

STATE EMPLOYMENT
RELATIONS BOARD

2005 OCT 24 A 9:53

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE FACT-FINDING)	BEFORE FACT FINDER:
)	JAMES E. RIMMEL ¹
BETWEEN:)	
)	CASE NO.: 04-MED-10-1081
OHIO PATROLMEN'S BENEVOLENT)	
ASSOCIATION)	HEARD: 3 OCTOBER 2005 ²
)	HOWLAND, OHIO
AND)	
)	
TRUMBULL COUNTY 9-1-1)	ISSUED: 18 OCTOBER 2005

APPEARANCES

FOR THE OPBA:³

FOR 911:

James W. Keating
Director of Human Resources
Paul E. Heltzel, County Commissioner
Karen Davies, 911 Interim Director

BACKGROUND

Now, under a 6 December 2004 letter the Ohio State Employment Relations Board (SERB) advised the parties “[b]ecause [they] have not communicated a fact-finding panel selection and in compliance with Ohio Revised Code Section 4117.14C(3), [it was] appoint[ing] James E. RIMMEL as Fact Finder in this matter, effective immediately.” SERB also stated that a fact-finding report would be due no later than 20 December 2004, “unless the parties mutually agree to extend the period of fact-finding.” The process was mutually extended on a number of occasions over eight plus months following SERB’s issuance of the afore communique and while the Union expressed

a desire to further continue the process indefinitely, James W. Keating (Keating), Trumbull County Director of Human Resources and designated Management Advocate, expressly declined to do so. This matter was thus scheduled for hearing on 3 October 2005 at the offices of Trumbull County 911 in Howland, Ohio.

While there is no dispute Mr. Kevin Powers, OPBA Advocate, requested on several occasions that the process be extended further, he offered no authority in support of his Motion. Put simply, review of applicable statutory⁴ and Administrative Code provisions disclose nothing which would permit my granting of that requested by Mr. Powers. Nor, am I aware of any effort by OPBA to seek a stay or other SERB order relative to my scheduling a fact-finding hearing on this matter for Monday, 3 October 2005. To the contrary, Mr. Powers (and OPBA) was on notice both as to my denial of his Motion For A Continuance and scheduling of the 3 October 2005 hearing on this matter. While as fact finder I have been given certain statutory powers in assisting parties in their efforts to arrive at a collective bargaining agreement, in reality those powers are quite limited. For example, the time limits for a fact finder hearing an assigned case and issuing a report is established by SERB, "unless the parties mutually agree to an extension."[emphasis added]. There was no such mutual extension covering this matter after 31 August 2005!

Now, it was under letter dated 29 September 2005 Mr. Keating proffered his position statement (copy attached as Exhibit "B") on behalf of the Trumbull County 911 Agency wherein he identified eight (8) issues as being unresolved. In his proffer, Mr. Keating certified that he had sent via Federal Express a copy of Management's position statement "to Kevin Powers, [at]10147 Royalton Road, North Royalton, Ohio 44133."

While the hearing was scheduled to start at 9:30 a.m., on 3 October 2005, it did not actually commence until 10:30 a.m. so as to allow Mr. Powers every opportunity to appear. It was at 10:30 a.m. that, upon Motion from the Employer, a Motion that the hearing proceed ex parte, a Motion that was granted for the reasons noted above relative to my limited authority, the hearing proceeded with Management offering both testimony and written evidence. All witnesses were sworn with examination being made by Mr. Keating and myself. A showing of relevance was also requested before any written evidence was received with only Mr. Keating being allowed to advance argument on behalf of the Employer.

Now, in considering and evaluating that proffered relative to the identified unresolved issues, the following criteria were considered:

Past collectively bargained agreements, if any, between the parties;

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;

The interests 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;

The lawful authority of the public employer;

The stipulations of the parties; and

Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution procedures in the public service or in private employment.

Likewise, one must be cognizant of proof requirements, especially in support of that being requested in these negotiations by the respective parties. In this instance, the record reflects eight (8) unresolved issues, issues raised by the Union. In other words, there are no unresolved issues before me involving a change/addition requested by Trumbull 911 Management, although it does advance an affirmative position as to the matter of wages. In any event, the significant void in proof created by the Union's failure to participate in the scheduled fact finding clearly prejudices its' efforts in these matters and leaves a void in the record in this statutory process. Put simply, I am not free to assume or speculate as to the whys and wherefores of that being sought by the Union in this instance. Neither applicable Statute nor Administrative Code allow a fact finder such discretion.

ARTICLE 9 - HOURS OF WORK

Here, it is reported the Union seeks to amend the provisions of Article 9, Section B-2 to provide that all paid hours, worked or unworked, be counted as “time worked” for overtime calculation purposes. In turn, the Employer seeks no change to present language providing for payment of overtime for all hours actually worked in excess of eight in a day or 40 in a work week. In support, the Employer notes while a few Trumbull County bargaining units do count sick leave in calculating eligibility for overtime pay, none have in their agreements such an all inclusive pay provision as being sought by the OPBA. Likewise, it notes OPBA has never attempted to determine the cost to the Employer this proposal would yield.

RECOMMENDATION:

That found under the provisions of the parties’ 2002/2004 Agreement under Article 9, Section B-2 should be carried forward into their successor agreement without change.

RATIONALE:

To adopt the Union’s proposal on this record would be akin to signing a blank check—clearly an ill-advised act. This I can and will not do! Resulting costs of given proposals and ability to pay questions are clearly relevant, yet OPBA has offered nothing in regard to these matters. Likewise, no evidence is of record from the OPBA addressing any or all of the criteria factors cited above.⁵

ARTICLE 11 - VACATION

The parties 2002/2004 Agreement provides for under Section A of Article 11 the following vacation eligibility schedule:

Effective upon the date of execution of this contract, all full-time, non probationary employees after one (1) year of completed service with the 9-1-1 Center shall be

entitled to vacation with pay under the following schedule:

1. One (1) year of service, but less than seven (7) years of service: two (2) weeks, (eighty (80) hours)
2. After seven (7) of service, but less than fourteen (14) years of service: three (3) weeks, (one hundred twenty (120) hours)
3. Fourteen (14) of service, but less than twenty-one (21) years: four (4) weeks, (one hundred sixty (160) hours)
4. More than twenty-one (21) years of service: five (5) weeks, (two hundred (200) hours).
5. If during the term of this Agreement, any other Trumbull County bargaining unit should negotiate or be awarded a more favorable vacation schedule the Trumbull 9-1-1 unit shall be granted said improved vacation schedule.

As to this issue, it is reported the Union seeks to liberalize the afore-quoted schedule as follows:

1 - 4 years	80 hours
5 - 10 years	120 hours
11- 16 years	160 hours
17 - 22 years	200 hours
23 or more years	240 hours

The Employer opposes any change to the existing vacation schedule in emphasizing that proposed by OPBA is far in excess of other bargaining unit vacation schedules within Trumbull County government agencies/departments. In any event, it notes there is no seniority roster of record so as to allow for some form of analysis as to the impact the requested changes would have upon this employer.

RECOMMENDATION

That found under the provisions of Article 11, Section A of the parties 2002/2004 Agreement should be carried forward into their successor agreement without change.

RATIONALE:

While work force data of record reflect that employment levels at 911 have been reduced from a high of 27 in 2000 to 18 in 2005 due, in part, to significant budget reductions, that requested here cannot be reasonably considered without the proffer of relevant cost and qualified replacement issues being cogently addressed. Put simply, I cannot rightly recommend an increase in the parties vacation schedule without knowing that this Agency can afford to hire and train sufficient personnel to cover for the additional vacation weeks. And, while this added time might be simply covered with overtime, I cannot rightly assume such a practice would be a sound option beneficial to employees and/or local citizens. Overtime is not always the best answer in filling vacancies or the most prudent from as safety standpoint, especially over long periods.

ARTICLE 18, SECTION A - WAGES

Here, the record indicates OPBA seeks wage increases of six percent (6%) in each of the three (3) years of a successor agreement. In turn, the Employer proposes a wage freeze over the first two (2) years, i.e., 2005 and 2006, with a wage re-opener for the third year.

While the Employer offered cost numbers reflecting the potential cost impact of that proposed by OPBA, no similar data are of record from the OPBA. That proffered by the Employer is as follows:

Current average hourly wage for Union Employee: \$17,4400

			Per Employee	Total (18 employees)
Current			\$14.74	\$265.32
6%	1/1/2005	=	\$15.62	\$281.24
6%	1/1/2006	=	\$16.56	\$298.11
6%	1/1/2007	=	\$17.56	\$316.00

NOTE: Roll-up cost of approximately 40%

			Per Employee	Total (18 employees)
Current	=	\$ 5.90		\$106.13
6% 1/1/2005	=	\$ 6.25		\$112.50
6% 1/1/2006	=	\$ 6.63		\$119.25
6% 1/1/2007	=	\$ 7.02		\$126.40

According to the Employer these cost estimates represent a potential compounded cost impact this Agency, an Agency already financially challenged, cannot afford. This Agency would not, according to the Employer, be able to bear these additional costs over the term of a successor agreement and still carry out its mission in serving local citizens. Put simply, it contends the revenue is not available to support any increase in wages let alone those being requested by the OPBA.

RECOMMENDATION:

Amend Article 18, Section A - Wages to reflect the following hourly rates for Trumbull County 911 employees:

	<u>Full Time</u>	<u>Part Time</u>
2005	14.74	11.22
2006	14.74	11.22
2007	(To be negotiated under reopener provisions below)	

On or about 1 October 2006, the parties will meet for the sole and limited purpose of negotiating an appropriate hourly rate for full time and part time 911 employees to be effective as of 1 January 2007.

RATIONALE:

Relevant data of record, including, but not limited to, a 43 page Staffing and Operations Analysis and Recommendation report from RCC Consultants, Inc. cogently demonstrate that Trumbull County 911 is facing major staffing, funding, structure, MIS, skills, casualty, redundancy,

consistency in application of standard operating procedures, Board Authority, scope of non-emergency service, etc., problems. These realities, coupled with the significant reduction in available operating revenue dollars due at least, in part, to a \$650,000 loss under a one-half percent($\frac{1}{2}\%$) reduction in the county sales tax rate cannot be ignored or glossed over in considering what is being sought here by the OPBA. This is not to suggest that 911 bargaining unit staff do not merit a pay increase, leastwise over the term of a new three (3) year agreement, but given the lack of county revenue and the claimed need for a 911 service, such simply cannot be recommended, leastwise without further undermining the viability of this Agency..

Likewise, this record reflects five (5) other county bargaining units have agreed-to wage freezes running through 2006 with five (5) other units being requested to do likewise in current negotiations. These rust belt realities leave me with little discretion in this matter especially when the local electorate has been reluctant to provide additional revenue streams and old sources have been either reduced or eliminated. This is truly government in crisis as such has been described by local media!

ARTICLE 18, SECTION C - PERS PICKUP

The record indicates OPBA seeks to have the Employer “pick-up” the entire pension contribution or two and one-half percent ($2\frac{1}{2}\%$) more than what it is presently doing, i.e., six percent (6%). In turn, the Employer seeks to maintain the status quo and notes the Union proposal would also envision even greater dollars under planned requirements to increase the overall contribution to ten percent (10%) over the next several years. It notes required contributions for the year 2006 will move to nine percent (9%) from the current eight and one-half ($8\frac{1}{2}\%$).

RECOMMENDATION:

That the provisions of Article 18, Section C of the 2002/2004 Agreement be carried forward into the parties successor agreement without change.

RATIONALE:

There being no cost data of record concerning this issue and proffered comparative agreements fail to show any that call for the Employer to pick-up the entire PERS contribution, there is simply no sound bases for acceding to this requested change. This is especially true where third party action will expand the scope/cost of this program.

ARTICLE 18, SECTION B - LONGEVITY

The record indicates OPBA seeks to change the present payment formula by increasing the per month dollar amount by 50%, i.e., \$4.00 to \$6.00 for each full year of service. In turn, the Employer requests the present formula under these provisions be carried over into the successor Agreement unchanged.

RECOMMENDATION:

That the provisions of Article 18, Section B of the 2002/2004 Agreement be carried over into the parties successor agreement without change.

RATIONALE:

Now, there are five (5) comparative Trumbull County agreements of record that reflect a maximum of \$4.00 with some being less as to the provided dollar multiple for Longevity payments. There are, moreover, no relevant cost impact data of record to allow for any consideration of this labor proposal.

MISCELLANEOUS ISSUE - TRADING OF TIME

The record indicates OPBA seeks on behalf of its' members the contractual right to trade time on an "hour-for-hour" basis and across pay periods. This record is salient as to the whys and wherefores of this proposal. In any event, the Employer objects to any erosion of its Management Rights in the area of scheduling personnel and notes that prior efforts to accommodate employees in this area proved an "administrative

nightmare.” It also claims that employees would endeavor to shield themselves from attendance discipline by trading time.

RECOMMENDATION:

That the parties' successor agreement not provide an employee contractual right to trade time within/or across pay periods.

RATIONALE:

While I am not willing, leastwise on this record, to conclude this type of procedure would be administratively unworkable, there is simply nothing supporting the wisdom/needfulness for such a right to be incorporated into this collective bargaining agreement. And, Management's 8 August 2002 memo to all personnel on this subject seems to have left some room for potential accommodation of full-shift trades. Only time will tell! In any event, there is nothing of record to allow me to consider an affirmative recommendation in this matter.

MISCELLANEOUS ISSUE - SIGNING BONUS

The record indicates OPBA seeks on behalf of its' members a \$1,000 signing bonus for each bargaining unit employee. In turn, the Employer vehemently objects to what it believes is an exorbitant and unreasonable request, especially given the current financial condition of the county and this Agency.

RECOMMENDATION:

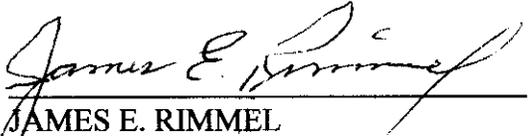
That the parties successor agreement NOT contain a \$1,000 per employee signing bonus provision.

RATIONALE:

This request, if granted, would represent another three plus percent (3+%) increase during the first year of the parties' successor agreement for an Agency whose current viability is in question. Put simply, a nine percent (9%) wage package in just the initial year of a three (3) year agreement is clearly unreasonable under all the circumstances facing Trumbull County 911. I realize the state of the record before me may simply reflect

various OPBA negotiating proposals which the Union may have been willing to back away from or they could have been their floor in this round of negotiations. Whatever they may be I simply cannot speculate but must limit my recommendation upon relevant argument and evidence of record, which I have done in this instance.

Respectfully submitted,



JAMES E. RIMMEL
FACT FINDER

ENDNOTES

1. Under letter dated 6 December 2004, Case No.: 04-MED-10-1081 was assigned by the Ohio State Employment Relations Board to Fact Finder James E. Rimmel with the parties being advised that “[t]he fact finder is to conduct a hearing and serve the parties with a written report no later than 12/20/2004, unless the parties mutually agree to extend the period of fact-finding as provided under Ohio Administrative Code Rule 4117.05(G).” [Emphasis added] The parties did mutually agree to extend fact-finding first to 2 January 2005 and thereafter under separate agreements to 31 January 2005; 31 March 2005; 31 May 2005; 31 July 2005; and, 31 August 2005. The parties also agreed under their initial extension agreement “that the limits on a conciliator in 4117.14(G)(11) are waived.”

It was under letter dated 31 August 2005 from Trumbull County Director of Human Resources James W. Keating notice was given the undersigned that the parties required fact-finding having failed to arrive at a successor collective bargaining agreement. The fact-finding hearing was eventually set down for Monday, 3 October 2005, commencing at 9:30 AM.

2. After several unsuccessful attempts to contact the party Advocates jointly, a conference call was held on 19 September 2005. During this telephonic conference, OPBA Advocate Kevin Powers vehemently argued that the parties had yet to arrive at impasse and insisted the matter be continued in a pending status so as to allow for further negotiations and consummation of other county labor agreements, especially within the Sheriff’s Department. He also expressed a desire to pursue a “Me-Too” wage provision for 911 personnel so as to “protect” these OPBA members.

It was when the undersigned advised Powers that he lacked authority to grant his Motion For A Continuance (hold this matter pending indefinitely) especially given Keating’s affirmation that the parties were at impasse and the 911 Agency (Commissioners) he represented no longer agreed to extend the fact finding process that Powers simply hang up on Keating and the undersigned. Powers also failed to respond to subsequent efforts to address this matter. Accordingly, under letter dated 20 September 2005, the undersigned sent notice to the parties that he had set this matter down for hearing for Monday, 3 October 2005, commencing at 9:30 AM. Said notice also advised the parties that the hearing would be held at “the Trumbull County 911 offices, 911 Howland-Wilson Road, Howland, Ohio 44484.” This notice was sent by means of certified United States mail with that sent to Mr. Powers being received at the OPBA offices on 22 September 2005 - see Exhibit “A” attached.

Now, the undersigned while traveling to the designated hearing location on 3 October 2005 made several telephonic attempts to contact Mr. Powers without success. After arriving at

the hearing location it became evident Mr. Powers was not planning to attend/participate (OPBA had not submitted a position statement as directed by SERB in its letter of 6 December 2004 or me in my letter of September 2005). The undersigned, however, was able to make telephonic (440-237-7900) contact with the OPBA's office in North Royalton, Ohio at 10:10 a.m. to be advised Mr. Powers was on the phone and was immediately placed in the office's voice mail system. I advised Mr. Powers via voice mail I was at the hearing site, that I would wait an additional period for him to arrive, i.e., 10:30 a.m. and if he or some other representative for the OPBA did not appear, I was obliged to proceed ex parte. Mr. Powers did not appear or telephonically contact the undersigned. Attempts were also made to contact local Union representatives via 911 operator and Union member Rick Cyphert without success, although Cyphert indicated he had contacted one of the local's officers who stated she knew nothing about the hearing and would not be coming in to participate or observe.

3. Prior to commencing the scheduled hearing, a hearing where witnesses were sworn, argument made and exhibits offered and received, Mr. Rick Cyphert, a former Union official and current employee at Trumbull County 911 was offered the opportunity to observe the proceedings as well as advised about what was occurring and why. Mr. Cyphert decided to avail himself to this opportunity. It was made clear to all present that Mr. Cyphert was not there as a Union representative, that he had no right to proffer or receive evidence nor would/could he agree to anything concerning any pending matter. Put simply, Cyphert was allowed to observe that which occurred during the scheduled 3 October 2005 fact-finding hearing on Case No. 04-MED-10-1081.

4. See RC Section 4117.14(C)(5).

5. The voids noted here are likewise applicable to the recommendations which follow concerning the other seven (7) unresolved issues. As such, while considered in connection with each issue, they will not be iterated in most instances under the respective issue(s) discussions which follow.

EX "A"

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin Powers
 10147 Royalton Road, Ste. J
 PO Box 338008
 North Royalton, Ohio 44133

A. Signature Agent
 Addressee
[Signature]

B. Received by (Printed Name) Agent
 Addressee
LAMARA Sanford

C. Date of Delivery
9/22

D. Is delivery address different from item 1? Yes
 No
 If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) *7004 2510 0007 5904 6725*

EX 13



HUMAN RESOURCES DEPARTMENT OF TRUMBULL COUNTY

COMMISSIONERS
PAUL E. HELTZEL
DANIEL E. POLIVKA
JAMES G. TRAGARIS

JAMES W. KEATING, DIR.

160 HIGH STREET, N.W.
WARREN, OHIO 44481

TELEPHONE: (330) 675-2460, (330) 675-2589; FAX: (330) 675-6646; TDD: (330) 675-6610

September 29, 2005

Attorney James E. Rimmel
P.O. Box 477
Canfield, Ohio 44406

**RE: OHIO PATROLMEN'S BENEVOLENT ASSOCIATION AND
TRUMBULL COUNTY 9-1-1
SERB CASE NO. 04-MED-10-1081**

Dear Attorney Rimmel:

Pursuant to the requirements of Ohio Revised Code 4117.14 (C) (3), the Employer submits the following information in the captioned Fact Finding.

(A). Principal Representative of the Employer:

James W. Keating, Director
Trumbull County Human Resources Department
160 High Street, N.W.
Warren, Ohio 44481
(330) 675-2589

(B). Bargaining Unit Description (as certified in SERB Case Numbers 94-REP-12080 and 94-REP-12081)

Included: All full-time and part-time dispatchers (Telecommunicators)

Excluded: All management level employees and support staff as defined in the act. Includes Director, Asst. Director, Supervisors, LEADS Coordinator, and Data Processor.

(C) The Collective Bargaining Agreement expired on December 31, 2004.

(D) The parties met for the purpose of negotiating a successor agreement beginning March 2, 2004. Approximately six (6) negotiating sessions were held and an Impasse was declared on August 31, 2005.

All issues have been agreed upon except for the following articles:

Article 9 – Hours of Work

The Union's proposal to count all hours of active pay status as "time worked" for overtime calculations has been rejected. The Employer believes the cost is not Justifiable, nor is it necessary or fair. Evidence will be presented demonstrating that no other similarly situated County employees enjoy this benefit.

Article 11 – Vacation

The Union proposes:

1 – 4 yrs.	80 hrs.
5 – 10 yrs.	120 hrs
11 – 16 yrs.	160 hrs.
17 – 22 yrs.	200 hrs.
23 + yrs.	240 hrs.

The Employer rejects the proposal and believes that no change should be made from current contract language, which is similar to other County Union Agreements.

Article 18 – Wages

(A.) The Union is proposing across-the-board wage increases as follows:

Eff. 1/1/05	6%
Eff. 1/1/06	6%
Eff. 1/1/07	6%

The Employer has countered as follows:

Eff. 1/1/05	0%
Eff. 1/1/06	0%
Eff. 1/1/07	Wage Re-opener

Evidence will be submitted showing that (Five) other County unions have agreed to a wage freeze similar to what is being proposed.

(B.) The Union proposes that the employees entire pension contribution be paid by the Employer.

The Employer has rejected this proposal as cost-prohibitive and unlike what other County employees receive.

- (C.) The Union has proposed that the Longevity payment be increased to \$6.00 per month for each year of service. Employees must work five (5) years to receive the benefit.

The Employer believes that the current payment of \$4.00 is fair and equitable. It is also noted that no other union receives more than \$4.00 per month for each year.

Miscellaneous Issues

1. Union proposes to allow employees to trade time on an "hour for hour" basis and across pay periods.

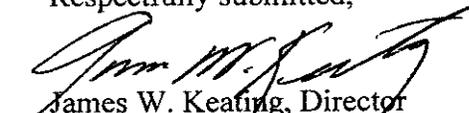
The Employer believes that this will cause scheduling problems and also permits employees to circumvent the attendance policy.

2. A \$1,000.00 signing bonus is proposed by the union.

The Employer can find no other union that, at least in recent years, has received such an exorbitant bonus. Further, the County's fiscal recovery necessitates no signing bonus can be afforded.

The foregoing issues are submitted to the Fact Finder for resolution. The Employer's representative will present supporting arguments and evidence at the hearing scheduled for October 3, 2005.

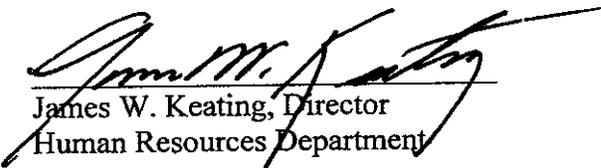
Respectfully submitted,


James W. Keating, Director
Human Resources Department

Cc: Kevin Powers, OPBA
Commissioners

CERTIFICATE OF SERVICE:

The undersigned certifies that a true and accurate copy of the foregoing Employer's Submission in Advance of Fact Finding was personally delivered on the 29th day of September, 2005 to Fact Finder Attorney James E. Rimmel, P.O. Box 477, Canfield, Ohio 44406, and to Kevin Powers, 10147 Royalton Road, North Royalton, Ohio 44133 via Federal Express.


James W. Keating, Director
Human Resources Department