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IN THE MATTER OF FACT-FINDING

BETWEEN

THE FRATERNAL ORDER OF POLICE

AND

CITY OF CANTON

BEFORE: Robert G. Stein

SERB CASE NO. 03-MED-10-1178

PRINCIPAL ADVOCATE FOR THE UNION:

Chuck Choate, Sr. Staff Representative  
FRATERNAL ORDER OF POLICE OLC, Inc.  
2721 Manchester Road  
Akron OH 44319-1020

and

PRINCIPAL ADVOCATE FOR THE CITY:

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## **INTRODUCTION**

The bargaining unit is comprised of forty-eight (48) employees holding the classifications of Police Sergeant, Lieutenant, and Captain. The parties have a well-established collective bargaining relationship. The population of Canton is approximate 80,000 people; however, during the past several years the City has lost population and revenue.

The parties met for two negotiation sessions in November of 2003 and one mediation /fact-finding session with the Fact-finder on January 15, 2004. They were successful in resolving all but four (4) issues during the negotiations and mediation. The issues brought to impasse were: Article 2, RECOGNITION, Article 21, WAGES, Article 28, TERMINAL PAY, and Article 47, TERM OF CONTRACT. The positions of each party were clearly articulated during the mediation session, making unnecessary the additional time and cost of a second day of hearing. The parties agreed to submit post-hearing briefs that were postmarked February 17, 2004.

Both Advocates clearly articulated the position of their clients on each issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of the parties' proposals on each issue but will instead reference the Position Statement of each party as well as their brief. The Union's Position Statement and brief shall be

referred to as "UPS" and the Employer's Position Statement and brief shall be referred to as "EPS".

## **CRITERIA**

### **OHIO REVISED CODE**

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

**ISSUE 1      Article 2      RECOGNITION**

**Union's position**

SEE UPS. The Union is proposing new language to this Article for the purpose of providing procedures to resolve disputes which may arise in the future over the bargaining unit's composition. Additionally, the Union is proposing language that addresses bargaining unit erosion and guarantees the bargaining unit right of first refusal for work normally performed by the bargaining unit. The Union has filed a grievance(s) regarding bargaining unit work.

**Employer's position**

SEE EPS. The Employer contends that the current language is sufficient and that the State Employment Relations Board is the proper authority in matters of bargaining unit composition. It also criticizes the Union's proposal under new sections 3 and 4 as being overly broad.

**Discussion**

The Union is processing one or more grievances that address alleged violations of Article 14 and are tied to the issue of bargaining unit

erosion. Beyond the examples addressed by the Union regarding these grievances, there is insufficient comparable data to support the additional proposed language of Article 2 at this point in time. It is also a matter of law that the State Employment Relations Board is the proper forum to seek clarification of the bargaining unit's composition.

Protection against the erosion of bargaining unit work becomes particularly acute in times when layoffs are contemplated. However, there was no evidence to suggest that any bargaining unit member has been laid off due to reorganization by Department management. The City of Cleveland's recent layoff of hundreds of police and fire fighters was a sobering reminder of the depth of Ohio's economic downturn and how it is now impacting local government.

Yet the demands of law enforcement change with each challenge posed by the community as well as outside threats like that of "9-11." And understandably, any time a City has new leadership, change is likely even in good economic times. Furthermore, it is not unusual for a Chief of Police to emphasize manpower flexibility and latitude to deploy the police resources in the most efficient and effective manner possible. For example, several municipalities with which this Neutral has worked during the past few years have placed an emphasis on putting more uniformed officers on the streets. This has resulted in the elimination or modification of office jobs performed by uniform personnel. While it is patently

improper to assign valid bargaining unit work to employees outside of the bargaining unit, disputes that must inevitably define such work are best left to the grievance process.

### **Recommendation**

Current Language

### **ISSUE 2      Article 21      WAGES**

#### **Union's position**

See UPS

#### **Employer's position**

See EPS

#### **Discussion**

The bargaining unit's wage increases are tied to a percentage of top patrol wage rate, which is typical in police departments. How the patrol unit fairs, so goes the sergeants, lieutenants, and captains as far as general wage increases are concerned. The City provided very convincing testimony and data that currently it is in serious financial difficulty and has been for several years. The fact-finder and conciliator for the patrol unit support this position (Cx 2, 3). Multiple years of declining revenues in part caused by departing industry and declining populations

are two of the reasons the City is in tight financial straits. Canton is a proud city with a long list of accomplishments. It is a diverse city, a center of the arts and culture as well as a community that is the home of the nationally known Pro-Football Hall of Fame. It has produced many fine leaders from both the ranks of management and labor. I speak with authority on this issue, having served as a permanent neutral under the AFSCME and the City's contract for other disputes involving different bargaining units for several years.

A national economic recovery appears to be underway, but at this time it appears to be a jobless one. Many of Ohio's local public governmental entities are being affected by a cut back in revenue from the State of Ohio, which in itself continues to look for solutions. Most of Ohio's state workers received no wage increase in 2003 and will not receive a wage increase in 2004. In addition, the step increases of state employees have been frozen and employee health premiums have increased. The City also cited the example of the Cleveland Police Department where hundreds of police officers were laid off. However, it convincingly points out that unlike Cleveland, it has to date, successfully avoided massive layoffs. Yet, it is also noted that in the City of Cleveland the rank differential of 16% supports the Union's position.

However, in spite of these many woes there is a sense of optimism that this tough northern city can weather this storm. The City also cited the conciliator's comments in Cx 2 indicating that after a two-year period of no wage increases, the City "*...will have to come to grips with the issue of making some adjustments to the basic salary schedule.*" There appears to be a realization by the parties, which was underscored by two different neutrals involved in impasses involving the patrol unit (Cx 2, 3), that in order to maintain a quality police department, wages cannot stay frozen much longer. However, the Union points out that despite the fact that wage increases are tied to gains in patrol unit wages, the FOP unit has not been treated in a manner consistent with the patrol unit regarding overall compensation that takes into consideration wages and health care costs.

The Union points out that the patrol unit has paid less for its health insurance during the past eighteen (18) months. The FOP unit paid \$22.33 per month in all of 2003, and the patrol unit will not pay an equal share for health care until June of 2004. In increasing numbers, Employers in the public and private sector are factoring in the cost of health care as a large part of an employee's overall compensation. The rapid rise in health care costs are in many cases eroding the ability of employers to provide normal salary increases. Yet, the sword cuts both ways and from the standpoint of internal equity, it is problematic to treat two safety bargaining units alike regarding wages, but provide one of the units with

the same health care plan at substantially lower cost for a lengthy period of time. Therefore, it is not unusual to see a Union that has had to pay substantially more for health care premiums over a long period argue for a change in compensation that over time undoes the past inequity.

In addition, the Union made a persuasive case, based upon comparables and tempered by financial reality that supports a moderate increase in the sergeants' differential. Currently, the differential is the same for all ranks, yet an increase in the sergeant's rank at this point in time will benefit the ranks above sergeant and will minimize the financial impact on the City. The Union is seeking an increase in differential as a method to regain some parity with the patrol unit. The City's financial difficulties have led the parties to agreeing to no wage increase in 2003, and for 2004 the City is again proposing no increase. In order to return to a measure of internal balance between the patrol unit and the FOP unit over time, a moderate change in differential for sergeants is reasonable. However, the stark reality of the City's current financial condition renders any retroactive implementation of such a benefit to be impractical in light of the facts and the opinions rendered by two other neutrals. Such a change is best made with the next expected date for an increase in patrol officer's pay.

### **Recommendation**

**Wages: Increase differential for sergeants only by .5% (to 15.5%) on July 1, 2004 and by an additional .5% (to 16%) on July 1, 2005.**

**ISSUE 3      Article 28      TERMINAL PAY**

**Union's positions**

See UPS.

**Employer's position**

See EPS.

**Discussion**

The parties in the last round of bargaining increased this benefit. The change allowed bargaining unit members to cash out their terminal pay to help increase their final average salary for retirement purposes. As stated above, the Union's proposal for another change in this benefit comes during a time when the City is struggling to regain its financial footing (see rationale in Wage discussion). Based upon the bargaining history of the parties and the interest and welfare of the public, there is insufficient support to make a change in this benefit.

**Recommendation**

**Current language**

**ISSUE 4      Article 47      TERM OF CONTRACT**

**Union's positions**

See UPS.

### **Employer's position**

See EPS.

### **Discussion**

I do not find that the City has the financial resources to support a long-term contract. Also, it would be of little advantage to either party to be locked into a lengthy contract that commits either side to a substandard wage settlement. Timing is everything in negotiations, and it is important to engage in negotiations when there is something to be gained. As stated above, there are signs the economy is recovering, albeit at a frustratingly uncertain pace in the area of job creation. However, it is impractical to be in a state of perpetual bargaining. The Union proposes a three-year agreement, which I find to be too long given the uncertainty of the City's finances. The City proposes a one-year agreement, which would cause the parties to enter into another round of negotiations in approximately six months or less. From a practical point of view, a two-year agreement (which only has approximately 21 more months to run) would allow the parties to take a break from the tedium of negotiations for a reasonable period of time.

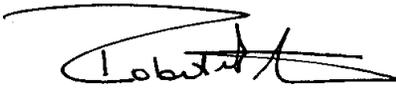
### **Recommendation**

**The Agreement shall run from January 1, 2004 through December 31, 2005.**

## TENTATIVE AGREEMENTS

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 9<sup>th</sup> day of March, 2004 in Portage County, Ohio.



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Robert G. Stein, Fact-finder

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