveled by personal automobile.

All other articles tentatively agreed to by the parties are included by reference into the contract

Signed this 15 day of February 2002 at Munroe Falls.


 Dennis M. Byrne, Fact Finder