



## **BACKGROUND**

This matter concerns the fact finding proceedings between the City of Canton (hereinafter referred to as the "City") and the Fraternal Order of Police, Lodge No. 2, Ohio Labor Council (hereinafter referred to as the "Union"). The undersigned, Christopher E. Miles, Esquire, was appointed as the fact finder in this matter through the offices of the State Employment Relations Board (SERB).

The fact finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. The City and the Union previously engaged in the collective bargaining process for a period of time prior to the appointment of a fact finder and additional negotiations were conducted by the parties subsequent to the appointment of the fact finder. During their negotiations, the parties were able to resolve the following issues:

Article 9	PERSONNEL FILES AND POLICY
Article 12	UNION BUSINESS
Article 17	EMPLOYEE RIGHTS
Article 19	VACATIONS
Article 25	FUNERAL OR BEREAVEMENT LEAVE
Article 29	SUSPENSIONS
Article 31.10	SICK LEAVE
Article 32	HEALTH AND LIFE INSURANCE COVERAGE
Article 43	ASSIGNED FIREARMS
Article 46	TERM OF CONTRACT

The issues resolved by the parties are therefore incorporated in this fact finding report.

Prior to the fact finding proceedings, which were conducted at the Canton City Hall Building in Canton, Ohio on January 27, 1997, the fact finder offered to attempt mediation of any unresolved issues, but the parties declined at that time. The City was represented by Mr. Joseph Martuccio, Assistant Law Director, and the Union was represented by Mr. Charles Choate, Staff Representative. Prior to the close of the fact finding proceedings, the parties agreed to extend the fact finding until March 7, 1997. The issues which were remaining at impasse for the consideration of the fact finder are as follows:

**City's Proposals**

Article 21 - Wages	New Sec. 6 - re: reverse "me too" clause
Article 14 - Seniority	New Sec. 5 - re: "1 of 3" promotions
Article 16 - Management Standards	re: "fair & prudent"
Article 23 - Uniforms	re: annual payments and quartermaster
Article 31 - Sick Leave	Sec. 3 re: FMLA and hospitalization

**Union Proposals**

Article 19 - Vacations	Sec. 9 - re: banking
Article 21 - Wages	Sec. 2 - re: shift differential
	Sec. 3 - re: Saturday/Sunday OT
Article 28 - Terminal Pay	Sec. 1 - re: additional 10% pay-out
Article 31 - Sick Leave	re: new language for sick leave conversion
Article 38 - Overtime	Sec. 4 - re: 4 hour call-back plus OT
	Sec. 10 - re: pay for rank
	New - re: Hall of Fame OT
	New - re: Comp-time buy-back
Article 40 - Shift Differential	re: 25 cents/40 cents to 50 cents/90 cents

**FINDINGS AND RECOMMENDATIONS**

**Article 14 - Seniority**

The City has proposed that most of the current Article covering seniority remain the same; however, it suggests that Section 5 be slightly modified. According to the City, the new Section 5 would be entitled "Selection Procedures for Promotions" and would provide for a departure from the current practice of promoting the highest scoring officer to the next rank. The City desires to be permitted to "select from the three highest ranked certified candidates (or lesser number as may be available)". It believes that simply being a highest scoring candidate on an objective written examination does not necessarily correlate to being the best all around leader for the high ranking positions of leadership in the Police Department. Thereby, the City seeks some flexibility in choosing the "best

leader" and it believes that selections made pursuant to the new proposal would not be grievable or arbitrable. The Union, on the other hand has rejected this language change. They counter proposed with the following language for Section 5 in Article 14:

**Section 5. Selection Procedures for Promotions**

Whenever a vacancy exists in a classification covered by this agreement, the Canton Civil Service Commission shall hold a competitive promotional examination in accordance with the state law and the rules and regulations of the Commission. After such examination has been held and an eligible list established, the Commission shall forthwith certify to the appointing officer the name of the person receiving the highest rating. Upon such certification, the appointing officer shall appoint the person so certified within thirty days from the date of such certification. If there is a list, the Commission shall, where there is a vacancy, immediately certify the name of the person having the highest rating, and the appointing authority shall appoint such person within thirty days from the date of such certification.

No credit for seniority, efficiency, or any other reason shall be added to an applicant's examination grade unless the applicant achieves at least the minimum passing grade on the examination without counting such extra credit.

The City has also proposed a new Section 6 in Article 14 which provides that "the right to assign Patrol Division Supervisors to permanent or rotating shifts will rest with the Chief. Seniority bidding will be used for all shift assignments." The Union has asserted that this is one of the most controversial proposals for consideration in this proceeding. Currently, the City of Canton Police Department operates with a unique structure whereby its Patrol Officers are assigned to permanent shifts, based largely upon seniority. On the other hand, the Supervising Officers or the members of the Union in this case, rotate shifts every month. Consequently, a significant portion of the Union's members serve one month in each shift and rotate into the next shift. Therefore, the City has suggested that its proposal would affect only about one-third of the Union's members. One of the major factors advanced by the City for this proposal is

based upon the annual evaluations of the Patrol Officers. The City contends that the Police Department would also run more efficiently if the Supervisors were matched on a regular basis with the Patrol Officers.

The Union is opposed to the proposed change. It believes the new language is a radical departure from a long standing practice between the parties of rotating shifts. It notes that this proposal has been made several times in the past and the parties have agreed to maintain rotating shifts for this bargaining unit.

### **Recommendation**

With regard to the new language proposed by the City for Article 14, it is recommended that such language not be included in the Agreement. With regard to promotions, it is recommended that the practice of promoting pursuant to the Civil Service rules and regulations remain status quo. There is no indication that this practice and procedure has not been effective. As for the new language proposed for Section 6 in Article 14 to rotate shifts for the supervisory personnel represented by the Union, it is likewise recommended that such language not be placed in this Agreement. The record reveals that this bargaining unit has rotated shifts in this manner for more than 23 years. In addition, about 15 years ago both the Patrol Officers and their supervisors rotated shifts together. However, the Patrol Officers thereafter were able to secure permanent shifts in their collective bargaining agreement. The record does not reveal that the department would run more efficiently if the Patrol Officers and the supervisors worked on the same shift. In addition, the City's concern about the evaluation by supervisors who are only with the Patrol Officers for about one-third of the time is, in my opinion, not sufficient to change this long standing procedure of rotating shifts for the Union. Furthermore, in this regard, in some instances it may be desirable that different supervisors evaluate the Patrol Officers.

### **Article 16 - Management Standard**

The City suggests that one of the items that the Patrol Officers "gave up" in exchange for higher wages was a unique article which was vague by stating simply that management decisions would be made "in accordance with a fair and

prudent management standard. This standard shall provide the basis for grievance by members of the bargaining unit." It is noted that this same language is contained in the Union's Agreement. The City seeks to have this language eliminated so that it may not serve as the only basis for a grievance when no other provision of the contract is violated. It is pointed out that this has not been a point of contention with the Union in the past. However, it believes that the elimination of such a nebulous standard would insure consistency in the Police Department. The Union has rejected this proposal and seeks to have the current contract language maintained. It emphasizes that there has been no problem with the Union in utilizing this provision for frivolous grievances.

### **Recommendation**

With regard to the City's proposal to eliminate the language in Article 16 from the Agreement, it is my recommendation that this be done. Although there is no evidence in the record to indicate that there has been a problem with the Union filing grievances pursuant to this general language, there also appears to be no reason or purpose to retain such language in the collective bargaining agreement. The City presumably must make such decisions in a fair and prudent manner in its dealings and actions with the Union.

### **Article 19 - Vacations**

The Union proposes a change in Section 9 of Article 19. It requests an increase in the number of weeks for a bargaining unit member to bank toward his/her retirement or termination. In addition, the Union seeks to increase by one week the number of earned vacation that may be banked in any given year. The City has counter proposed by offering the Union what the Firefighters Union and the non-Union employees in the City have. That is, the ability to bank 15 weeks toward retirement at the rate of three weeks per year.

### **Recommendation**

As for Section 9 in Article 19, it is recommended that the City's counter proposal be incorporated into the Agreement. Thereby, the bargaining unit

members shall be able to bank up to 15 weeks of earned vacation time toward retirement or termination. However, according to standards imposed upon Firefighters Union and other non-Union employees in the City, no more than three weeks of earned vacation may be banked in any one year.

### **Article 21 - Wages**

The Union is proposing an increase to both the overtime rate for its members and also that the rate be extended to include Saturdays worked by Union members. This is a change in the language of Section 3 of Article 21. The Union's proposal also provides for the ability to take an option of the increase from pay to compensatory time in lieu of pay. The City is opposed to a new method of accumulating additional overtime compensation, which it points out exceeds any FLSA requirements. The City contends that this would translate into an expensive change. It emphasizes that the Police Department is a 24 hour operation and does not operate under a standard Monday through Friday, 5 day work week. It also points out that the supervisors, along with the Patrol Officers, already receive a bonus of one and one-quarter time for working straight time on Sundays.

### **Recommendation**

With regard to the Union's proposal to increase the overtime rate and extend it and to provide for compensatory time in lieu of pay, it is recommended that this proposal not be included in the Agreement. This proposal, as demonstrated by the City at the hearing, could prove to be a very expensive undertaking to implement. In addition, as noted above, Union members currently receive a bonus for working straight time on Sundays.

### **Article 21 - Wages**

The City has proposed a bilateral or "reverse me too" clause for the Agreement. With regard to this proposal some background is essential. The Union's Agreement with the City is a derivative "me too" contract. It is based in large part upon the wages terms and benefits as contained in the collective

**bargaining agreement which is negotiated independently between the City and the Police Patrolman's Association. In Article 21 a framework is established for the Union members pay and benefits. As of January 1, 1993, the Union members are entitled to a 13% rank differential between the ranks; i.e., a Sergeant earns 13% more than a Patrolman, a Lieutenant earns 13% more than a Sergeant, and a Captain earns 13% more than a Lieutenant. The base salary which is used to compute the rank differential is inclusive in that it "rolls in" the base pay of the Patrol Officers along with any wage increase, stress pay, residency incentive benefit, and longevity, as well as "any other benefit or compensation granted to the Police Patrolman's Association that are considered taxable income to a Patrolman". This is provided for in Section 1(f) of Article 21. In other sections of Article 21, the Union is guaranteed increases in shift differential rates, Sunday pay rates, and parity in health related benefits when compared with the Police Patrolman's Association. With regard to wages for the prospective agreement, the City notes that the Union has not requested a wage increase per se because it is locked into an automatic 13% rank differential over each successive rank as stated above.**

**According to the City, the Union has entered into these negotiations already having received more than \$800,000.00, by the City's estimate, for the three year period retroactive to July 1, 1996, without having to "trade" a thing or bargain because of the "me too" clause. In the recent fact finding and conciliation with the Police Patrolman's Association an award and settlement resulted in wage increases of five percent, four percent and four percent, retroactive to July 1, 1996. According to the City, the Patrol Officers gave up a number of concessions in order to receive significant financial benefits. On the other hand, the Union receives these same benefits without having to make the same concessions in return. The City contends that the "me too" clause has been a costly provision. It suggests that it undermines the collective bargaining process and hampers the ability of the City to collectively bargain with the Union. It argues that the "me too" clause restricts the ability and discretion of a neutral fact finder or conciliator to independently consider financial and other issues as required under State law. It points out that the Union represents Supervisors with different needs than the Patrol Officers. The City concedes that while the "me too" section may have had a noble purpose in attempting to and remedying any past alleged abuses by a prior administration in the City such is now not a concern. The Union's position is that to agree to a reverse "me too" clause would be the equivalent to relinquishing its**

right and responsibility to negotiate on these topics. The Union therefore rejects the City's proposal in this regard.

### **Recommendation**

Although the City essentially is proposing not to eliminate the "me too" clause altogether, but merely to modify it so as to provide it with an option to incorporate language into the Union contract that may have been secured in the Patrol Officers contract, it is my Recommendation that the City's proposal for the "reverse me too" not be included in this Agreement. It is noted that although the Union members represented herein may secure certain benefits by virtue of negotiations with the Patrolman's Association, it is likewise the case that the Union may seek to secure such benefits in excess of those agreed to by the City and the Patrol Officers. It is also true that the City can seek through negotiations, fact finding and conciliation the same concessions which were obtained from the Patrol Officers, as it has done in this case. Therefore, it is my considered opinion that the "me too" clause does not put the City at such a disadvantage as to adopt the language proposed by the City for a "reverse me too".

### **Article 23 - Uniforms**

The City is proposing the same system that it negotiated with the Patrol Officers and that is that the former bifurcated Quartermaster and Uniform Maintenance System be merged and the the total amount of money allocated for both purchasing new items and maintaining clothing, etc., be combined into a \$975.00 annual cash payment. The Union rejects this proposal in favor of the existing Quartermaster System.

### **Recommendation**

With regard to the City's proposal to do away with the existing Quartermaster System and replace it with a cash dollar accrual on an annual basis, it is recommended that this language be included in the Agreement. This proposal would allow the City to phase out the existing Quartermaster System under which the Union members have a limited number of vendors from which to

purchase the required police uniforms and equipment.

### **Article 28 - Terminal Pay**

In Section 1, paragraph C of Article 28, the Union proposes the addition of a category for payment in this language for bargaining unit members with 29 years of service and above. This is a change from the existing language wherein the benefit stops at 29 years. The City seeks to retain the status quo language. It notes that this benefit was designed to encourage law enforcement officers to retire as they age and become eligible for full pension benefits. In addition, it points out that the 1200 hour ceiling was automatically increased for the Union by three hundred hours because the Patrol Officers have recently negotiated a 1500 hour minimum. It argues that the Patrol Officers negotiated away its bonus days benefit earned for good attendance to acquire the three hundred additional hours. The City contends that an additional 10 percent cash pay out for years 30 and above is unnecessary and is an additional expense which is not in keeping with the original purpose.

### **Recommendation**

The recommendation for the Union's proposal in Section 1, paragraph C of Article 28 is that this language be added to the Agreement. The language is only a slight modification to the existing provision and rewards the bargaining unit members for years of service in excess of 29 years.

### **Article 31 - Sick Leave**

In Section 3 of Article 31, the City proposes to modify existing language to state that "the City shall pay for hospitalization during the use of accrued sick leave, for up to twelve (12) weeks per annum pursuant to the FMLA, whichever is greater, and term life insurance for the duration of the sickness or injury." The City asserts that in the past it has occasionally continued to pay for hospitalization for employees who have exhausted what has often become large amounts of accrued sick leave and other forms of paid time off, including vacation, comp time and injury leave. The Union rejects the proposal and seeks to have the existing

contract language continued. It opposes the City's proposal because it believes that it appears to be a reduction of existing benefits for bargaining unit members.

### **Recommendation**

It is recommended that the new language proposed by the City for Section 3, Article 31 be included in the Agreement. This proposal would limit the payment of an employee's hospitalization to a time period within which the employee uses sick leave or family medical leave time to twelve weeks per year, whichever is greater. Of course, an employee could continue to make medical insurance payments beyond that time period. The history of the parties indicates that this situation has not arisen very often.

### **Article 31 - Sick Leave**

The Union seeks to have additional language which would be new to the provisions of Article 31 for the purpose of providing a benefit for its members for not using sick leave. The language proposed by the Union provides for the ability of bargaining unit members to convert amounts of sick leave to vacation time subject to the conditions listed in the proposal. The City rejects the proposal of the Union and asserts that it would be a very costly precedent. It points out that such benefit does not exist in any of the City's other bargaining units and emphasizes that sick leave is meant to be a form of "insurance" that provides one with full pay while he or she or a family member is sick or injured.

### **Recommendation**

It is recommended that the new language proposed by the Union for inclusion in Article 31 not be included in the Agreement. The Union's proposal would permit an unconditional type of time off with pay, just like vacation time. Such is not the purpose of sick leave. In addition, the City appears to be generous in making available the use of sick time as well as other leave from work.

### **Article 38 - Overtime**

The Union has proposed several changes for Article 38. Two of them involve current language in the Agreement and two proposals provide for new language to be added to the Agreement. These proposals will be separated and discussed below.

### **Article 38 - Section 4**

The Union seeks to enhance the existing benefit listed in Section 4 by providing bargaining unit members who are called in or requested to work when said time occurs more than four hours prior to the start of their regularly scheduled work day. The Union requests that should this situation occur, the bargaining unit member shall be paid one and one-half times his or her base rate of pay for all continuous hours of service. The City has rejected this proposal.

### **Recommendation**

It is recommended that the new language proposed by the Union for Section 4 of Article 38 not be included in the Agreement. It is noted that Union members who are called to perform any work on an unscheduled work day or work shift are paid a minimum of four hours at one and one-half times his or her base pay. In addition, it is pointed out that this situation does not occur very often. Therefore, it would seem that the four hours of pay for work on an unscheduled work day or work shift would even out in the event that employees are called in for more than four hours.

### **Article 38 - Section 10**

In this proposal, the Union seeks to add the Commander of the Training Bureau and the Commander of the Dispatch Operations to its list of premium payment personnel for the payment listed in this section for higher rank pay. The Union also seeks to increase the existing benefit of a bonus paid at the rate of a one-half hour as listed in this section to a bonus paid at the rate of three-quarter of an hour. The City believes that the Union's attempt to add two new positions to

the existing four is not necessary. It also believes that the pay for higher rank is more than adequate.

### **Recommendation**

With regard to the Union's proposed additions to Section 10 in Article 38, it is recommended that the two positions for Commander of Training Bureau and Commander of the Dispatch Operations be added to the list of premium paid personnel for the benefit listed therein. However, it is recommended that the rate of one-half hour for the substituting officers overtime rate remain the same.

### **Article 38 - New Language**

The Union has proposed new language to be added to Article 38, Overtime, to provide for the unique circumstance experienced by Union members during the period of time known as the Hall of Fame Festival. The Union asserts that the proposal seeks to mirror what is the practice between the parties and provide for an increased economic benefit for Union members. The City rejects this proposal on the basis that the Union members already enjoy the benefit of enhanced overtime rates for working 10 hour shifts during the four busy days of the Hall of Fame Week.

### **Recommendation**

It is recommended that the Union's proposal be included in the Agreement. The proposal basically provides that the overtime rate will be paid for all hours worked regardless of the length of the work day. It appears to the fact finder that this provision does basically mirror what the practice has been between the parties and would reduce administrative problems and paperwork.

### **Article 38 - New Language**

The Union proposes new language to provide its members with the ability to buy back compensatory time which has been accumulated up to a maximum of

40 hours annually. The proposal indicates that the request for such buy back shall be completed by the bargaining unit member no later than November 15th of each year. The City has rejected this proposal and notes that Union members can carry up to 200 hours of any combination of compensatory time and vacation into the next year. It suggests that subsequent conversions would be administratively burdensome and could result in overvalued overtime payouts.

### **Recommendation**

It is recommended that this proposal by the Union be included in the Agreement; however, it is recommended that the request by the Union member be made before July 1st of each year. This would enable the City to make the pay out based upon the pay rates of the year in which the time was earned.

### **Article 40 - Shift Differential**

The Union seeks to increase the amount paid to Union members working the afternoon or the midnight shift. It proposes that an increase be made from 25 cents to 50 cents for the afternoon shift and from 40 cents to 90 cents for the midnight shift. The City rejects this proposal and points out that in the conciliation for the Patrol Officers that unit was afforded 40 cents per hour for afternoons and 55 cents per hour for the midnight shift. This was automatically passed on the Union members pursuant to the "me too" language.

### **Recommendation**

It is recommended that the amount awarded to the Supervisors remain the same as awarded to the Patrolman's Association for the shift differential in Article 40; i.e., 40 cents per hour for afternoons and 55 cents per hour for the midnight shift. This represents a reasonable increase of 15 cents per hour across the board.

**CONCLUSION**

In conclusion, the fact finder submits the Findings and Recommendations as set forth herein.

A handwritten signature in cursive script, reading "Chris E. Miles".

**Christopher E. Miles, Esquire  
Fact Finder**

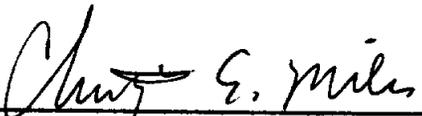
**March 6, 1997  
Washington, Pennsylvania**

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>CITY OF CANTON,</b>	)	<b>CASE NO. 96-MED-10-0930</b>
<b>Employer</b>	)	
	)	
<b>and</b>	)	
	)	
<b>FRATERNAL ORDER OF POLICE</b>	)	
<b>OHIO LABOR COUNCIL, INC.,</b>	)	
<b>LODGE NO. 2,</b>	)	
<b>Employee Organization</b>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Findings and Recommendations was sent by first class mail to Charles M. Choate, Staff Representative and Joseph Martuccio, Assistant Law Director, the representatives for the parties in the above referenced case, on the date set forth below.

  
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Christopher E. Miles, Esquire  
Fact Finder

Date: March 6, 1997