

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
(SERB)

STATE EMPLOYMENT  
RELATIONS BOARD

2005 JUL 27 P 12: 01

IN THE MATTER OF THE )  
FACT FINDING BETWEEN: )  
THE CITY OF CAMPBELL, OHIO )  
AND )  
THE FRATERNAL ORDER OF POLICE, )  
OHIO LABOR COUNCIL, INC )

BEFORE FACT-FINDER:  
JAMES E. RIMMEL

HEARD: 12 JULY 2005  
CAMPBELL, OHIO

ISSUED: 21 JULY 2005<sup>1</sup>

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APPEARANCES

For the FOP:

Pat Daugherty  
Senior Staff Representative

For the City:

Michael L. Seyer  
Michael D. Esposito  
Clemans-Nelson Senior Consultants

BACKGROUND

This matter comes on for fact-finding under a "wage rates" re-opener clause of the parties' 1 January 2004 to 31 December 2006 Agreement, said clause reading, in part, as follows: "For the year of 2005, the Employer agrees, upon request from the Union, to re-open negotiations effective May 1, 2005 for the purpose of discussing wage rates only." And, while the record is silent as to

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<sup>1</sup> Prior to hearing the parties had agreed as part of their extension agreement for fact-finding that my report, if necessary, would be due on or before 31 July 2005.

the number of times the parties met on this single issue prior to impasse being declared, there is no valid<sup>2</sup> question that the matter is properly before me for hearing/recommendation as a fact-finder. In any event, the hearing on this matter went forward with both parties being provided opportunity to present argument and evidence with both availing itself to such. In this particular matter testimony and evidence was also received from Ms. Nita Hendryx (Hendryx) of the State of Ohio's Auditor's Office, Campbell having been placed under fiscal emergency by State Auditor Betty Montgomery on 10 June 2004.

While it appears there may have been present several statutory criteria warranting the Auditor's declaration, the record reflects the following stated rationale for this action as:

#### Condition 5 - Deficit Fund Balances

Section 118.03(A)(5), Revised Code defines a fiscal emergency condition as:

The existence of a condition in which the aggregate of deficit amounts of all deficit funds at the end of its preceding fiscal year, less the total of any year-end balance in the general fund and in any special fund that may be transferred as provided in Section 5705.14 of the Revised Code to meet such deficit, exceeded one-sixth of the total of the general fund budget for that year and the receipts to those deficit funds during that year other than from transfers from the general fund.

We computed the adjusted aggregate sum of all deficit funds as of December 31, 2003, by subtracting all accounts payable and encumbrances from the year-end cash

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<sup>2</sup> At hearing, the FOP took issue with the range of the City's proposal contending such was outside the scope of the parties wage re-opener language. This averment does not serve to properly call into question SERB's 27 April 2005 appointment of me as fact finder or present, in this forum, a question of my jurisdiction over this matter. As for the question of whether Management has gone beyond that provided for under the provisions of Article 29, Section 1 in their proposal to establish all-inclusive base salaries under this proviso, I will deal with such in this report.

fund balances of each fund. We then determined if the aggregate deficit fund balance exceeded one-sixth of the general fund budget and the receipts of those deficit funds. After computing the unprovided portion of the aggregate deficit, we subtracted funds that may be transferred, as provided in Section 5705.14 of the Revised Code, to meet such deficits.

Deficit Fund Balances  
Ohio Revised Code Section 118.03 (A)(5)  
As of December 31, 2003

Schedule III

Funds	Cash Fund Balances	Less Accounts Payable and Encumbrances	Adjusted Aggregate Funds with Deficit Balances	Less One-Sixth General Fund Budget/Fund Receipts	Unprovided Portion Of Aggregate Deficit
General	(\$536,361)	\$233,968	(\$770,329)	\$510,133	(\$260,196)
State Issue 2	(31,986)	0	(31,986)	0	(31,986)
Aging	(22,538)	2,307	(24,845)	2,154	(22,691)
Street	(182,654)	13,177	(195,831)	44,847	(150,984)
State Highway	(40,328)	16,156	(56,484)	3,633	(52,851)
Community Development	0	3,062	(3,062)	4,122	0
Land Revitalization	(92)	0	(92)	10,900	0
Water	(142,676)	134,854	(277,530)	200,743	(76,787)
Court Legal Research	<u>(3,226)</u>	<u>453</u>	<u>(3,679)</u>	<u>1,046</u>	<u>(2,633)</u>
Totals	<u>(\$959,861)</u>	<u>\$403,977</u>	<u>(\$1,363,838)</u>	<u>\$777,578</u>	<u>(598,128)</u>
Funds Available for Transfer					<u>0</u>
Total Unprovided Portion of Aggregate Deficit					<u>(\$598,128)</u>

And, while it appears the City may be obliged to sell its water treatment plant in the near future, a sale that may yield substantial dollars even after existing debt on the plant is satisfied, the City's use of these monies is subject to certain statutory restrictions and oversight. Likewise, it appears the City continues to be subject to significant penalties and interest charges from Public Employee Retirement Systems who have not been paid the employer's portion of retirement contributions due, systems who may pursue even more aggressive approaches to secure these funds if the City continues not to satisfy its obligations to these entities. In any event, that proffered by the parties was considered, along with the following prescribed statutory criteria in arriving at the recommendation

that follows:

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:

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

Now, little purpose would be served in delineating herein all that has brought the City of Campbell to this difficult point in its history. Suffice it to say, however, local citizenry/taxpayers, elected officials, employees, Unions, organized crime figures, corporate decision makers, etc., all have played a part in this City's fall into the abyss of future financial uncertainty/viability. The fact remains the City of Campbell, under Auditor oversight, will only dig out of this abyss if all involved groups support the difficult decisions which will have to be made over the next several years. This is not to suggest that City officials can do as they please irrespective of collective bargaining agreements, only that their efforts to turn around the City financially can only come about by involving all concerned. In any event, one cannot reasonably argue that labor negotiations are

anything other than a proper venue to address matters of this nature.

### CITY POSITION

The City advances the argument there can be no question that its financial picture is quite bleak, requiring tough decisions at all levels of this governmental body. It suggests if the City is to move forward, including moving from financial oversight by the State Auditor's office, it must, among other things, establish and control its labor employment costs. It contends City Administrators believed they had taken steps in that direction in negotiating wage freezes with various Unions, including the FOP. It notes, however, shortly after it had consummated a new labor agreement with the FOP, a compensation issue was raised under the parties' grievance and arbitration procedure, a matter that eventually was taken to arbitration. It was under award dated 19 January 2005, that Arbitrator Louis V. Imundo, Jr. (Imundo) issued his decision in the matter, said opinion and award reading, in part, as follows:

The record establishes that at no time during the negotiations did Management ever tell the Union that their proposal to carry over the first sentence of Section 25.7 and not the second sentence with designated years to correspond to the years covered by the successor agreement would result in a one time fifty cents an hour pay increase as opposed to three consecutive fifty cents an hour pay increases. Clearly, this change is a significant departure from past practice that adversely affects the paychecks of bargaining unit members. In the Arbitrator's opinion the record clearly establishes that when the language that appears in Section 25.7 of the current Agreement was proposed and agreed upon neither Mr. Seyer, Mr. Daugherty nor anyone else who was at the bargaining table understood that there was any intent to end the past practice of paying fifty cents a year for weapon qualification pay. In fact, the record conclusively establishes that the only reason for the carrying over of the first sentence of Section 25.7 and dropping the second sentence was because the

specified years were irrelevant.

In conclusion, for all of the aforementioned reasons it is the Arbitrator's opinion that the City has failed to provide weapon qualification pay pursuant to Article 29 of the Agreement.

Award

The instant grievance is sustained. Management is hereby directed to compensate bargaining unit members who qualified with their duty weapon in 2003 fifty cents an hour on their base rate of pay retroactive to May 7, 2004. Bargaining unit members who requalify themselves each year with their duty weapon are to be paid fifty cents an hour on their base wage rate cumulatively for each successive year of the Agreement.

Now, the City notes the parties are presently before the Mahoning County Court of Common Pleas with the City seeking the vacation<sup>3</sup> of the Imundo Award and the FOP under cross-motion seeking an order confirming such. It also claims local administrators have continued to pay the \$1.00 per hour weapons qualifications stipend as provided for under the parties former Agreement throughout 2004 and 2005, even though it was not expressly carried over under the successor agreement. Likewise, it notes the parties have in place certain contractual staffing requirements which place an even greater burden on the City and limit its' abilities to reduce the workforce. It does acknowledge that local representatives have agreed to suspend this contractual requirement throughout 2005, but emphasizes there are no assurances the FOP will do the same for 2006 and thereafter.

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<sup>3</sup> Other than taking note of the current effect of the Imundo Award on the City's future employment costs obligations under existing contractual language this forum is not the place for dealing with the propriety of such. That matter is before the Mahoning County Court of Common Pleas for decision and thus I offer no opinion on the matter that was before Arbitrator Imundo and/or his decision.

The City argues also this record cogently demonstrates the needfulness for significant cost adjustments in every area of this local government so as to allow for proper debt/obligation service and avoid costly litigation from frustrated creditors/state agencies/systems. In any event, it contends the City simply cannot afford the estimated \$81,120.00 in what it believes will have to be paid out if the City follows that ordered by Arbitrator Imundo under his interpretation of the weapons qualification stipend provided under Article 29 of the parties' Agreement. It thus requests I adopt its proposal to roll-into the base salaries under Article 29 certain stipends/supplements. Specifically, the City proposes the following changes be made under the parties current contract re-opener:

ARTICLE 29 - WAGES

Section 1. Rates of Pay. The following reflects the base salaries for the respective members of the bargaining unit.

	<u>Annual Salary</u>	<u>Base Hourly Rate</u>
Sergeant/Detective	\$40,045.00	\$19.2524
<i>Sergeant (out of class rate)</i>		\$17.2254
Senior Patrolman (20 yrs.)	\$35,620.00	\$17.1250
Patrolman	\$34,580.00	\$16.6250
Cadet	\$29,480.00	\$14.1731

Section 2. Shift Differentials. The following reflects the shift differential pay which will be paid to all bargaining unit members, with the exception of Sergeants, during the term of this agreement.

Day Shift	(Currently 8:00 a.m. - 4:00 p.m.)	Ten cents (\$.10)
Afternoon Shift	(Currently 4:00 p.m. - 12:00 a.m.)	Thirty-five cents (\$.35)
Midnight Shift	(currently 12:00 a.m. - 8:00 a.m.)	Forty-two cents (\$.42)

Section 3. The City shall continue to pay the portion of the employee contribution to the Police and Fireman Disability and Pension Fund that was in effect at the time of the execution of this Agreement.

**Section 4.** In the event of the absence or non-assignment of a Sergeant on any shift, the City shall assign the most senior bargaining unit member who is working that shift as the supervisor for the effected shift. The assigned bargaining unit member shall receive as compensation for the assignment the hourly **out of class** rate of pay of a Sergeant for the entire shift he is assigned as a supervisor. **A senior patrolman shall continue to receive his regular hourly rate for acting as a sergeant.**

**Section 5.** The parties acknowledge that the Sergeant stipend and differential have been abolished and rolled into the annual salary and base hourly rate for employees occupying the rank of Sergeant.

**Section 6.** The parties acknowledge that the senior Patrolman supplement has been abolished and rolled into the annual salary and base hourly rate for employees having twenty (20) years of full-time service with the Campbell Police Department.

**Section 7.** The parties acknowledge that the Weapons Qualification supplement has been abolished and rolled into the annual salary and base hourly rates for all bargaining unit members.

#### **ARTICLE 37 - HAZARDOUS DUTY PAY**

**Section 1.** The parties acknowledge that annual hazardous duty pay has been abolished and rolled into the annual salary and base hourly rate for all bargaining unit members.

#### **FOP POSITION**

The FOP acknowledges the City of Campbell is in a dire financial situation requiring tight costs/fiscal controls. It emphasizes, however, its' members, even though not responsible for the situation the City currently finds itself in, have agreed to wage freezes and other concessions in order to help the City address this problem. In doing so, it argues FOP members cannot be reasonably expected to give up a livable wage or bear an unfair share of the burden.

The FOP argues also that being sought here by the City is beyond the scope of the parties re-opener clause and thus may not be rightly ruled upon by me in this fact-finding. It notes the re-opener provisions are to be found under Article 29, Section 1, yet the City is attempting to modify/rescind, among others, a weapons qualification stipend provided for under Article 29. Section 7. As for the Imundo Award, the FOP argues such was clearly premised on well-known, long-established past practice relative to the payment of a weapons qualifications stipend to its' members.

The FOP iterates that its' members have clearly demonstrated their willingness to help the City through its financial crisis. This, it contends, is even further evident in their willingness to take a wage freeze again for the year 2005 under the re-opener. They are not, however, according to the FOP, willing to surrender their weapons qualifications stipend. This stipend, according to the FOP, was negotiated by the parties as a part of the current agreement and thus must be complied with by City Administrators. It thus requests I leave Articles 29 and 37 compensation provisions unchanged.

#### RECOMMENDATION

EFFECTIVE 1 JANUARY 2005 SECTION 1 OF ARTICLE 29 SHOULD BE AMENDED BY DELETING THE PHRASE "FOR THE YEAR 2004." THE SECOND PARAGRAPH OF THAT SECTION SHOULD BE ALSO DELETED IN ITS ENTIRETY THE SECTION THUS READING AS FOLLOWS: **RATES OF PAY.** THE FOLLOWING REFLECTS THE BASE SALARIES FOR THE RESPECTIVE MEMBERS OF THE BARGAINING UNIT.

SERGEANT/DETECTIVE \$35,600.00

PATROLMAN \$31,900.00

CADET \$27,400.00

### RATIONALE

This record cogently demonstrates that the City of Campbell is currently confronted with serious financial problems, problems that have resulted in missed employee paydays, withholding of the employer's portion of retirement system payments, selling of its waste system plant and attempts to sell its water treatment plant, many unpaid vendors, etc. There have been also attritional and other forms of workforce reductions with more of the same being one of the few remaining ways to reduce operating costs further. The fact of the matter is the City's sole witness raised the specter of more employee reductions and possible elimination of some services if additional revenues are not secured. Given the age, income, retirement, declining population, and demographics of this community, the latter appears somewhat unlikely. The fact is this City already has one of the highest income tax rates in the area at 2.50%, a tax which yields relatively less revenue per capita than nearby municipalities. In any event, under the afore-quoted statutory fact-finding guidelines: "the effect of the adjustments on the normal standard of public service" must be considered. And, while this requested change may not prevent future police department reductions<sup>4</sup> or use of county sheriff personnel in lieu of such,

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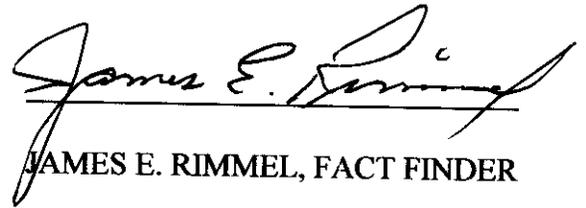
<sup>4</sup> In making this observation I express no opinion as to the import of that found under the provisions of Article 17 , Section 6 of the parties' Agreement or what rights the oversight board might have in this area in light of such.

the City's evidence clearly suffices to demonstrate the wisdom of and need for the requested changes. This is not, however, where my analysis may rightly end for the parties have clearly limited the scope of their re-opener.

Turning to the re-opener provisions, while it is to be found under the provisions of Article 29, Section 1, the re-opener is expressly limited to "wage rates only," and does not include the other forms of compensation called for under Article 29, Sections 2-7 and Article 37. The parties clearly identified what are to be considered rates of pay in the preface of Section 1 under Article 29 and it is that matter, and that matter alone, that the re-opener is limited to at this time. The language chosen by the parties is unquestionably clear and I have no authority to go beyond such even in a case like that before me.

As for the FOP contention that its representatives and members played no part in the City coming to this point financially this record calls this claim into question. Put simply, this record suggests a degree of FOP/member duplicity in hiding from Campbell taxpayers and the media true employment cost increases under prior negotiated labor agreements, thus the so-called stipend, etc. In any event, my appointment does not allow for me to dispense equitable remedies though it is questionable whether, under this history, I could neither side being innocent in such efforts in the past. The fact is the parties under the language of their current agreement have limited the scope of their 2005 re-opener to "wage rates only" such being found solely under the provisions of Article 29, Section 1. And, while the City's proposal calls for increases in those rates such only occurs if certain other provisions, namely, Article 29, Sections 5, 6 and 7 and Article 37 are eliminated. To do this one is required to go beyond the expressed language of the parties re-opener clause. This I cannot rightly do!

Now, I realize the City describes its proposal as merely rolling into the base rates various stipends with no loss of overall employee compensation from that which existed as of 31 December 2003 occurring. This may be true but the City proposal clearly affects contractual provisions outside of those dealing with rates of pay and thus are not included in that which the parties agreed to discuss under their 2005 re-opener.



JAMES E. RIMMEL, FACT FINDER