

FACT FINDING REPORT

December 1, 2010

CANTON PROFESSIONAL)
FIREFIGHTERS ASSOCIATION)
Local, 249)
)
Employee Organization)
)
And)
)
CITY OF CANTON)
)
Public Employer)
)

CASE NO. 10-MED-08-0929

Appearances for Employee Association:

Rosario S. Carcione Local President
Mark Liberatore Firefighter

Appearances for Employer:

Steve Rich Fire Chief
Kerry Ball Division Chief
John Whitlatch Division Chief
Thomas Ream Safety Director
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Fact Finder:

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Introduction

The parties convened on Monday, November 8, 2010 at the Canton City Hall, Council Madic Adjunct Chamber at 8:00 am. The Employee Union is the exclusive representative of the bargaining unit for all uniform members of the Canton Fire Department, excluding the division chief and entrance probationary firefighters. The unit has approximately 160 members at this time, and the principal representative for the Union is Attorney Timothy R. Piatt of Macala, Gore & Piatt, of Canton, Ohio. The employer is the City of Canton, whose principal representative is Attorney Kristin Bate Aylward, Assistant Law Director, Canton Law Department. Parties have had a collective bargaining relationship since approximately 1980.

On September 1, 2010 the parties commenced negotiations for a successor collective bargaining agreement. Although the parties have made some progress through their continuing negotiations, they have been unable to reach a total accord. Thus, pursuant to O.R.C. Section 4117.14 the employee union requested the appointment and designation of a fact finder. At the onset of the hearing, the undersigned inquired of the parties if they wished to engage in some mediation exercises before proceeding further with the hearing, which exercise was declined by both parties. No stipulations were proffered by the parties and the witnesses were then sworn and / or affirmed. The hearing was then commenced. The City presented six (6) issues and the Union presented ten (10) issues which are to be addressed.

During the hearing, the employer introduced evidence regarding the decline of revenues, particularly over the last four calendar years, coupled with projections that suggest a further decrease in revenues for the calendar year 2011. This would reflect a total decrease of approximately close to seven million dollars, and slightly below two million in 2011 below 2010. Initially in its submission, the employer also includes a cost of anticipated increases particularly in the area of health insurance. The Union has countered the City's position in part by its evidential submissions that indicate a modest upturn in some areas of income during the last three months of 2010, as well as the expectation that certain pending grants may be resolved that would assuage these overall revenue declines. For example, such grant money would be available for revenue purposes particularly with respect to the fire department. It also referenced evidential items that have manifested a modest increase in new jobs within the City, and the projected significant benefits that would produce a surge of new income to the City as a result of Rolls Royce going forward with a new manufacturing installation that would hopefully add approximately 800 new jobs with corresponding income benefits to the City. The Union

offers those items that it contends will interdict the income downtrend and provide a basis for agreeing with some of its economic benefit requests.

In view of Northeastern Ohio presently passing through a bleak economic period, including the Canton area, and credible indicators that support less than optimistic projections for a favorable and robust recovery in the immediate future, employer and employee entities in the public as well as the private sector must approach the subject of employee benefits with an appropriate degree of caution which has not been experienced in recent decades, but also with some imaginative and flexible positions to weather this negative economic period.

Both parties have offered credible evidential matter and exhibits to support their positions regarding the contested issues that exist between them, some of which candidly would support different results with respect to fact finding conclusions submitted here if they were posited in a significantly different economic climate.

In view of the foregoing economic prologue, we now address the individual issues submitted by the parties.

City's Issues 1-6

Issue No. 1: Article 15, Temporary Appointments

The City proposed two changes to the current language in this Article in the Collective Bargaining Agreement. The City seeks to amend the current language regarding temporary appointment to the position of Battalion Chief so that the appointment of Battalion Chief shall be by rank seniority rather than by departmental seniority. This change it asserts would ensure more experienced and competent supervisors being placed in this position. For example, under current language, a new Captain with a few days of supervisory experience but 20 years of departmental seniority would be placed in such supervisory position over an employee who has been a Captain for eight (8) years but only had 15 years of total City seniority.

The Union raised a procedural issue on cross - examination of the Fire Chief's testimony as to whether or not such temporary appointee should receive compensation when assigned to such a higher rank for less than 1/4th or more of the number of regular hours in a work day, e.g.: after one (1) hour when engaged in such temporary appointment.

The City also sought a second change to the current language in Article 15 with requirements for temporary appointments to EMS / Safety Captain be changed from EMT or certified paramedic exclusively and that a regularly assigned fire suppression specialist who is a certified paramedic would

be given the first opportunity for the temporary appointment. Such change would help ensure the most qualified and experienced personnel would get the temporary appointment.

The Union did not take express issue with the underlying rationale on this point.

RECOMMENDATION:

The undersigned recommends that the present Article 15 be amended so that it should read that appointment to the position of Battalion Chief shall be rank seniority instead of departmental seniority. The undersigned further recommends that the present language for temporary appointments to EMS / Safety Captain, in Items Two (2) and Three (3) of the current Agreement be changed from “EMT or Certified Paramedic” to Certified Paramedic exclusively and that a regularly assigned Fire Suppression Specialist who is Certified Paramedic be given the first opportunity for the temporary appointment.

Issue No. 2: Proposed New Article 39, Combination Companies

The City proposes under this issue to cause a new Article 39 to be included in the Collective Bargaining Agreement and suggests that the following language be set forth in the new Article 39 as follows:

“Combination companies may be implemented throughout the fire department at the Fire Chief’s discretion and pursuant to the following provisions:

- Combination companies shall have two medics assigned at all times and, when possible, utilizing regular on duty personnel, the third member will also be a medic.
- All personnel assigned to a combination company shall receive paramedic premium pay while so assigned. Premium pay would be pursuant to Article 59, subsection C.”

The reasoning advanced by the City for this proposed new Article is that it would be an exercise in progressive management of the department, and it would allow for more flexibility in staffing. The City also contends that over the last year this particular plan aided in keeping its multiple fire stations open while receiving all the revenue derived from capital EMS runs. The City claims this efficiency and personnel use have been crucial to keeping fire stations open and serving the public through enhanced ability to answer such calls. The City contends that many fire departments in Ohio have progressed to the use of such combination companies and that they have implemented it as a management right.

The Union has not agreed to implement such a new Article in the Collective Bargaining Agreement. It feels this concept would increase the workload for some firefighters, and present safety issues at fire scenes if a crew is on an EMS run when a fire call comes in. Further, it contends that the

combination companies program would only work efficiently and maintain adequate safety concerns if a compliment of no less than 34 firefighters would be on duty.

The City responds to the Union's concerns by indicating that this particular program has worked successfully in the calendar year 2009 as well as the first ten months of 2010, and is a Management prerogative under O.R.C. 4117.06, subsection C. With respect to safety concerns raised by the Union, it avers that Management has always kept certain fire suppression apparatus staffed and held back at all times when such EMS runs are being undertaken.

RECOMMENDATION:

It is recommended that the City's proposed new Article 39 be adopted and included in the Collective Bargaining Agreement as set forth above.

Issue No. 3: Article 46, Sick Leave

The City proposes to change when a 24 hour on 48 hour off shift employee would have to provide a doctor's slip to justify the use of sick leave. The City submits that every other entity comprising the total number of City employees, other than the fire department, requires that when an employee is absent more than three consecutive days, the employee must provide a doctor's excuse justifying that absence. This rule also applies to the fire department for 40 hour per week personnel. The City further states that in the case of a typical schedule of the 24 hours on duty and 48 hours off, the requirement that these employees must bring in a doctor's slip after the third day can actually give them up to 11 days off in a row, factoring in Kelly days. Thus, the City proposes that firefighters on 24 hour shifts should be required to bring a doctor's slip after they miss two days of work, this would give them five days off, two more than the average employee. The City further contends that there has been abuse of this particular present three (3) work day requirement in the case of the 24 hour shift firefighters.

The Union does not agree with the City's position on this issue. The Union argues that such a proposal would increase the City's cost of its health care system by mandating, in effect, earlier required doctor's visits or contact for a certificate of such an absence since they contend that active firefighters are far more exposed to injuries by the very nature of their employment calling than other 40 hour employees.

The second point of the Union's opposition is that Management has failed to properly and adequately address any abuses here under the existing section of Article 46 under Absentee Policy,

Item No. 6, “Pattern Abuse”. It also observes at Paragraph 4 of present Article 46 of the Collective Bargaining Agreement has application to firefighters and maybe inconsistent with FMLA law.

RECOMMENDATION:

The City’s request appears to be appropriately based on financial concerns as well as efficient management processes. The undersigned recommends that Article 46 in the Collective Bargaining Agreement should be amended under Absentee Policy, Paragraph 3, by substituting the following language:

“Employees must provide a physician’s certificate for any absences extending for four (4) or more scheduled work days for 40 hour firefighters and two (2) or more scheduled work days for 24 hour shift firefighters.”

Issue No. 4: Article 52, Health and Life Insurance Coverage

The City has concerns regarding the escalating costs of providing health insurance benefits for its employees under its present program. Stop loss premium increases from \$250,000 to over \$800,000 caused concern and that led to ceasing its relationship with AultCare. The City’s consultant indicates that premium increases are projected to be at least ten percent (10%) per year. To maintain the solvency of its self insurance fund, the City indicated it had to act in the recent past in an aggressive manner. Based on information received from its health care consultant, it took action that resulted in increasing deductibles, out-of-pocket expenses, prescriptions, co-pays, and employee contributions which went from \$22.33 per two week pay period to \$55.00 per two week pay period. The City further indicates that these increases were immediately imposed on Management and negotiated into two contracts of two AFSCME unions comprising over 400 employees whose contracts were open in 2009. The City further asserts that the proposed cost increase here would be identical to those imposed on other City employees in the recent past. The City also contends that the cost per employee remains well within the average range of health care costs as recorded by SERB. The Service Director indicated that the City’s goal with respect to health care is to have the same proposal for all City employees with respect to their contributions and their co-payments. The City takes the position that any projected deficit for 2011 would come from multiple sources and not just the firefighters’ involvement and / or health costs. The Union clearly opposed the City’s proposal. Here the Union takes issue with its view of the City’s position regarding the SAFER grant pending presently as totally inflexible with respect to not including it in its proposals as to the City’s deficit posture including

health care costs. It also suggests that federal law might well have some application to the proposed firefighters' contributions to the health care insurance costs.

RECOMMENDATION:

The evidence submitted on this issue supports concerns regarding maintaining the integrity of the self insurance fund for the City of Canton and its initial submission that over 400 employees of the City of Canton have already agreed to the suggested increase. Therefore, it is recommended that Article 52 be amended to require the firefighter employees to increase their employee contributions from \$22.33 per two week period to \$55.00 per two week period.

Issue No. 5: Article 59, Base Pay

The City suggests that the base pay for the Union employees in the new Collective Bargaining Agreement indicates that there will be a zero percent (0%) increase in the first year and one percent (1%) increases in the second and third years. The City predicates its position on unprecedented revenue shortfalls in recent years by its submission that general fund revenues have decreased from over 55 million in 2007 to an estimated 48 million in 2011. The City indicates there have been deep cuts made the two (2) past calendar years. All departments were directed to make additional cuts of four percent (4%) to their proposed budgets for 2011. The deficit projected for 2011 is 1.2 million.

The City adds that two (2) Police Unions, the CPPA and the FOP and two (2) AFSCME Unions, 2937 and 3449, have all voluntarily agreed to zero (0) increases in base pay for the year 2010 in their proposed new contracts. Further, that the SAFER grant has not yet been finally approved and the only way it can honor financial increases to the Union after 2011 will be by attrition. It also states that the Union's proposals for raises have varied between six percent (6%) and three percent (3%).

The Union states that comparable tables in evidence from the largest eight (8) Ohio cities (Canton is the ninth (9) largest) have annual average firefighters salaries of \$57,309 while Canton's is \$50,679; that six (6) somewhat smaller core cities have annual average salaries of \$54,969 again compared with Canton's of \$50,679. It adds that other firefighter benefits with respect to the foregoing cities are also more favorable than Canton's, and that the Canton Police Department has consistently fared better than its firefighter counterparts. The Union also counters the City's evidential financial analysis stating that there are other funds from which it could effectuate transfers to support part of its requested wage increases, and that city council could pass legislation that would enable the transfer from other more stable municipal funds. It also refers to the last three (3) months of this calendar year

where financial data shows certain income accounts posting increases over 2009 receipts, e.g. real estate taxes and ambulance services.

RECOMMENDATION:

The record is compelling to support the City's position that its anticipated loss of revenue for the calendar year 2010 is buoyed by credible evidential submissions with probative items that project continuing shortfall in the calendar year 2011. There are indications that some modest improvement will be obtained in the calendar year 2012. Thus, it is recommended that there be a zero percent (0%) increase in base pay in the new contract for the first year from November 1, 2010 to October 31, 2011 and a two percent (2%) increase for the second calendar year of the new contract from November 1, 2011 to October 31, 2012 which should be in line with increments received by other employee groups for the same calendar period.

Issue No. 6: Article 70, Duration of Contract

The City here has advanced a proposal for a new three (3) year contract period with the Union. Under its approach, the new contract period would be November 1, 2010 through October 31, 2013.

The Union has advanced a proposal for Duration of Contract, Article 72 in which it expresses its request that its new agreement shall be effective November 1, 2010 through October 31, 2012 for a two (2) year period.

Evidence has been submitted by both parties as to their projections as to the anticipated state of the economy and the attending uncertainties for the near future. The undersigned concludes that a shorter period of contract term would serve the interest of both the City and the Union.

RECOMMENDATION:

The undersigned therefore sees compelling reasons to reject the City's request on this issue and to adopt the Union's proposal on this issue, and, therefore, it is the undersigned's recommendation that the ensuing contract period be one for two (2) years commencing and being effective from November 1, 2010 through October 31, 2012, pursuant to the Union's Issue No. 70.

Union's Issues 1-10

Issue No. 1: Article 20, Grievance Procedure

The Union contends that this procedure is a dispute resolution procedure for the Union and takes issue with the current language that allows the City to also file. It states that pertinent language must be deleted. It argues that the language in Paragraph 2 of this article must be modified to allow parties to exercise certain rights under O.R.C. Chapter 2711. Specifically it requests that the current language at the end of Paragraph 2, "and to the State Courts thereafter" be deleted. Also, the Union focuses on step four of the procedure under this Article stating that it should be modified to delete the City's entitlement to request arbitration at any time regardless of whether the request relates to a pending grievance. According to the Union, if not deleted, then, at any time, the City can force the Union to arbitrate any and all matters which, in turn, would amount to a forced renegotiation of the Agreement. Lastly, a Union representative must be entitled to attend all meetings / hearings in order to ensure the integrity of the process and adherence to the Agreement.

The City indicated it had recently made a proposal on this article and has withdrawn it for purposes of this fact finding and offers nothing in addition.

The undersigned notes that the present agreement provides that the grievant may be represented by the Union representative or by his individual retained counsel at all the steps of the procedure. That provision appears to sufficiently address the Union's last commentary.

RECOMMENDATION:

The undersigned finds the Union's requests here to be appropriate. The recommendation is to delete those two (2) provisions. Thus, the current language at the end of Paragraph 2, "and to the State Courts thereafter" should be deleted. In reference to Paragraph 2, Step 4, the second sentence should also be deleted from this article.

Issue No. 2: Article 24, Promotional Examinations

The Union states that where permitted by rules and regulations of the Civil Service Commission, the City, with the advice of the Union, shall designate specific materials on which examinations for promotions should be based, and the City shall make available a list for study to firefighters one year prior to the expiration of the existing promotional list. The City agrees to form a task force with the Union which will make recommendations to the Civil Service Commission regarding the criteria to be used in the grading of such promotion exams and creation of eligibility lists.

It expressly requests that, “appointment to the position of the Fire Prevention Officer shall be through a competitive exam. The City agrees to meet with the Union to establish criteria for the Fire Prevention Officer Exam.”

It further argues that the City has failed to follow Ordinance No. 1503.03, Appointment of Inspectors or Investigations, which states that employment of inspectors “shall be selected through an examination” and that the “examination shall be open to members” of the Fire Department.

The City takes the position that the proposal advanced by the Union here is prohibited by Civil Service Law.

RECOMMENDATION:

While the undersigned respects the ability and opportunity for the City and the Union to make suggestions to the Civil Service Commission with regard to the mechanics and objectives and tests used, promotional examinations as well as the creation of eligibility lists, the undersigned notes that Ohio law, specifically O.R.C. 124.23, subsection (E), indicates that the control of Civil Service examinations is under the auspices of the Director of Administration. This request must be rejected.

Issue No. :3 Article 28, Layoff Procedure

With reference to this issue, the parties have submitted this item on the basis of the analysis on arguments contained in their respective Position Statements.

The Union here proposed to amend the current language in this Article to insert the following language: “and /or due to an abolishment of the individual’s position” shall have indefinite recall rights.” It contends that layoff for position abolishment is no more the Union member employee’s fault than is a layoff for economic reasons.

The City simply responds by stating that it does not agree with the language contained in the Union’s proposal.

The undersigned understands that the term “layoff” is a term of art in labor fields, and that the word “abolishment” of the individual’s position is not generally viewed in the same light. While sound compelling arguments can be made regarding this issue, some modification of the Union’s approach would appear to have some merit with respect to possible gamesmanship and contrivances not necessarily grounded on economic considerations.

RECOMMENDATION:

The undersigned recommends that present Article 28, Layoff Procedure, be amended in the 4th sentence of the 1st paragraph as follows: “any firefighter laid off for economic reasons and /or due to

abolishment of the individual's position shall have recall rights for a period of 36 months after such employee's position has been abolished in the event that such position has been reinstated during such 36 month time period."

Issue No. 4: Article 29, Military Leave

The Union focuses on some of the present language in the Article. Specifically, the Union advances here that because of a recent legislative amendment that now when a member is on Military Leave for both annual training and weekend drills, the City will pay the difference in wages between the employee's regular daily rate and the military daily rate for a period not to exceed four hundred eight hours (408) in a calendar year. The Union specifically indicates that pursuant to legislation which became effective on September 17, 2010, O.R.C. Section 5923.05 requires in part as follows: "that 'a public safety employee' means an employee who is employed as a firefighter or emergency medical technician (O.R.C. Section 5923.05(A)(2)(g)); that for such employee, a 'month' means seventeen 24-hour days or 408 hours within one calendar year (O.R.C. Section 5923.05(A)(2)(b)); and that no collective bargaining agreement may afford fewer rights and benefits than are conferred in Chapter 5923.05(O.R.C. Section 5823.05(G))." The Union urges that the language of the provision must be modified to meet this statutory requirement.

The City opposes the number being inserted since laws can and do change, and asks that the article refer instead to the statute and that the City will abide by whatever current language is employed.

RECOMMENDATION:

The undersigned finds the Union's request to be appropriate. It is the recommendation of the undersigned that Article 29 be amended to delete the language "not to exceed in a calendar year twenty-two (22) work days at eight (8) hours per work day", and to insert the following language in its place: "not to exceed four hundred eight (408) hours in a calendar year."

Issue No. 5: Article 44, Minimum Manning (Staffing)

Pursuant to this issue, the Union proposes a new Article to be included in the Collective Bargaining Agreement which would have the effect of requiring the City and its fire department to maintain a minimum manning of not less than 34 firefighters per platoon, which it contends would enable the department to adequately address and respond to fire suppression, medical and other emergencies in the City. Currently, it indicates that both the City and the Union have maintained this minimal manning staffing at that level pursuant to MOU language implemented on January 15, 2010,

which both sides agreed would remain through the current contract year. The Union states it agreed through the MOU to accept a change in their working conditions and allowed the City to reduce its daily staffing levels to 34 suppression personnel. The Union contends that operating with less than 34 would place the residents and firefighters in danger. Further, the Union argues that falling below 34 suppression personnel increases response times and then would lead to increase in injuries. It contends the increased cost to the City for maintaining minimum staffing levels has been minimal. Also, the City's overtime expenses attributed to staffing levels has decreased in 2010 compared with 2009. It argues going below that level does not justify the employer increasing inherent risks by reducing the safe minimum staffing under the guise of financial difficulty. It states that the City has recognized these inherent dangers for the Canton Police Patrolman's Association and has placed safe minimum staffing levels into their collective bargaining agreement.

The City opposes this change on the basis of inability to pay and also argues that no other fire departments in Ohio have such huge numbers in their contracts referencing exhibits submitted in the record. Further, it observes that minimum manning is extremely rare in fire contracts in the State of Ohio and in Stark County as well, and that the few contracts that do contain a maximum manning number have set it very low, as an example, ten (10) in the city of Massillon. The City also urges that while certain state guidelines have seventeen (17) firefighters as an optimum number to fight a fire, no other department in Stark County has the manpower to routinely provide that number, and further it posits that a given event that is rare, or one that occurs by way of simultaneous fires, etc... may be handled by support from other communities in Stark County by mutual compact and by calling off-duty personnel for major fires. It submits that from March 2010 to the present, the overtime cost for maintaining a level of 34 suppression firefighters has been approximately \$55,000. The City contends that if the maximum compliment for the department would be about 150 or less, the overtime costs for that same time period could possibly be higher.

Lastly, the City has argued most departments in Ohio have implemented such levels as a management right without negotiating with the Union on this type of matter. It avers that support for this position on the City's part may be found in O.R.C. 4117.08 C (6) regarding Management's right to determine the adequacy of the work source.

RECOMMENDATION:

In view of the materials and evidence submitted with respect to the Union's proposal, under proposed new Article 44, the undersigned regrettably recommends that the Union's proposal be rejected. Nevertheless, the undersigned would encourage the parties to use their combined energies to

provide the necessary resources to maintain the minimum manning level of not less than 34 firefighters per platoon.

Issue No. 6: Article 46, Sick Leave

It appears that the Union's submissions pertaining to this Article are two-fold as contained in its rational segment. First it takes exception with respect to the City's requested reduction from three to two work days requiring a physician certificate for the 24 hour shift firefighters. This issue was addressed and concluded under the City's Issue No. 3, pursuant to which the recommendation was that the language in Paragraph 3 of Article 46 needed to be amended to read, "Employees must provide a physician's certificate for any absences extending for four (4) or more scheduled work days for 40 hour firefighters and two (2) or more scheduled work days for 24 hour shift firefighters."

Consequently, that particular portion of the Union's issue under this article will not be addressed again.

The Union also contends that the current "no fault" absentee language contained in the current article at Paragraph 4 is onerous, is inconsistent with FMLA and other statutory entitlement, and is otherwise improper and requests that the language be deleted. Further, the Union takes the position that only the Canton Firefighters Association is the only Union within the City to have such language.

The City has not submitted any contrary position to that advanced by the Union on this request.

RECOMMENDATION:

The undersigned recommends that Union request that current language in Paragraph 3 under "Absentee Policy" and three (3) or more schedule workdays for 24 hours shift firefighter be retained is rejected pursuant to the recommendation of the fact finder expressed in the City's Issue No. 3. Further, the undersigned recommends that the language contained in the current Article 46, sick leave, at Paragraph 4 be deleted from the Collective Bargaining Agreement.

Issue No. 7: Article 51, Overtime

This item is also only submitted by the parties on the analysis and arguments contained in their respective Position Statements. The Union advocates three (3) new amendments to the present Article. First, it requests that the following language be inserted at the end of present Paragraph H: "The employee may take compensatory time in a minimum of four (4) hour increments; however, the last of those must be 7 p.m. to 11 p.m. If an employee wants to take a block of compensatory time which runs past 11 p.m. that employee must take compensatory time for the rest of the shift.

Secondly, it urges that the maximum accumulated compensatory time in paragraph I be changed from one hundred twenty (120) hours of compensatory time to two hundred forty (240) hours.

Last, the Union submits that the following language be inserted by way of amendment immediately after the first existing sentence in Paragraph I of Article 51: “There will be a minimum of one slot above and beyond the allowed number of people off per shift that is set by the Fire Chief. This slot is reserved exclusively for the use of compensatory time.

The Union explains the proposed language for the foregoing requested amendments had its genesis in the MOU dated April 9, 2008 which was the result of a grievance filed by it, and that it is seeking parity with the Canton F.O.P.

The City opposed these requested changes to the current language in Article 51, and acknowledges that it entered into an MOU as a matter of policy for the present contract period. It counters that the changes in policy have been implemented to assuage the Union’s concerns under Article 51 with respect to allowing one (1) slot of compensatory time per day and for its use to be less than 24 hours. It concludes that the present policy has provided it with more flexibility to schedule compensatory time without being locked into a slot every day with respect to the Union’s first two (2) requested changes here, it is evident that these policies continue to exist.

Responding to the Union’s third request here, the City also opposes doubling the compensatory time allowed to be accumulated. The core of its opposition to such a change would have the effect of interdicting its ability to maintain appropriate staffing levels and increase overtime replacement costs to an inappropriate level, particularly if present staffing levels decrease.

Once again, both entities advance positions that, singularly viewed, have appeal but, in the conjunctive, require a balancing exercise.

RECOMMENDATION:

Here the undersigned, in view of the material submitted which support the conclusion that the adoptions of the Union’s requested amendments to Article 51 would have the effect of a significant cost increase to the City in the present economic situation, the undersigned recommends retention of the current language of Article 51, and further recommends the rejection of the Union’s proposals.

Issue No. 8: Article 59, Base Pay

Here the Union offers an in depth analysis of factual data referencing a 20 year average annual salary for the eight (8) largest Ohio cities, which was indicated before to be \$57,118 and that Canton, the ninth largest city, is only \$50,679 as previously stated. A similar reference and analysis was

submitted to core cities in Ohio which are smaller in population than Canton sharing a very similar ratio of difference in average annual salary between them and Canton. The Union submitted other pertinent analytical data, which included a summary of recently new created jobs in the City and the anticipated future development of the Rolls Royce Fuel System, which could add 800 new jobs within the City resulting in expanded potential revenue.

The City addressed its opposition to Union requested increases ranging from six percent (6%) to three percent (3%) on an annualized basis. This particular issue was also addressed under the City's Issue No. 5, in reference to Article 59, Base Pay.

The evidence is compelling to support the City's position that its anticipated loss of revenue for the calendar year 2010 is supported by credible evidential submissions. There are indications that some modest improvement will obtain by the calendar year 2012. Under the City's Issue No. 5, the undersigned recommended that there be a zero (0) increase in base pay under the new contract for the year November 1, 2010 to October 31, 2011 and a two percent (2%) raise for the second year of the new contract from November 1, 2011 to October 31, 2012.

RECOMMENDATION:

Applying the same rationale as the undersigned did under the City's Issue No. 5, it is, therefore recommended that the new Collective Bargaining Agreement include an increase in paramedic premium pay from \$.75 to \$1.00 per hour, and it is further recommended that an increase in base pay under the new Agreement beyond a zero (0) increase under the first year of such Agreement and beyond two percent (2%) for the second year of such contract be rejected.

Therefore, it is the recommendation of the undersigned that the Union's Issue No. 6 be approved in part and rejected in part.

Issue No. 9: Article 70, Hazard Pay (New Article)

Under this issue, the Union states that the City's Police Force receives hazard pay. Thus, parity in this regard in the safety force is appropriate. The Union further notes that the comparative Youngstown, Ohio Fire Department personnel also receive hazard pay. It is also evident from the Union's Exhibit C that the other seven larger cities in Ohio make no provision for hazard pay. There is no indication in the record as to how those other larger cities treat or provide hazard pay for their Police Departments.

The City opposes this article based on the inability to pay as set forth under analysis of Article 59 dealing with the base pay under the City's Issue No. 5 where the undersigned has previously

addressed their and the City's general arguments about its present financial problems and the Union's counter position there as well as here.

RECOMMENDATION:

The undersigned recommends that in order to develop some sense of parity within the safety forces in the City, and also based on a partial sense of consistency as expressed by the undersigned in its conclusion to the City's 5th issue, that hazard pay in the sum of \$150 be included in the second year of the new Collective Bargaining Agreement.

Issue No. 10: Article 72, Duration of Contract (New Article)

The Union, as previously indicated in the City's Issue No. 70, contended for a two (2) year contract rather than a three (3) year contract as desired by the City. The undersigned in the analysis expressed in the City's 6th issue, has already concluded its approach to this proposed article designated there as City Article 70 in which it is recommended the Union's approach of a two (2) year period be the term of the new Collective Bargaining Agreement which will be concluded in the new future.

RECOMMENDATION:

The undersigned therefore sees a compelling reason to adopt the Union's proposal on this issue and therefore it is the undersigned's recommendation that the ensuing contract period be one of two (2) years commencing and being effective from November 1, 2010 through October 31, 2012.

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CERTIFICATION

A copy of the foregoing Fact-Finding Report was forwarded to, Timothy Piatt, Attorney-at-Law, Employee Organization Representative, tpiatt@mgplaborlaw.com as well as Kristen Bates Aylward, Assistant Law Director, Employer Representative, Kristen.aylard@cantonohio.gov via electronic mail on December 1, 2010.

A copy of the foregoing Fact-Finding Report was also to Mary Laurent, Bureau of Fact Finding, SERB via electronic mail mary.laurent@serb.state.ohio.us

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