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FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 20, 2004

In the Matter of:)
)
The City of Canton)
)
and) 03-MED-08-0819
)
Canton Professional)
Firefighters Association)
IAFF Local 249)
)

APPEARANCES

For Local 249:

Jeffery Haley, President Local 249
Mark Liberator, Bargaining Committee Local 249
Thomas Hanculak, Attorney for IAFF Local 249
Jeff Sokolowski, Attorney for IAFF Local 249

For the City of Canton:

Tad Ellsworth, Canton Service/Finance Director
Kevin L'Hommedieu Canton Assistant Law Director
Bernie Hunt, Canton Safety Director
James Scott, Canton Fire Chief

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the members of the Canton Fire Department represented by the International Association of Firefighters (IAFF) Local 249 and the City of Canton. Prior to the Fact Finding Hearing, the parties were involved in numerous negotiating sessions, and they came to a tentative agreement. That agreement was rejected by the members of Local 249 and the instant Fact Finding was scheduled as a result. When the parties failed to ratify the tentative agreement their positions hardened and consequently there are nine unresolved issues: 1) The Pro Football Hall of Fame Festival Premium, 2) Pay for Sunday Work, 3) Officer in Charge Pay, 3) Minimum staffing, 4) Uniform Allowance, 5) Holidays, 6) Court Time, 7) Base Wages including a Paramedic Premium, 8) Health Care, 9) and Duration. The list contains issues that can be divided into two categories. The first group contains parity issues. That is, the Firefighters argue that the Canton police officers receive certain benefits and the Firefighters believe that they should receive the same benefits because both departments deal with public safety issues. These issues are the Hall of Fame premium, Pay for Sunday work, Officer in Charge Pay, Holidays, Manning, and Court Time.

The second group is the basic economic issues, wages and health insurance premiums. The firefighters argue that they are not earning the same wages and benefits as other comparable fire departments and that the City's health proposal is too draconian to be accepted based on the facts of the City's financial condition. On the other hand, the City argues that it is in desperate

financial straits and that it is simply trying to keep basic services available for the citizens of Canton.

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

The underlying reason for the parties' inability to reach agreement is their divergent opinions on the City's financial condition. The City's finance director, Tad Ellsworth, testified that the City was in no position to meet the Union's demands and that there is a realistic probability that the City might be forced to

layoff some employees if the situation did not improve. Barbara Varanese of Ohio Government Financial Management, Inc., the Union's economic expert, presented an analysis of Canton's finances in an attempt to rebut the City's arguments. If the City does not have the necessary funds to meet the Union's demands, then the Fact Finder cannot recommend the Union's positions on most of the open issues. On the other hand, if Varanese's testimony is found to be accurate, then the Union will have proved that the City can fund its demands. Therefore, the testimony of these two individuals is crucial for an understanding of the core issue that divides the parties.

The first point that should be noted is that Ellsworth's and Varanese's analyses are not as different as they appear at first glance. Both individuals analyze the City's financial data and find that the City financial situation is problematic. The major disagreement arises over the different way that Ellsworth and Varanese view the City's capital fund.

Ellsworth contends that the City is facing a severe financial problem. He pointed out that income tax collections have fallen in each of the last few years. Furthermore, the City projects that income tax receipts in the fiscal 2004 will be lower than last year's collections. He also made the point out that grants from the State and other sources of income, e.g., the inheritance tax and interest earnings have fallen precipitously, and property tax revenue has stagnated over the past few years and shows no signs of rebounding.

He also presented data showing that the City's expenditures are increasing. Employment costs continue to rise driven in large part by increases

in the cost of medical insurance. Ellsworth testified that the cost of insurance has risen by 67% from 1996 until 2002 and that the City did not believe that medical care costs would stabilize in the near future.

Ellsworth also testified that the City's financial condition was actually worse than it appeared. He stated that for a number of years the City had received payments from Stark County as part of a settlement of a lawsuit. The money was placed in a Benefits and Insurance Fund. The last payment into the fund was made in 1999. The City has been transferring money out of the fund for the last three years to supplement its General Fund. The Benefits and Insurance Fund has been drained and the City no longer has this safety valve to fund the day to day operations of its various departments. Therefore, the cost of these departments will now come directly from the General Fund. Furthermore, Canton has a very lucrative terminal leave policy that has created an extremely large unfunded liability. Ellsworth stated that the City Council was trying to create a fund to partially cover this liability because the number of City employees who will retire or leave Canton is expected to grow in the coming year.

He ended his testimony with an analysis of the demographic picture in Canton by presenting data that portrayed Canton as an aging industrial city. The population is falling and poverty and unemployment rates are significantly higher than the corresponding state or national rates. He argued that these data show that the City cannot afford to fund the Union's demands.

Varanese did not directly address many of the City's specific arguments. Rather, she testified that the City had other sources of income that it could use to meet its operating expenses. First, she testified that the City's Worker's Compensation Fund is over funded. Currently, the fund contains approximately five million dollars. She testified that this is a larger reserve than the City needs based on both national averages and the City's actual experience with Worker's Compensation claims.

The City strongly argued that Varanese was wrong in this analysis. The record shows that this fund has been depleted of approximately five million dollars over the last few years as money was transferred into other accounts. In addition, the City signed an agreement with the State to maintain the fund at its current level to meet State financial guidelines on Worker's Compensation reserves. Therefore, the remaining dollars in the fund cannot be used to meet other obligations. Based on the testimony, the Fact Finder believes that the City proved its point in this instance and the Worker's Compensation Fund cannot be seen as a source of revenue that can be tapped to supplement the General Fund.

The second and key point to Varanese's analysis is that the City does have a source of funds that can be used to pay for day to day operations. The City collects a two per-cent income tax. One per-cent is earmarked for specific uses. The other one per-cent is controlled by the City Council which has discretion in how these funds are expended. Varanese testified that currently the City Council places sixty per-cent of the discretionary one per-cent income

tax into the General Fund. The other forty per-cent of the one per-cent of the income tax is placed into the Capital Fund. That is, the City Council places three fifths of the one per-cent of the income tax that is under their control into the General Fund which is used to fund the day-to-day operations of the City. The rest of the discretionary income tax revenue is placed into the Capital Fund which is used to buy equipment, fix roads, etc. Varanese testified that if the City Council changed the allocation of funds from the current sixty-forty split to an eighty-twenty split, then the City would have enough money in the General Fund to meet the firefighter's demands and alleviate its financial problems.

Varanese's examination of the City's financial statements showed that the Capital Fund contained millions of dollars and that there were minimal encumbrances and few demands on the fund. Therefore, she argued that the City could transfer funds from capital projects to the general fund and there would be minimal impact on the City.

The City's representative strongly argued that Varanese's analysis was flawed because she did not understand the City's capital budgeting procedure and it needed to be fully understood before any discussions about the ability to transfer dollars out of Capital Fund could be fruitfully entered into. He explained that the process for allocating capital funds was completed in April. Therefore, the capital fund looked more robust than it really was during the first three months of the year because the allocations from the fund had not been determined. Once the budgeting process was complete, the funds available to complete necessary capital projects were always far less than the amount needed.

Therefore, Ellsworth stated that, in his opinion, Varanese did not take the pressing demands for necessary capital expenditures into account when she analyzed the fund.

The City's arguments over its capital budgeting process, while true, are beside the point. Varanese's thesis is that the City must make decisions about how to spend its available funds. She contends that the decisions made by the City reflect one set of priorities and that there are other priorities that must be taken into account when an entire budget is adopted. In some senses she is correct. In many situations where a City has the necessary funds to meet its expenses, budgets often represent a snapshot of the priorities of the Mayor and City Council. However, when a City is facing an extremely tight fiscal environment that is less true. In this particular situation the City government is trying to keep the City's departments operating without layoffs or other cuts. Varanese is arguing for an increase in the funds going to day to day operations at the expense of bricks and mortar. The question before the Fact Finder is whether the City's budget can *realistically* (emphasis added) support the firefighters' demands.

Canton is an aging "rustbelt" city. Its population (tax base) is declining and aging. In addition, revenues are stagnating (falling). Consequently, the City is facing an uncertain future. Moreover, while the national economy seems to be slowly improving, there are questions about the economic climate of both Ohio and Stark County. In the short run there is little reason to expect that the financial condition of either Ohio or Canton will get significantly better.

Therefore, there is no reason to expect a significant increase in Canton's revenues in the foreseeable future. Moreover, any economic recovery in the northeastern Ohio area will probably have a greater impact on suburban areas as opposed to central cities. Canton is in the same position as Cleveland, Youngstown and other aging cities. The economic picture is not bright.

If Varanese's arguments are accepted, then the City should spend less on capital projects. However, an old gradually decaying City must attend to its infrastructure. If Canton begins to spend even less than it currently is on capital projects, the City's streets, parking decks, buildings, etc. will fall into disrepair. This will of course lead to a situation where the City will become a less desirable place to live. This will lead to even more population loss as anyone who can leaves the area and moves to a jurisdiction with more amenities, i.e., flight to the suburbs. Therefore, in some real ways Varanese is suggesting that Canton roll the dice and bet that overall economic conditions improve to the extent that City tax collections increase significantly before the City's capital needs become overwhelming. If her analysis is accepted and the underlying economic situation does not radically improve, then a very realistic scenario is that the dispute resolution procedures of ORC 4117 will be used to force the City to increase wages and benefits for its employees in 2004, so that it can lay these same employees off in 2005.

The Fact Finder agrees that there is a question of priorities involved in any budgeting process. However, in this instance the facts show that Canton's revenues barely cover its operating expenses. Regardless of where the City

chooses to spend its available funds, the fact remains that there is not enough money to meet its obligations. Canton's elected officials are trying to meet their responsibilities in a very difficult period. The Fact Finder believes that the record proves that the City's Budget Director fairly portrayed the City's financial position. This means that the Fact Finder believes that the City does not have the wherewithal to meet the Union's demands.

Issue: Article New – Hall of Fame Premium

Union Position: The Union demands that all firefighters who work during the Professional Football Hall of Fame festivities be compensated at the regular overtime rate of pay.

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

Discussion: The Union's demand is based on parity considerations. The Canton Police Patrolman's Association (CPPA) has an overtime provision in their contract and the firefighters believe that their job is as dangerous and onerous as the job performed by the police department and, therefore, they argue that they should be paid the same overtime rate as the police officers.

The City rejects the Union's demand for three reasons. First, the City argues that it cannot afford to pay the cost of the demand which is estimated by the City as approximately \$98,000.00 for two years. Second, the City testified that the W-2 earnings of the police and fire department personnel are essentially the same. Finally, the City argues that while the fire department personnel are involved in the Hall of Fame festivities, they are not as affected as the CPPA members who cannot take time off and who must work mandatory twelve (12)

hour shifts. Therefore, the City does not believe that the evidence shows that the firefighters have proved that they are discriminated against in this instance.

The Fact Finder notes that the record shows that the members of the police and fire departments earn approximately the same income over the course of a year. This is one definition of parity. Parity, as a concept, is meant to insure that workers within a jurisdiction who perform similar activities are treated similarly. In practice this means that public safety personnel are paid similarly. It should be noted that because of different job responsibilities, different schedules, etc. many public employers try to equalize the income of public safety workers not the hourly wage. This appears to be the situation in Canton.

Parity does not and cannot mean that every single article in disparate contracts is exactly the same. The members of the CPPA face certain challenges and have unique contract clauses that reflect the realities of providing police services in an older, medium sized Midwestern city. The firefighters' contract contains clauses that relate to fire department personnel in the same city. It is unreasonable to expect that the contract clauses of the two departments should be identical because that implies that the two jobs are identical. They are not. However, the personnel of the two departments should be paid similarly, and the record shows that they are. Therefore the Fact Finder does not find that the Union proved that it is being treated inequitably with regard to this issue.

Finding of Fact: The City cannot afford to meet the Union's demand.

Moreover, the Union did not prove that it was being treated inequitably with respect to earnings.

Suggested Language: None

Issue: Article New – Pay for Sunday work

Union Position: The Union demand is for parity with the CPPA and Fraternal Order of Police (FOP) contracts between the City and its police personnel. The Union demands that any hours worked on Sunday be compensated at time and one-quarter.

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

Discussion: The Union presented this issue as a matter of equity (parity). The Union pointed out that the contracts between the City and the police unions contained this provision, therefore, the firefighters believe that they should earn one and one-quarter times the straight rate for time worked on Sunday.

The City rejected the Union's demand for two reasons. First, the City calculates that the cost of the demand is in excess of \$320,000.00 per year. The City claims that it cannot afford to meet this demand. Second, the City does not believe that the firefighters are treated inequitably with regard to Sunday pay.

The major problem with the Union's demand is the fact that firefighters work a much different schedule than police officers. For the most part, police officers work an eight hour shift, five days per week. While there are exceptions to this rule, in general police officers work a "normal schedule." Firefighters, on

the other hand, usually work a twenty-four hour on and forty-eight hour off schedule. Because firefighters work a different schedule than other city employees, they are paid somewhat differently. If firefighters wish to work a twenty-four hour on and forty-eight hour off schedule, they must accept the fact that certain provisions in contracts between the City and other Unions will contain provisions that cannot be transferred verbatim into their contract.

Parity implies that personnel who perform similar jobs receive essentially the same, not identical, compensation. Parity does not imply that individuals who are in different departments should have identical contract clauses.

Based on the record, the Fact Finder does not believe that a) the City can afford to meet the Union's demand, and b) the Union proved that it was treated inequitably with regard to Sunday pay given the fact that firefighters work a non-standard schedule.

Finding of Fact: The Union did not meet its burden of proof on this issue.

Suggested Language: None

Issue: Article 15 – Temporary Appointments

Union Position: The Union demand is for increased compensation for a firefighter who works in a higher rank. The current contract specifies that a firefighter must work one-quarter of a workday, i.e., six hours, to earn the higher rank wage. The Union wants to reduce the time for rank pay to one hour.

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

Discussion: The Fact Finder understands the Union's position on this issue. If a firefighter works as the officer-in-charge, then it is reasonable that he/she receive the pay commensurate with the duties that he/she assumes. However, the testimony on this issue was incomplete. The Union presented its argument and made its case based on a) equity and b) the fact that it claims that the City had the ability to pay for the increase.

The record is silent on the number of times that a situation occurs that requires a junior firefighter to take the duties of a superior. There was no discussion of past practice or whether the person acting as the officer-in-charge actually has increased responsibility and makes independent decisions. Absent this kind of information, the Fact Finder cannot realistically evaluate the argument for increased compensation. However, regardless of any other fact, the Union's demand is for a reduction in the current practice by five hours, the Fact Finder believes that this demand is excessive. Therefore, the combination of the City's financial position, an unrealistic demand, and a lack of information on specifics about the issue leads the Fact Finder to accept the City's position.

Finding of Fact: The record does not support the Union's position.

Suggested Language: Current Language

Issue: Article 25 – Safety Manning

Union Position: The Union demands that the City increase staffing by one firefighter on each fire suppression vehicle. The Union also demands that a minimum of four Advanced Life Support (ALS) ambulances on call at all times.

City Position: The City counters with current contract language.

Discussion: The Union's demand is for an increase of one firefighter per fire suppression vehicle. There was no testimony on the number of ALS ambulances on call at any time, but the Fact Finder assumes that the Union demand would lead to an increase in staffing on the ambulances also. The Union couches its demand in terms of firefighter safety and better service to the citizens of Canton. In addition, the Union testified that its demand corresponded to the National Fire Protection Association (NFPA) 1710 standard which states that four firefighters per pumper and five firefighters per ladder truck is the most efficient and safest manning level.

The City countered the Union's position with three arguments. First, the City testified that there was no demonstrated problem with the current manning level. That is, there is no evidence that either the firefighters or the citizens of Canton are endangered by the current staffing levels. Second, the City pointed out that ORC 4117 gives the public employer the right to determine the size of the workforce. The City argued that the Union's demand was really a demand for increased staffing and the City was charged by law with determining staffing levels. Finally, the City testified that Union's demand would cost approximately \$750,000.00 per year and that the City did not have the funds to pay for the increased cost.

The Fact Finder notes that the parties have a manning provision in their current contract. Therefore, the parties must negotiate over the issue. However, there was little testimony on the specifics of the proposal. The question is one of

safety for the firefighters and service to the community at large. There was some testimony that response times in Canton are within acceptable limits. But, there was no examples of situations where firefighters were endangered or the citizens were harmed by the current staffing levels. Rather, the testimony centered on whether the Canton Fire Department was meeting the NFPA 1710 standard.

The question is not whether the department meets a standard that is determined to be the optimal for fire departments, but whether the department is running safely and efficiently. In a perfect situation every fire department would have the money and manpower to meet the NFPA standard. In times of budgetary shortfalls and in situations where there are competing needs for limited dollars, municipal officials must often make hard decisions about the uses of their limited resources.

The Fact Finder does not believe that the Union presented a case that its demand is necessary at this time. Safety is a pressing issue and the parties must work to insure that the firefighters are not put in an unsafe working environment, but the testimony at the hearing did not paint a picture of firefighters who are often placed in danger because a lack of manpower at a fire or citizens whose lives are put in danger by a lack of ALS ambulances and EMT personnel.

The Union also presented evidence that the CPPA contract contains a manning clause and they argued for parity with the police department in terms of staffing. The Fact Finder is not persuaded by this testimony. Without a detailed examination of all the relevant information about response times, danger of the

job, reasons for the CPPA language, etc., the Union's argument is not persuasive. This is not meant to imply that firefighters do have an extremely dangerous occupation. They do. Firefighters face potential tragedy every time they answer a call. However, the fact that the police department has a staffing provision in its contract with the CPPA is not a reason to assume that the City and the IAFF must change the language in their contract. This is especially true given the cost implications for the City.

Finding of Fact: The record does not show that the current manning provision is the contract between the IAFF and the City of Canton is deficient.

Suggested Language: Current Language

Issue: Article 36 – Uniform Allowance

Union Position: The Union had three demands for changes in Article 36. First the Union wants the uniform allowance to be raised to \$1,400.00 from the current \$1,050.00 for firefighters and an increase to \$1,800.00 from the current \$1,050.00 for members of the fire prevention bureau. Second, the Union wants to eliminate the current language that reduces the uniform allowance for firefighters who are off duty for ninety consecutive days. Finally, the Union wants to change the language of the contract to allow firefighters to wear shorts and T shirts in the station during the summer.

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

Discussion: The Union's demand for an increase in the uniform allowance is based on a parity argument with the CPPA contract. The union points out that the police officers receive a \$1,400.00 year allowance plus ancillary benefits. The firefighters believe that they should receive the same benefits. This is another situation where different jobs may require somewhat different benefit levels. Both departments receive a uniform allowance and the allowance should be the same if the needs of both departments are the same, they are not. The City provides turnout gear for the firefighters but police officers do not have an analog to turnout gear. The City gives the police officers an allowance for replacing protective vests, but the firefighters do not wear vests. Usually police officers must supply their own leathers, but firefighters do not have to wear gun belts, etc. Therefore, the facts of the matter are that the uniforms are different and the allowance may be somewhat different.

The Fact Finder understands that many jurisdictions do give the same uniform allowance to all safety forces. However, the fact that some jurisdictions do have the same allowance is different from the fact that all jurisdictions should have the same allowance. The firefighters did not prove that their uniform allowance is deficient. Given the City's financial condition, the Fact Finder cannot recommend acceptance of the firefighter's demand without overwhelming evidence that the current allowance is causing a hardship on the firefighters.

The second part of the demand is for an increase in the allowance for members of the fire prevention bureau. The Union argued that the firefighters who work in the fire prevention area must wear suit coats and ties, etc. The

Union claimed that these individuals must buy these clothing items and that the current allowance is inadequate. Therefore, the Union wants the allowance increased. There was little testimony on this issue and the record does not show that the Union proved there was a need of an increase in the allowance. If membership in the fire prevention bureau is causing a hardship in terms of clothing costs, then future negotiations are the place to examine the issue in detail.

Finding of Fact: The Union did not prove that there was a pressing need for an increase in the clothing allowance.

The second part of the Union's demand is that the language in the contract that reduces the clothing allowance for individuals on long term leave be removed from the contract. The Union claims that this language is punitive and a person who is injured should not be penalized because of the injury. The City claims this language simply recognizes the fact that a person on long term leave does not need to wear a uniform and therefore, there are fewer cleaning costs, etc. The City claims that the current language is a codification of an obvious fact.

The Fact Finder believes that the City's argument is reasonable. A uniform allowance should be used to buy and maintain a uniform. If a person is on long term leave, then that person should have less need for a uniform allowance. On the other hand, the language can be seen as punitive because it reduces a benefit to a firefighter who is injured. However, absent some evidence that the language is actually causing a hardship the Fact Finder will not

recommend its removal from the contract. The parties agreed on the language at one point in time and there was no testimony about any specific circumstance that necessitated changes in the current language.

Finding of Fact: The City's position with respect to this issue is reasonable.

The last part of the demand is that the firefighters be allowed to wear a "summer uniform" in the station during periods of hot weather. The Union pointed out that many departments offer this uniform option. Furthermore, the Union agrees that the shirts and shorts must be of a uniform nature and present a professional image look for the department. The City argues that uniform specifications should not be listed in the contract and are at the discretion of the Chief. The Chief testified that he wants the firefighters to present a professional image at all times and does not believe that shorts and T shirts present the image that the department should maintain.

The Fact Finder is not convinced by the City's reasoning on this point. Many departments allow a "summer uniform." This does not mean that Canton should allow such a uniform, but in this case it does mean that there should be some compelling reason for rejecting the Union's demand. The concept of less formal attire has spread to corporate America and Fortune 500 companies often have less stringent dress codes during the summer and "dress down" days. The City also argued that dress codes should not be specified in the contract, but Article 36(H) does contain the dress requirements for the department. In this case, the Chief does not want to meet the Union's demand, but the give and take of collective bargaining sometimes means that a party must accede to the other

side's position. Given the entire record, the Fact Finder believes that the Union's demand is reasonable and has minimal cost, if any cost, to the City.

Finding of Fact: A summer uniform does not have any major cost implication to the City. Furthermore, the Union agrees that the shirts and shorts must be a uniform and present a professional image.

Suggested Language:

Article 36(A) Current Language

Article 36(B) Current Language

Article 36(H) Station uniform is fatigue pants or short pants, short sleeve dark blue sport shirt with CFD embroidered logo with rank on left side front, or blue long or short sleeved t-shirt or an optional long sleeved sweatshirt with screen printed CFD patch on front left chest and CANTNON FIRE on back, black belt, black or dark blue socks, black shoes, windbreaker with CFD patch at the left front with first initial and last name under the right pocket.

Firefighters who are going off duty shall be permitted change into civilian dress after 6:00 A.M.

Issue: Article 41 – Holidays

Union Position: The Union is demanding that an extra holiday, Easter Sunday, be added to the list of holidays enumerated in Article 41. In addition the Union is demanding language that allows a firefighter to substitute different religious holidays for the religious holidays listed in the contract if the firefighter has a different religious heritage.

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

Discussion: The Union demands the inclusion of Easter Sunday into the contract as a matter of fairness. The Union argues that Easter is a holiday in the CPPA contract and that the firefighters should be treated the same as the police officers. It is usual that all City employees enjoy the same holidays. In this instance that is not the case. The CPPA contract does list Easter as a holiday and the IAFF contract does not. Therefore, the firefighters' contract enumerates one less holiday than the CPPA contract. The Fact Finder believes that there is a disparity in the way that the two units are treated with regard to holidays. However, the cost of the extra holiday is prohibitively high given the City's financial condition. In addition, there was no testimony on the reason for the disparity. Without more information, the Fact Finder cannot make an informed judgment on the validity of the Union's demand.

The second part of the Union's demand is for some leeway in scheduling religious holidays. The religious holidays listed in the contract all stem from a Christian tradition. It is true that there are other religious traditions, and the events of the last few years have brought that fact in to focus. Sensitivity to non-Christian religious traditions is reasonable and becoming a fact of life throughout the country. In addition, the Union's suggested language is found in the CPPA contract. This is a situation where all employees should be treated the same.

The City's argument that the Union's suggested language would cause an accounting nightmare is unpersuasive. If the police department can handle the

scheduling problems, then the fire department should also be able to adjust schedules with little difficulty. This is especially true given that individual firefighters can trade shifts, etc. with the Chief's permission.

Finding of Fact: The IAFF contract lists one less holiday than the CPPA contract, but the cost of adding an extra holiday to the firefighters' contract is prohibitively expensive for the City at this time. The CPPA contract does contain language specifying that police officers from a non-Christian background can substitute religious holidays to reflect their beliefs. The City did not advance a persuasive argument why the firefighters should not enjoy the same benefit.

Suggested Language:

Article 41(A) Current Language

Article 41(B) Members of the bargaining unit may substitute two (2) other religious days in lieu of taking Good Friday or Christmas as a paid holiday. This option shall be exercised in writing to the Chief no later than March 1st of each year.

Issue: Article 39 – Overtime

Union Position: the Union demand is for an increase from two to four hours pay for time spent in court (court time) and for two hours of pay whenever a firefighter is under a standby subpoena.

City Position: The City rejects the Union's demand and counters with the status quo.

Discussion: The Union's position is based on the CPPA contract which contains a court time provision for four hours when an officer appears in court and two hours paid time for a standby subpoena. The Union also stated that occasionally a firefighter had been served with a subpoena, but then never called to testify and that this caused the firefighter in question to use his day off in an unproductive way. There were no details given about the instances where a standby subpoena was issued but no testimony was required.

The differences between a police officer and a firefighter are evident when discussing court time. Police officers routinely are scheduled to testify and must appear in court as an integral part of their job. Firefighters are required to testify periodically, but the number of times a firefighter testifies per capita is far less than a police officer. One of the reasons that a police officer is paid for court appearances is that he/she must be on call whenever a case that he/she was involved in is litigated. This is a massive intrusion into the life of a police officer and it is part and parcel of the job.

The Union's demand is for parity with police officers with respect to court time. In this instance the job requirements in the two departments are not the same. For the Fact Finder to agree with the Union's position, he would have to be sure that the CPPA did not trade off some item for its court time payment in a previous negotiation. The entire process of collective negotiation implies that certain issues are more central to one group than another. Police officers have a huge interest in court time because they spend so much time testifying. This fact implies that the CPPA would make court time a central issue in the negotiation

process. The bargaining history of this item between the IAFF and the City does not indicate its central importance to the firefighters. If the Union desires an increase in the court time payment, then the free give and take of future negotiations is the place to attempt to increase the payment.

Finding of Fact: The fact that the police contract has a court time provision that pays more for court appearances does not prove that the firefighters are treated inequitably.

Suggested Language: Current Language

Issue: Article 59 – Wages

Union Position: The Union demands a 2% increase effective 11/1/03 and 4% effective 11/1/04.

City Position: The City is offering no raises over the life of the contract.

Discussion: The questions with respect to wages and health care are at the heart of the disagreement between the parties. The rest of the issues in dispute would most likely have been settled or dropped if the parties could reach agreement on these two issues. However, they were unable to bridge the gap between their positions and they could not reach agreement.

The Fact Finder finds that the City can simply not afford to pay the raises that the Union demands. This conclusion is consistent with the findings of other neutrals who have been involved in negotiations between Canton and its unionized employees. The Union depends on the analysis of Barbara Varanese to reach the conclusion that the City does have funds to pay for the firefighters'

wage demand. That analysis is discussed in the introduction to this report and the main conclusion is that the City can use capital improvement funds to pay for current expenses. The Fact Finder believes that this approach is not a realistic option for Canton which is an older municipality with an infrastructure that needs constant repair. For Canton to use capital improvement funds to pay for everyday operations in the face of falling tax revenues and in light of a weak economy is capital suicide. While it is true that Canton may be able to fund wage increases for a year, if the economy and the revenue situation in the City do not get significantly better, the City will be faced with no capital improvements and no ability to fund its current operations. To find that the City should fund wage and benefit increases in this environment is simply not reasonable and the Fact Finder cannot agree with the Union's position.

The Union's argument for a wage increase is based on the use of comparables. According to the Union's analysis the wage of a Canton firefighter is over 10% less than the average wage paid in comparable jurisdictions. There may be some questions about the jurisdictions included in the Union's list of cities, but in general the Fact Finder does believe that small cities in Northeast Ohio are in financial distress and these jurisdictions will tend to pay less than larger cities and suburban areas. Unfortunately, this is a fact of life. The fact that the firefighters believe and feel that they can prove that they are underpaid vis-à-vis other comparable areas does not give Canton the ability to print money. The fact is that all employees of the City are receiving no raises. The Fact Finder does not believe that the firefighters are either different or unique when it

comes to wages. The City cannot afford to fund any raises, much less the raises demanded by the firefighters.

Finding of Fact: The City of Canton cannot afford to pay the wage increases demanded by the firefighters.

Suggested Language: Current Language adjusted for dates, etc.

Issue: Article 59 – Paramedic Premium Pay

Union Position: The Union proposes that the paramedic premium be reinstated.

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

Discussion: The Union argues that the City earns an exceptional amount from the paramedic service and should share some of that money with the firefighters who provide the service. The parties agree that the City and Union agreed to trade the paramedic premium as part of an deal whereby the City dropped its residency requirement for firefighters.

The firefighters argue that the premium should be reinstated because the City, in their opinion, reneged on the agreement. The Union argues that the City dropped the residency requirement for all city employees because of the agreement with the firefighters, i.e., dropping the residency requirement became the pattern. The firefighters, therefore, argue that they essentially traded the paramedic premium for nothing because other employees did not have to sacrifice anything in order to have the residency requirement dropped. The Union contends that this is unfair.

The City does not contest the facts of the situation, but claims that the agreement reached with the firefighters was part of a quid-pro-quo and that it lived up to its end of the agreement. The City believes that the firefighters are attempting to replace a benefit in the contract that they willingly negotiated away. The City also argues that other bargaining units made concessions in their contracts for elimination of the residency requirement, but provided no specifics on this assertion.

This is a situation where both parties have reasonable positions. The Fact Finder understands the Union's position. Residency requirements are always seen as a problem from a Union's point of view and cause friction between the parties. The tradeoff made by the firefighters was substantial. The Union's position that it negotiated for all city workers is probably true. In some ways the firefighters did set the pattern. However, some unit had to go first. When a unit is able to negotiate a benefit into its contract all other bargaining units attempt to get the same benefit. This is the way bargaining works and it is codified in ORC 4117 when the law discusses the concept of comparability.

A more central issue is whether the firefighter-paramedics should receive the payment. The data show that the paramedic service generates significant revenue for the city. Moreover, a paramedic premium is a payment throughout the State. Consequently, the Fact Finder believes that this is a situation where the Union can make a case for demanding that the premium be reinstated into the contract. Of course, the City might disagree and the free give and take of negotiations is the way to solve this difference of opinion. Regardless of the

specifics of the demand, the City's financial position precludes the payment of a paramedic premium at this time.

Finding of Fact: The City cannot afford to pay a paramedic premium to the firefighter/paramedics at this time.

Suggested Language: None

Issue: Article 52 – Health and Life Insurance Coverage

Union Position: The Union demands the status quo. That is, the current language that mandates a deductible of \$50.00 per individual and \$100.00 per family. After the deductible is met, the City pays 80% of any medical care up to a maximum out-of-pocket total of \$2,500.00.

City Position: The City wants to change the insurance coverage to increase the deductibles and modify the coverage.

Discussion: The City presented evidence that the cost of medical insurance had risen dramatically over the years and that it could no longer afford to provide the current coverage. The City also pointed out that the changes in the insurance plan that it is demanding in these negotiations have been agreed to by all other City workers, both union and non-union. The City argues that the firefighters should pay the same amount for insurance that every other City employee pays.

The Union agrees that all other City employees pay more for medical insurance than they pay. The Union claimed that other City employees accepted the City's demands for increased contributions to the medical plan because they

believed that the City was in financial distress, but that the Varanese analysis proves that the City's financial position is brighter than the City believes. This has been discussed at length elsewhere and the Fact Finder believes that Varanese overstated the City's ability to fund wage and benefit increases.

The firefighters presented a numerical example of the effect of the City's proposed changes on the take home earnings of a firefighter. The example is a worst case scenario that shows that a firefighter might pay 10% of his/her salary for medical insurance. The Fact Finder believes that the example is overdrawn. However, there is a real possibility that some individual firefighters will experience large increases in their out-of-pocket medical costs. This is very unfortunate, but it is a fact of life in the current medical cost climate that exists throughout the nation. The City of Canton is in a severe financial distress. The Fact Finder actually believes that the firefighters are aware of this fact, but do not want to see a significant increase in their medical costs and are fighting a rear guard action. This is reasonable from the Union's point of view, but Canton's financial crisis is real and affects every person who works for the City.

One main sticking point in the insurance plan seems is the "spousal drop" provision. If a spouse has insurance from another employer then City demands that the spouse be dropped from the City's plan or pay a large monthly premium in order to remain on the plan. The net effect is that the spouse of an employee may be forced to either accept a reduced level of medical care or pay a significant amount for insurance. According to the testimony presented by both sides at the hearing, this provision has caused problems throughout the City.

The City testified that it intended to look at this provision and perhaps modify or drop it entirely.

The Fact Finder does not believe that he can arbitrarily modify the medical insurance plan in effect throughout the City. However, if he could simply pick and choose which parts of the plan that should be accepted, he would delete/modify the spousal drop provision. The record is clear that this provision is causing problems with all City workers. While a spousal drop provision is becoming a feature of many insurance plans, in this case the cost seems to be greater than the benefit. The Fact Finder urges the City to examine the spousal drop provision in its medical plan and modify or drop it in order to make the health insurance plan more acceptable to the employees.

Finding of Fact: The City's financial condition means that the City must change its medical plan and that the firefighters should be covered by the plan in effect throughout the City.

Suggested Language: On October 31, 2004, the language in the firefighter's contract should be modified to include the increased co-pays, deductibles, and other provisions included in the City's new insurance plan.

Issue: Article 70 – Duration

Union Position: The Union demands a two year contract.

City Position: The City desires a one year contract.

Discussion: The Union's argument is that this round of negotiations has been long and arduous and the Union does not want to go to the expense and trouble

of reopening negotiations for a new contract in just over three months. The Union does not believe that this is a reasonable course of action.

The City, on the other hand, argued that its financial position might change and that the parties could discuss cost and benefit items without the specter of financial doom lurking in the background. Therefore, the City argues that the cost of restarting negotiations in the near future might be beneficial to both parties. The parties' positions on this issue are somewhat unusual. Usually the City wants a longer duration and the Union wants either new negotiations or a re-opener.

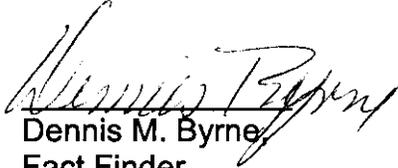
This is another situation where both sides have legitimate reasons for their demand. The Fact Finder is going to recommend the City's position on this issue. The City's financial position has driven almost every recommendation in this report and those recommendations have been to accept the City's position. The Fact Finder notes that the economic climate of the nation is improving and there is some probability that this may positively impact Northeast Ohio. Reopening the contract in October may give the Union the ability to negotiate some wage and benefit changes if the City's financial picture does improve. If the City's finances do not improve then the situation facing the Union will not have changed and the negotiations will, hopefully, not be too costly.

Finding of Fact: A one year contract term allows the Union the ability to renegotiate wage/benefit provisions in a time when the City may be facing a somewhat brighter financial future.

Suggested Language: This agreement shall run from November 1, 2003 through midnight October 31, 2004.

Note: All other agreements between the parties shall be incorporated by reference into the final agreement.

Signed and dated this 20th day of April 2004 at Munroe Falls, Ohio.


Dennis M. Byrne
Fact Finder