

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2003 SEP 19 A 10: 11

In the Matter of the Fact-Finding)	Before Fact-Finder
)	
Between:)	James E. Rimmel
)	
THE CITY OF CANTON)	Case No.: 03-MED-05-0574
)	
and)	Heard: 18 August 2003
)	Canton, Ohio
)	
)	Post Hearing Submittal:
)	4 September 2003
CANTON POLICE PATROLMEN'S ASSOCIATION)	Issued: 17 September 2003

Appearances

For the City:

Kevin L. Honmedieu, Esq.
Assistant Law Director

For the Association:

Larry S. Pollak, Esq.
Attorney for Association

BACKGROUND

This matter comes on for fact-finding as a result of impasse in negotiations over a successor Collective Bargaining Agreement between the City of Canton, Ohio and Canton Police Patrolmen's Association, Local 98 (CPPA). The City and the CPPA were parties to a Collective Bargaining Agreement covering the period of 1 July 2002 to 30 June 2003. It is that one-year agreement they are presently endeavoring to negotiate a successor agreement over, an effort that lead to a tentative agreement (TA) being consummated in May of this year. That agreement, however, was rejected on claimed financial grounds by City Council resulting in this fact-finding effort.

While the parties' pre-hearing submittals as to the issues at impasse differed, this problem was resolved at the outset of the hearing, with both agreeing that only three issues

remained at impasse, to wit: (1) the base salary for patrolmen, (2) health insurance coverage and (3) duration. In any event, both parties, in a timely fashion, provided the Fact-Finder with pre-hearing statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code Section 4117.14(C)(3)(a). As for the other articles subject to these negotiations, it was agreed that reflected under the TA would be considered agreed-to, subject to approval by the legislative authority and membership of the Association.

In making the recommendations that follow relative to the agreed-to unresolved issues, I have been guided by the factors set forth in ORC Section 4117.14(C)(4)(e) and Ohio Administrative Code Section 4117-9-05(K), namely:

- (a) Past collective bargaining agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) Stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceeding in the public service or private employment.

CONTRACT ISSUES AT IMPASSE

ARTICLE 73 – BASE SALARY OF PATROLMEN

Under the present salary schedule, the level of compensation for patrolmen is spread over a six-step structure where, at the initial step, the rate is fixed by councilmanic action with the respective steps thereafter being as follows:

12 mos.	2	\$34,933
24 mos.	3	\$37,058
4 AY	4	\$40,073
11 AY	5	\$40,454
18 AY	6	\$41,216

“ ‘Anniversary Years’ apply to Patrolmen who have completed at least 36 months of service.”

The Association’s proposal/summary argument:

The Association proposes each step of the wage scale be increased to establish parity with first responder firefighters for the City of Canton. It likewise seeks for the initial year a 2-½ percent adjustment to be calculated after a parity adjustment is in place. It requests, moreover, should I opt for a multi-year agreement, an adjustment of 4 percent for its’ members during any second and/or third year of an agreement. Parity, according to the Association, is the paramount issue in these negotiations, an issue affirmatively acknowledged and dealt with by the respective negotiating teams. It was simply due to the political agenda of certain mayor “want-a-bee’s” that that agreed-to was rejected by Council.

The Association argues cited comparables clearly show Canton Police Officers are at or near the bottom in base wages in all relevant comparisons. And, it contends most area cities have established base parity in wages paid police officers and firefighters.

The City’s proposal/summary argument:

The City proposes each step of the wage scale be maintained over the term of one additional year at those rates presently in force. In other words, the City proposes a wage freeze for the period running from 1 July 2003 through 30 June 2004. The City claims it presently lacks the ability to absorb any cost increase(s) in the immediate future, especially given that already built into the agreement under existing language.

Analysis:

Put simply, tomorrow has apparently arrived for the City of Canton, leastwise as viewed by Council and the City’s Budget Director. Whether this conclusion of dire financial circumstance is accurate and/or a product of federal and/or state financial problems, area problems, liberal application of wage/benefit packages in the past, employer/industry shutdown/exodus from Stark County, statutory impositions upon local governmental bodies,

one can only speculate at this point. The fact is data of record indicate Canton suffers from an eroding tax base with increasing levels of unemployment and poverty within its jurisdiction. It also appears remaining significant employers are few in number, leaving the City with an uncertain state as to its future viability. The record also reflects while the City was able to accord raises to its' employees in the area of four percent (4%) from 1992 through 1998, that ability ground to a screeching halt when revenues began to flatten out in 1999. The fact is, for four consecutive years, this City has operated at a deficit and is facing a fifth year in fiscal 2003. It also appears the City, through this year, was able to apply various forms of reserves to offset operating deficits, reserves that will no longer exist at the end of 2003.

Now, the Association advanced strong exception to the City's contention of the lack of ability to pay for parity and wage adjustments under a new collective bargaining agreement. It suggests there are monies available under general, capital and other funds that may be used for salary and benefits. It believes also Canton patrolmen are the lowest paid for cities up to 85,000, as well as for those officers working in the top 10 cities within the State of Ohio. Likewise, it argues that proffered data indicate many cities within Ohio have adopted the practice of paying their firefighters and patrolmen at or near the same level in base compensation.

As to this latter point, the City emphasizes the data reflect that Canton patrolmen, in reality, receive greater overall compensation than firefighters based upon their wages and benefits provided under the Agreement. It thus suggests there is no need to establish parity, i. e., base rate parity, under the parties' Agreement.

Turning to the City's revenue sources, it appears they include a municipal income tax, local government funds, interest earnings, real estate tax, estate tax and miscellaneous other sources. In this instance, Canton's municipal income tax is levied at a rate of 2% on wages, self-employment income and corporate profits, a tax that has been in place since 1981. For the year of 2002, this tax yielded roughly 61% of total revenues for the City. But collection in 2002 was roughly 1½% less than what was collected in 2001 or \$440,103.00 less. It appears that to make up this shortfall in 2003, Management was obliged to transfer in excess of \$3 million from various other accounts, including "benefits in insurance fund," an action the Association unsuccessfully contested in the courts, before SERB and through the parties' grievance and arbitration procedure.

The record further reflects that roughly 86% of all general fund expenditures are for wages and fringe benefits, expenditures that in 2002 approximated \$43 million, \$8.5 million or 20% being for CPPA members. This record further reflects that a newly enacted program captioned "DROP," which allows safety force personnel to "retire" with the pension system but continue working for a period of three to eight years, is of concern to the Administration. It contends while this program will not result in any retirements before the year 2006, Management is obliged to anticipate the effect of another liberal, unfunded state program. It emphasizes approximately 16 patrolmen or 13% of the unit will be eligible for this program. It notes under this program, in addition to CPPA members, firefighters, FOP and uniformed management safety personnel are also eligible, bringing the potential cost to the city in 2006 to well over \$1 million. Based upon the foregoing data, the City argues that notwithstanding the cogency of the Union's wage comparisons, leastwise relative to parity, the City does not have the "ability ... to finance the issues proposed" within the meaning of this statutorily prescribed criterion.

In so contending, it must be considered the City has the burden of proof in this regard, a burden I believe, on this record, it shifted to the Association, given the breadth of its financial presentation at hearing. In other words, there can be no question that this City's financial condition has deteriorated over the last five years to the extent it can no longer continue to afford the types of wage and benefit increases CPPA, as well as others, including Management, have become accustomed to in Canton. And, while the Association suggests further adjustment could be accommodated through utilization of capital and other designated funds, it has provided no sound rationale in support of this argument. Nor, has it shown this city has the right to utilize such funds for wages and benefits not associated within a specific capital project(s).

While it is true the Association argued that the cities of Cleveland and Columbus have recently "transferred" or otherwise utilized capital funds to support their wage and benefit programs for bargaining unit personnel, no collaboration of these contentions were offered. In fact, under OCRC Section 5705.14, it appears a City is not free to engage in such activity. In any event, the data of record suffices to conclude the City of Canton is not presently in a position to either accord City Police Officers parity and/or a wage increase. In this regard, the

stipulations of the parties as set forth under the attached Exhibit "A" are quite relevant, especially paragraphs 4, 5 and 6.

I am quite mindful of the fact the negotiating teams for the parties arrived at a tentative agreement that provided parity between firefighters and patrolmen, an agreement rejected by City Council. Whether this was solely a product of two members of Council who are seeking the office of Mayor and/or a simple knee-jerk reaction to an accusatory editorial in the Canton Repository, the evidence proffered by the Association, simply is not cogent in this regard. The reality of the matter is that politics are always unfortunately present in this type of employer/employee relationship and the watchful eye of the public, i.e., the media, cannot be avoided whether their position is sound or frivolous. The fact remains the financial data proffered by the City, data unrebutted by the Association in any meaningful way, suffice to conclude a wage adjustment, be it general or parity, simply cannot be accorded in this instance. In so holding, I am quite mindful that such a recommendation envisions a potential second year of no increases for Association members, said members having agreed to a wage freeze under the terms of their prior collective bargaining agreement. I am also mindful that the City candidly acknowledged at hearing that parity would be appropriate under other circumstances where the ability to pay was not an issue.

RECOMMENDATION:

THE PRESENT BASE SALARY SCHEDULE PROVIDED UNDER ARTICLE 75 EFFECTIVE 1 JULY 2002 IS TO BE CONTINUED THROUGH 30 JUNE 2004.

ARTICLE 61 HEALTH AND LIFE INSURANCE COVERAGE

At hearing, the Association stipulated its members were willing to accept the City's proposal for a change in health insurance coverage, a change that envisioned higher deductibles and other out-of-pocket costs, provided base wage parity was established between CPPA and first responder firefighters. The fact is the Association indicated its members were willing to accept the City's proposal in order to allow the City to broaden the risk pool for such coverage so as to accord the City certain financial savings in its benefit costs and to do so without benefit of general wage adjustments in the final analysis.

The City likewise emphasized the need for broadening the insurance pool, emphasizing that non-bargaining unit city employees, as well as those in other bargaining units, have been moved to the desired citywide program.

The Association Proposal:

The Association emphasized throughout its pre-hearing statement, as well as at hearing, that its members willingness to accept the City's health care proposal in its totality was tied to their receipt of base wage parity with Canton Firefighters. It emphasizes if parity is not to be accorded under these recommendations, its members would unquestionably reject any recommendation adopting the City's proposed new health care program.

The City Proposal:

The City emphasized the ever-increasing cost of health care, suggesting its proposal, a proposal broadening the risk pool of coverage, would somewhat stem these cost increases. It emphasized others within the City already have been assigned or agreed-to this new coverage. It thus suggests this Unit should not be allowed to continue to be exempted from this broader risk pool and scope of coverage.

Fact-Finder Analysis and Findings:

It is somewhat elementary to state that the broader the insurance pool one is able to establish the lower rates for health insurance are to be found. Hence, it is quite common today to see in place programs where employee deductibles are typically higher and greater potential out-of-pocket costs are provided so as to lessen increase premium cost trends in health care coverage.

Like the parity issue where the employer agrees that such would be arguably appropriate under other circumstances, the Association believes this new health care proposal is necessary provided its members are accorded parity and thus a way of paying some, if not all, of additional out-of-pocket expenses.

Once again, the equities of each side's proposal in this regard are arguably sound but they cannot be viewed in a vacuum. The fact is this group of employees, if the afore wage recommendation is eventually adopted, will have their ability to sustain their personal well-

being and that of their families further eroded, especially if this health care proposal is adopted effective upon ratification/order. In any event, given both realities, a deferred adjustment appears to be appropriate.

RECOMMENDATION:

The new health care coverage as proposed by the City and previously agreed-to by the Association, as part of the parties' TA, shall become effective as of 1 June 2004, Agreement language reading:

SECTION 1.

THE CITY SHALL MAINTAIN HEALTH AND LIFE INSURANCE COVERAGE AS EXISTED UNDER THE PARTIES' PRIOR AGREEMENT FOR A PERIOD OF ELEVEN MONTHS, I.E., 1 JULY 2003 THROUGH 31 MAY 2004.

SECTION 2.

THE CITY SHALL MAINTAIN HEALTH CARE AND LIFE INSURANCE COVERAGE IN EFFECT ON JUNE 1, 2004. HEALTH CARE COVERAGE INCLUDES: OPTICAL; DENTAL; AND A COMPREHENSIVE MEDICAL PLAN SUBJECT TO AN ANNUAL DEDUCTIBLE OF ONE HUNDRED FIFTY DOLLARS (\$150) PER PERSON, TWO HUNDRED FIFTY DOLLARS (\$250) PER FAMILY, WHICH IS APPLIED BEFORE MEDICAL BENEFITS ARE PAID TO IN-NETWORK OR OUT-OF-NETWORK PROVIDERS.

AFTER PAYMENT OF THE DEDUCTIBLE, THE PLAN WILL PAY 80% OF COVERED MEDICAL EXPENSES TO IN-NETWORK PROVIDERS. IN-NETWORK CO-INSURANCE IS SUBJECT TO AN ANNUAL OUT-OF-POCKET MAXIMUM OF \$1,000 PER PERSON/\$2,000 PER FAMILY. ONCE THIS MAXIMUM IS MET, THE PLAN BEGINS TO PAY COVERED MEDICAL EXPENSES AT 100%.

AFTER PAYMENT OF THE DEDUCTIBLE, THE PLAN WILL PAY 70% OF USUAL, CUSTOMARY AND REASONABLE COVERED MEDICAL EXPENSES TO OUT-OF-NETWORK PROVIDERS. OUT-OF-NETWORK CO-INSURANCE IS SUBJECT TO AN ANNUAL OUT-OF-POCKET MAXIMUM OF \$2,000 PER PERSON/\$4,000 PER FAMILY. ONCE THIS MAXIMUM IS MET,

THE PLAN BEGINS TO PAY 100% OF USUAL, CUSTOMARY AND REASONABLE COVERED MEDICAL EXPENSES. ANY MEDICAL EXPENSES THAT EXCEED USUAL, CUSTOMARY AND REASONABLE STANDARDS WILL NOT BE COVERED BY THE PLAN.

LIFE-THREATENING EMERGENCY ROOM VISITS WILL BE COVERED AT 100% AFTER AN EMPLOYEE PAYS THE \$50 PER VISIT CO-PAYMENT.

FOR ANY EMPLOYEE WHOSE SPOUSE HAS OTHER HEALTH COVERAGE AVAILABLE THROUGH AN EMPLOYER, THE CITY PLAN SHALL PAY BENEFITS SECONDARY TO THE SPOUSE'S GROUP COVERAGE. ALL MEMBERS MUST COMPLETE ANY DOCUMENTS REQUIRED BY THE CITY.

CURRENT LIFE INSURANCE COVERAGE SHALL PROVIDE A MINIMUM OF TWENTY THOUSAND DOLLARS (\$20,000) TERM LIFE INSURANCE FOR ALL POLICE OFFICERS.

SECTION 3.

THE CITY AGREES TO MAINTAIN THE SAME LEVEL OF BENEFITS AS SET FORTH ABOVE IF IT RESTRUCTURES HEALTH AND LIFE INSURANCE DURING THE TERM OF THIS COLLECTIVE BARGAINING AGREEMENT. THE CITY RETAINS THE RIGHT TO RESTRUCTURE HEALTH CARE AND LIFE INSURANCE DURING THE TERM OF THIS CONTRACT AS TO COST CONTAINMENT PROCEDURES SUCH AS PRE-HOSPITAL ADMISSION CERTIFICATION, MANDATORY SECOND OPINIONS, ETC., BUT MAY NOT INSTITUTE ANY CHANGE OF COVERAGE WITHOUT MUTUAL AGREEMENT OF THE PARTIES HEREIN.

SECTION 4.

TO OFFSET THE INCREASED COST OF HEALTH AND LIFE INSURANCE COVERAGE SET FORTH ABOVE, EACH FULL-TIME EMPLOYEE COVERED UNDER THE PLAN SHALL HAVE DEDUCTED FROM EACH PAY \$22.33, COMMENCING WITH THE FIRST PAY ISSUED UPON APPROVAL OR IMPOSITION OF THIS COLLECTIVE BARGAINING AGREEMENT.

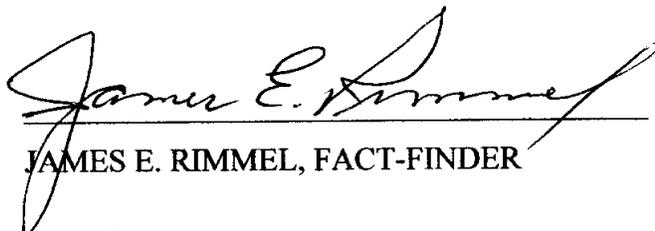
AN EXHIBIT ATTACHED TO THE CONTRACT IS INCORPORATED HEREIN EXPLAINING THE CHANGES FURTHER.

DURATION

While the parties' TA envisioned a potential agreement longer than 12 months, the reality of the situation allows for only an one year agreement. It is hoped that the financial condition of the City will become, at the very least, clearer and more stable so as to accord both an opportunity to address pressing issues without serious financial constraints. It is also recognized one cannot reasonably expect employees to continue to face wage freezes ad-infinitum, be they council, citizens, bargaining unit members, administration or the fourth estate. It is thus recognized that some adjustments will be necessary, even if those adjustments require a substantial reduction in manning via layoffs, consolidation of functions or other triconian methods. It is likewise recognized if such becomes necessary the citizenry of Canton may no longer receive the level of police services presently provided. In any event, it is quite clear that an agreement of only one year is all that can be recommended at this time.

RECOMMENDATION

THE PARTIES' NEW COLLECTIVE BARGAINING AGREEMENT
WILL BE EFFECTIVE 1 JULY 2003 RUNNING THROUGH AND
INCLUSIVE OF 30 JUNE 2004.



JAMES E. RIMMEL, FACT-FINDER

9-17-03

DATE

Ex "A"

**City of Canton and Canton Police Patrolmen's Association
Fact-finding Stipulation**

1. The parties stipulate that the document submitted into evidence at the fact-finding hearing is in fact an accurate projection of the costs of the now defeated tentative agreement of the parties. That document, which was part of the City's presentation to City Council on the subject of the tentative agreement, is attached.
2. The parties stipulate that the marginal difference in cost between the expired contract and the now defeated tentative agreement would have been approximately \$13,176 in increased marginal cost over the course of 2003 -2005.
3. The parties stipulate that the fact that the tentative agreement was not ratified cost the City an additional \$20,000 - \$25,000 in additional Hall of Fame costs in 2003 that cannot be recouped.
4. The parties stipulate that, in spite of the relatively small, marginal cost difference between the expired contract and the now defeated tentative agreement, the actual cost of the wages and fringe benefits under the now defeated tentative agreement would increase by approximately \$180,000 in 2004 and by approximately \$420,000 in 2005 (relative to 2003). The parties stipulate that if the expired contract was left unchanged, those costs would occur anyway. These increases are due to previously negotiated contractual items such as step increases and longevity that were left unchanged in the now defeated tentative agreement.
5. The parties stipulate that parity to the firefighters, if it occurred all at once, would represent, on average, a 4.4% raise. This is calculated by summing the salaries of all 125 members at their current step and rate and comparing it to their salaries at their current steps under parity. Using this average, the parties also stipulate that the union's proposal of an additional 2.5% and 4% in consecutive years would result in an 11.3% compounded increase in wages over two years, on average. The ongoing marginal increase in cost of this proposal would exceed \$569,000 annually in salary alone, not including roll-ups.
6. The parties stipulate that the numbers presented here do not include the increased costs of supervisor's wages and fringe benefits that would result contractually from any increase in the patrolmen's base wages.

FOR THE CITY

FOR THE UNION

per telephone authority

Larry S Pollak

Kevin L'Hommedieu

Larry S. Pollak

8/27/03

8/27/03

Date

Date