

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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In the Matter of the
Conciliation Between:

Before Arbitrator
James E. Rimmel

THE CITY OF PARMA, OHIO

Case No.: 02-MED-01-0039

And

Heard: 11 September 2003
Parma, Ohio

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION (PATROLMEN UNIT)

Post Hearing Briefs Rec'd:
23 September 2003

Issued: 3 November 2003

Appearances

For the City:

Jack L. Petronelli
Johnson, Angelo, Colaluca, LLC

For the OPBA:

S. Randall Weltman
Climaco/Lefkowitz/Peca/Wilcox/
& Garofoli Co., LPA

BACKGROUND

This matter comes on for conciliation pursuant to Ohio Revised Code Section 4117.14(D)(1), as well as Ohio Administrative Code Rule 4117-9-06(A), following rejection of a fact-finder's report by the City. It was in accord with Ohio Revised Code Section 4117.14(G)(3) that the parties proffered to this conciliator their respective pre-hearing statements wherein, among other things, they identified the various unresolved issues as well as summarized their respective positions concerning those issues. Accordingly, this matter was set down for hearing on Thursday, 11 September 2003, after several scheduled dates were canceled/postponed, said hearing being held at Parma City Hall offices.

While Fact-Finder Alan Miles Ruben (Ruben) had before him six issues that he proffered specific recommendations for, the parties agreed at hearing that only two remained

before this conciliator. Since the City challenges a number of conclusions/alleged omissions of Professor Ruben, his 28 February 2003 report is attached hereto and made apart hereof as Exhibit 1.

At hearing, both parties were permitted the opportunity to proffer testimony, exhibits and/or arguments concerning the two remaining unresolved issues, with both availing themselves to those opportunities. In making my recommendations concerning these remaining issues, I have been guided by the factors set forth in Ohio Revised Code Section 4117.14(G)(7)(a)-(f): to wit:

- (a) Past Collectively Bargain Agreements, if any, between the parties;
- (b) 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 the classification involved;
- (c) The interest in the 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding or other impasse resolution proceedings in the public service or private employment.

As to the first issue, i.e., wages, the analyses and recommendations of Professor Ruben are collected in his attached report at 5 through 24 inclusive. In sum, Professor Ruben concluded that the City was unable to proffer sufficiently cogent evidence in support of its contention it lacked the ability to pay that being sought by the Association. Professor Ruben thus recommended a 2% wage increase retroactive to 1 January 2002 with 4% adjustments, as proposed by the Association, for fiscal/calendar years 2003 and 2004. As indicated, these recommendations, along with the others in the 28 February 2003 report, were rejected by Parma City Council, citing an inability to pay.

CITY ARGUMENT/FINAL OFFER

Turning first to the effect of the Fact-Finder's Report, the City contends the Conciliator is not statutorily or otherwise bound to follow in lock-step fashion the recommendations of a Fact-Finder. To the contrary, it contends Conciliators are obliged to consider all proffered to them, including the Fact-Finder's Report, in determining which of proffered final offers to adopt. As for the citations of the OPBA, the City contends a close review of those cases indicates even where Conciliators have taken a narrow view of their role, it does not simply involve a rubber stamped process. It contends, moreover, in the cited cases, those Conciliators have stated that a Conciliator can overturn a Fact-Finder's Report and Recommendations where there is clear error shown on the part of the Fact-Finder.

The City argues also not all Conciliators have adopted the more narrow view in arriving at their conclusions. It notes the Fact-Finder in this case, Allan Miles Ruben, espoused a different view in a previous conciliation. It notes that in his Conciliation Award in the matter of *The City of Mentor and the Ohio Patrolmen's Benevolent Association*, October 25, 1999, Professor Ruben adopted a more expanded role for the Conciliator in Ohio's collective bargaining process. It notes Professor Ruben stated:

Fact-finders are trained, skilled and experienced neutrals, typically selected by, or mutually acceptable to the parties in whose impartiality the parties have confidence. They reach their Findings and Recommendations after careful evaluation of the respective positions of the parties and the available data, taking into account all relevant factors.

The notion is that the Fact-Finder thus stands somewhat in the position of a judge in a non-jury trial, and the Conciliator as an appellate tribunal. Put somewhat differently, there is a rebuttable presumption that the Fact-Finder's Recommendations are correct, but the presumption may be rebutted by showing that relevant circumstances have materially changed since his Report was issued, that significant evidence was not available or considered by the Fact-Finder, that the data relied upon was flawed or otherwise misinterpreted by the Fact-Finder or that some other similar fundamental oversight deprived the Fact-Finder's Recommendations of their presumptive validity.

There is no escaping the fact that the Recommendation of a Fact-Finder on a particular issue, while restrained by evidentiary considerations and the statutory factors, represents, in essence, an exercise in judgment. That judgment should take into account the impact of the Recommendation on the long term relationship between the parties, the effect on relationships and negotiations with other Bargaining Units, the impact upon the effective and efficient rendition of City services, the competing demands upon finite governmental resources for other services, and the recruitment and retention of quality personnel in light of wages and working conditions elsewhere.

There ought to be, at least on those relatively rare occasions, an opportunity for the Conciliator to set aside a Fact-Finder's Recommendation when the Conciliator is convinced that the judgment of the Fact-Finder has been improvidently exercised.

The City argues further this record cogently demonstrates that relevant circumstances have materially changed since Professor Ruben issued his report. It contends the City has introduced a number of circumstances that occurred after the report was issued on 28 February 2003. It contends these changed circumstances have had a serious adverse impact on the City's finances and thus its ability to pay that sought by the Association. In any event, the City contends I must weigh the entire record de novo before deciding the issues before me.

First, the City contends the testimony of City Auditor Dennis Kish (Kish) cogently demonstrated that it will be faced with substantial increases in Workers' Compensation premiums effective 1 July 2003. It emphasizes these increases will call for a 9% higher premium from the previous year. It emphasizes, moreover, that the Bureau of Workers' Compensation will no longer provide a premium dividend effective July of 2003. It notes the effect of the elimination of the premium dividend or rebate was substantiated by the unrebutted testimony of Kish. In any event, it emphasizes the amount of the dividend was approximately 50% of the premiums paid the City.

Secondly, the City emphasizes the Administration has been recently informed the rates for retiree health care are going to increase dramatically from previous years. Specifically, it

contends the cost under the retiree health care plan is increasing by \$469,838.16. This, according to the City, is the result of the Police and Fire Disability and Pension Fund shifting more of the cost of health care to retirees. In any event, it contends under the City's plan, the City picks up any difference in cost to the retiree directly resulting from their participation in this retirement health care plan.

Thirdly, the City contends Professor Ruben did not consider the effect of the reduction in local government revenue sharing. It notes, moreover, at the time of Professor Ruben's Report, the City had been advised that their projected local government revenues would be \$3,962,354.64. This, according to the City, proved otherwise, with the City being apprised on 24 July 2003 that this amount was going to be reduced to \$3,695,599.62 for an approximate reduction of \$266,755.00. The City contends taken together, that the loss of the Workers' Compensation dividend (\$200,000.00), the increase in expenses for retiree health care (\$469,838.00) and reduction in local government revenues (\$266,755.00), have resulted in a total of \$839,591.00 less funds for the City of Parma. These facts, according to the City, were not considered by Fact-Finder Ruben as they did not exist at the time of his Report and Recommendations.

Likewise, the City contends it was impacted even further by the recent failure of a Police levy renewal in May of 2003. It notes this levy generated 1.8 million dollars annually. It notes, moreover, the levy was defeated by a 2:1 margin and as of 31 December 2003, the City will no longer be collecting the 1.8 million dollars collected through the Police levy. It contends the failure of the Police levy was a result of numerous front-page articles appearing in the Cleveland Plain Dealer as a result of claimed investigatory reporting. These articles, according to the City, portrayed members of the Police Department gouging the City on sick leave, overtime, etc.

The City contends while the administration officials identified in the newspaper articles are no longer in office and the City has implemented regulations to address these alleged abuses, there is little likelihood that the levy will pass on 4 November 2003. This is so, according to the City, even though the administration is working hard to regain the trust of City residents.

As to other underlying problems leading to the levy defeat, the City contends OPBA has refused to change contract language to close certain loopholes so that the public may

regain some of the trust in the Police Department. To make matters worse, according to the City, police officers have engaged in a slowdown (or outright refusal) in their writing of traffic tickets. It emphasizes at hearing Police Officer Ken Gillissie admitted that officers were not writing tickets as a result of the various disputes with the City. He also, according to the City, admitted such was the reason the Parma POPAS program was cancelled. In other words, it contends the refusal by police officers to write traffic tickets has had an adverse impact on the City finances, i.e., reduced revenues. Put simply, it contends instead of trying to correct the financial situation, police officers have made it worse.

Furthermore, the City references Mayor Boldt's (Boldt) testimony relative to possible layoffs should the Association's wage proposals be adopted. It emphasizes Boldt testified that even without these wage increases, if the police levy fails again, there will be layoffs. It emphasizes further there has been a hiring freeze in effect for over two years as a result of limited financial resources.

Furthermore, the City argues Professor Ruben's Report was flawed and/or misinterpreted relevant data thus depriving his Recommendations of their presumed validity. Specifically, it contends the City never indicated a willingness to retroactively adjust wages to 1 January 2002 as contended by the Fact-Finder. It emphasizes the City's position has always been consistent on wages prior to this conciliation hearing, a position calling for no increase in wages in 2002 with 3% effective 1/1/03 and 3% effective 1/1/04. In any event, it contends there never was a retroactivity agreement to 1 January 2002. Secondly, the City claims while Professor Ruben correctly noted the Paramedic Levy brought in \$446,500 for calendar year 2002, he failed to mention or state this levy would be eliminated when an ambulance billing program replaced the levy. In any event, it contends the City will not receive any funds from the Paramedic Levy in 2003 and thereafter.

Thirdly, the City notes while Professor Ruben indicated its carryover at the end of 2002 was 2.4 million dollars, he failed to take note that \$750,000.00 was borrowed in December of 2002 to insure there would be sufficient funds to pay bills. It thus contends these loan monies should not have been included in the carryover. Without the loan, the carryover was only \$1,650,000.00 or 4.67% of the 2002 expenditures. In any event, it emphasizes the \$750,000.00 loan had to be repaid in 2003 and should not have been considered in the carryover. It was only a cushion, according to the City, to insure that there were sufficient

funds to pay expenses and the first payroll in 2003. Likewise, the City emphasizes Professor Ruben stated in his report that the health care costs for the City of Parma for 2002 was \$3,625,000.00. This, according to the City, was incorrect in that the actual cost for 2002 was \$4,044,208.61. It thus contends that it is obvious the documents relied upon by Professor Ruben were flawed or he simply misinterpreted the evidence presented by the City at the Fact-Finding Hearing. In any event, it contends his Report and Recommendations contain numerous errors as it relates to Parma's financial condition, errors he relied upon to recommend increases in excess of what the City had offered at the time.

Finally, on this issue, the City contends Professor Ruben incorrectly referenced the average base wage for a Parma Police Officer at \$50,495.00. This calculation, according to the City, failed to take into consideration a \$600 longevity stipend, \$1,200 clothing stipend and \$1,068 for firing range compensatory time thus equating to an average wage of \$53,382.00. In any event, it contends the City of Parma is already above the average total compensation for Police Officers. It thus contends the Fact-Finder's statement that the City of Parma is below the average is simply erroneous.

Accordingly, the City contends the Fact-Finder's Report should not be presumed correct based upon the number of material changes in circumstances occurring subsequent to the issuance of his award and because of numerous flaws and misinterpretations of financial data as noted in the testimony of Auditor Kish. It thus requests I sustain the City's final offer position on wages in this matter, i.e., 4% effective 1-1-03 and 4% effective 1-1-04..

OPBA ARGUMENT/FINAL OFFER

The Association contends the analysis and rationale articulated by Professor Ruben in his Fact-Finding Report and Recommendations were clearly sound and worthy of adoption. It thus contends its final offer of 2% effective 1 January 2003, 4% effective 2 January 2003 and 4% effective 1 January 2004 should be adopted by this Conciliator. As for the City's belated effort to undermine Professor Ruben's analysis and recommendations, the Association argues that a cursory review of such will undermine this effort.

Turning first to the alleged City loan, the Association emphasizes the testimony of Auditor Kish is unsubstantiated on this record. It emphasizes Kish agreed that Professor Ruben's Report correctly stated that the general fund's unencumbered balance as of 31

December 2002 was indeed 2.4 million dollars. It claims this carryover represented 6.5% of Parma General Fund revenues. It contends surpluses of this size, as a rule of thumb, generally indicate financial stability and prudent public finance administration. In any event, it contends that with or without the \$750,000, the 2002 General Fund carryover was approximately \$900,000 over that for the previous year. It emphasizes this surplus occurred despite a documented transfer of \$996,000 from the General Fund to the City's Medical Liability Fund. A like transfer from the capital funds to the general fund, according to the Association, would be available to the City should additional monies be needed to cover wage increases.

Secondly, it contends the City's own documentation clearly reflects medical expenditures from Parma's medical funds of 3.6 million dollars in 2002. This documentation, in fact, shows that for 2002, 3.6 million was spent for medical with an additional \$434,851 being spent on other related health care. In any event, it contends the City's exhibit does not have anything to do with Parma's 2002 year-end general fund balance. It contends if Kish is correct in that Professor Ruben mistakenly arrived at the amount of the 2002 health care expenditures, it was only in the amount of \$435,000. The result of such mistake, according to the Association, would be that at 2002 year-end the medical fund would have had a surplus of \$337,000 instead of \$772,000. Obviously, that surplus was unrelated to the surplus of the City's General Fund. It argues, moreover, neither Professor Ruben nor Dr. Byrne, a Conciliator in an earlier matter involving Parma, failed to note the import of the health care concessions in their reports. These concessions, according to the Association, will yield significant savings for the City. Both parties, according to the Association, have touted the benefits to the City of the new second tier coverage program and its related cost savings. It claims the new formula under this second tier concept will result in substantial savings for Parma.

The Association further contends that Kish offered no substantiation for his claim that Professor Ruben misstated the bargaining unit's 2001 total compensation at \$51,095 instead of something that he believed approximated \$53,000. It emphasizes Kish brought no documentary evidence backing his claim and upon cross-examination and questioning by the Conciliator, he produced nothing further. It emphasizes Kish offered no answers in regard to whether compensatory time can be taken if overtime is required so as to allow for such. Nor,

according to the Association, could he, as Auditor, state, even ballpark, how many bargaining unit members take this benefit in time rather than cash. In any event, it contends even if there was merit to Kish's claim about the pay package, that does not change Professor Ruben's conclusion that the 2002 average wage increase [for Cuyahoga County] was 4.11%. Further, according to the Association, nothing changes the fact that Parma's final offer on wages reduces the bargaining unit's total package ranking much more severely than the OPBA's final wage offer.

Turning to the claimed elimination of the Paramedic levy, the Association contends Kish vaguely suggested that Professor Ruben erred in not factoring in the City's discontinuation of its "Paramedic levy." What Kish failed to reveal, however, according to the Association, is the Paramedic levy which yielded \$465,000 for 2002 was replaced with "a recently imposed ambulance fee" which is projected to yield \$1,200,000. It contends none of Kish's claims make a case that Professor Ruben erred in either his analyses or recommendations. It thus contends I am obliged, under previously cited case precedent, to grant OPBA's final offer in this matter.

Turning to the City's alleged new events and circumstances, the Association contends such are miniscule at best. It contends Kish acknowledged at hearing any budgetary impact from cutbacks in funding to local governments would be in 2004, and this impact would be realized by all municipalities. It contends Kish conceded this anticipated loss in revenue represents a small percentage in regard to that particular revenue source and a miniscule percentage in regard to all of the City's revenue sources. As for the claimed increases in Retiree Reimbursement Health Care costs, the Association contends while supporting documentation is lacking and Kish could not discuss the Purchasing/Personnel Director's claimed savings, he is speculating as to what impact these changes will actually have upon the City. In any event, it contends Kish's testimony regarding this issue simply was not cogent or otherwise believable.

As for the professed Workers' Compensation increase, the Association notes all employers were advised that their "one-time premium dividend" will not be given in July 2003 and their 2004 rates will go up by an average of nine percent (9%). It emphasizes the BWC stated in its communiqué that this change would be probably only a temporary interruption to its 1996/2002 practice of returning fund surpluses. In any event, it contends as

with the retiree medical fund issue, Kish never provided the total amounts of money involved here, how those amounts relate to previous years, and/or what impact the suggested changes would have on the applicable accounts. Nor did he, according to the Association, testify as to whether these changes would affect the City's many other revenue sources and Parma's expected surpluses in its General and Capital Funds.

As for Kish's claim that the May 2003 failure of the police levy should be a major consideration, the Association contends such is simply without merit. It emphasizes it cannot be rightly assumed the levy will be voted down on 4 November 2003. It emphasizes the Mayor's testimony that the May election result was a total surprise to him and his administration. In any event, it contends Kish could not state with any knowledge or authority that the levy will, in fact, fail in November. All he and the mayor could say on the issue, according to the Association, was what other unnamed Parma politicians had told them. It is unbelievable, according to the Association, that Kish and Boldt, two (2) veteran Parma politicians, would not have commissioned a poll or would not have knowledge of others doing so, in order to properly gauge voter sentiment. In any event, it notes they both confirmed that, unlike in May, "the City" will visibly and monetarily support a levy campaign that will involve the City's new Safety Director and Police Chief. It emphasizes there is place a new Police Chief and Safety Director who have replaced controversial and outspoken counterparts, counterparts who were in charge during the period of The Plain Dealer's sensationalized expose of alleged overtime and sick leave "abuses". It contends these new administrators have worked hard to improve the image of the Police Department and its relationship with the public.

Furthermore, the Association contends that subsequent to The Plain Dealer articles, the new police administration have instituted new rules and procedures governing sick leave and overtime accountability. It contends, moreover, there have been several instances of positive publicity generated by exemplary police service, the most recent being the Department's reaction to the August blackout. In any event, it emphasizes Dr. Byrne noted in his report "...there is no reason to assume that the police levy will fail when it is again placed on the ballot." Speculation regarding the passage of a police levy does not reduce or transform the reasonableness of the OPBA's final offer. Nor does it change the citywide impact of the decision of either Dr. Byrne or the instant Conciliator. In any event, the

Association emphasizes the City's long, uninterrupted history of pattern bargaining in regard to the City's nine (9) unions was corroborated by the Mayor. As such, it is reasonable to assume the results of this proceeding will set the pattern for all City employees. Based on this fact, the police levy should not be a factor in the Conciliator's analysis.

The Association contends that the status of the police levy issue is even less important when other new, actual circumstances and events are considered. It emphasizes that given certain changes in the City's income tax ordinance the City has received significant increases in revenue in 2003. The actual receipts so far in 2003 indicate, according to the Association, an increase of approximately twenty-three percent (23%) above 2002 receipts. This boost in City revenue is not, according to the Association, surprising given the improvement in the national economy and the continued viability of Parma's local economy. It emphasizes Kish's testimony that Parma's largest employers continue to operate and operate profitably. Likewise, it contends Parma's residents continue to enjoy an unemployment rate far below both the national and local levels. In any event, it contends Kish agreed that as 2003 proceeds and 2004 approaches, there is nothing on the horizon indicating an erosion in Parma's healthy economy/tax base.

DISCUSSION AND FINDINGS

Now, there can be little question that the various news articles that ran in the Cleveland Plain Dealer in the spring of this year described alleged conduct by some Parma police officers, which, if true, raise serious issues concerning their trustworthiness, honesty, etc. And, while I recognize the members of the "Fourth Estate" are not above employing terms which overly state or otherwise distort the truth of a matter discussed, one cannot simply dismiss the potential effect the described practices have had upon this City's financial picture and credibility with local residents/voters. In any event, what suggests to me that there may be some validity to that asserted in the various articles is the admission at hearing that some officers were derelict in their duties and retaliated against various City Administration decisions. In fact, there is no dispute of record concerning the City's claim that the POPAS program was cancelled due solely to the actions of police officers.

Put simply, if this were an equity proceeding, I would be inclined to summarily dismiss the Association's prayed for wage increases for they would be at bar without clean hands. Local Police Officers clearly engaged in self-help activities that arguably involved insubordination and dereliction of duty. This is not, however, such a proceeding, for the factors which control have been established by statute and administrative rule. It is these factors I am obliged to apply in determining which of the two final offers to adopt. There is simply no discretion allowed with respect to that proffered by the parties.

At hearing and in its post-hearing brief, the Association not only challenged/discounted the City's claimed financial straits, etc., it argued that there is no bases under statute/rule for finding an inability to pay. In support, the Association cited a conciliation decision of Professor Harry Graham in Case No.: 91-MED-10-1176. A review of Doctor Graham's Award, however, only reflects a finding that:"[i]t would be unusual if inability to pay were the sole and controlling standard. That that occur is precisely the position of the City." In other words, Doctor Graham found that none of the afore-quoted criteria should be generally viewed in a vacuum. His use of the term "unusual" does suggest the good Doctor left the door ever so slightly ajar for just such a possibility given circumstances different than those before him in the East Cleveland matter. In any event, it appears Doctor Graham did not find, as argued by the Association, an absolute prohibition to this type of argument/finding.

In the matter before me, the City has opted, with minor exceptions, to rest solely on its claim of a financial lack of ability to pay the prayed for increases proposed by the Association. In doing so, it is the City's obligation to bear the burden of proof on this point. And, it is under this burden I find the City has fallen short and this is so even if I were to demur to all that testified to by Auditor Kish concerning the record before Professor Ruben and his interpretation thereof. In any event, given the conclusion which follows, I need not determine whether Professor Ruben was mistaken in his findings or may have decided differently had he known of various subsequent occurrences, such as the police levy failure.

Now, unlike the Association, I belie Parma officials are truly faced with several potentially serious revenue/expense problems, including a few of their own making. For example, when the City simply extended the wage recommendations of Fact-Finder Anna DuVal Smith under a re-opener matter, it did so without much debate or effort to change

apparent long-standing practice concerning employee wage increases in Parma. And, as the Mayor noted, in doing so, the Administration and Council discussed the possibility of offsetting resulting cost increases with layoffs, layoffs that were never forthcoming. It does appear, however, that the City's administration has had in place over the last several years a hiring freeze where most attritional vacancies have not been filled. In any event, in advancing an ability to pay argument, the City is obliged to proffer evidence concerning "the effect of the [wage] adjustments on the normal standard of public service." No such evidence, leastwise cogent, is of record here.

It is true the Mayor candidly testified if the Association wage package were adopted by me, a package he again suggested that would have a ripple effect for all other bargaining and non-bargaining unit personnel, there might have to be layoffs. A "might," however, does not rise to the level of evidence envisioned by those who crafted the afore-quoted phrase concerning the effect upon City services. Stated differently, layoffs per se do not necessarily translate into a negative effect on "public service." In any event, this record indicates the City's capital fund has been enhanced as a result of recent changes in the City's income tax ordinance. In noting this fact, I do not mean to suggest I have been pursued by the Association argument that the City is free to transfer funds out of and into the general fund. The fact is, ORC Section 5705.14 indicates otherwise. It is, however, fair to conclude on this record that it has not been shown the City's capital efforts will be adversely impacted by prayed for wage adjustments. Likewise, it has not been cogently shown that the City will not be able to provide, even with fewer people, "the normal standard of public service" for Parma residents if the Association proposals are adopted.

Since the Association evidence concerning the other cited code/rule factors is the only evidence of record on those matters, there is no real need to discuss the relevance and import of these data. Suffice it to say, the award to follow is primarily premised upon the City's failure to carry its burden under the ability to pay factor. In doing so, I am truly burdened in having to reward certain officers who may deserve a number of things, but a wage increase is not one of them.

AWARD

The proposal of the Association on wages is adopted and awarded.

ARTICLE XXIX. SECTION 29.05 – FIREARMS PROFICIENCY PRACTICE ALLOWANCE.

In discussing this issue, Fact-Finder Ruben opted to “not recommend the adoption of the City’s proposal to eliminate the firearm proficiency allowance.” He concluded, among other things, that this negotiated benefit was the result of trade offs by the Association and its agreement to reduce the hours from 60 to 44 resulted from recognition that officer travel to practice sites was no longer necessary with the opening of the Justice Center.

CITY ARGUMENT/FINAL OFFER

The City proffers the elimination of this provision/benefit contending it is no longer necessary given the opening of a new Justice Center. It claims this benefit was originally established by ordinance, an ordinance having a sunset provision. In any event, it contends there simply is no cogent reason for the City to continue paying this stipend. It thus request it be eliminated from the parties labor agreement.

ASSOCIATION ARGUMENT/FINAL OFFER

Stated simply, the Association seeks to maintain the status quo contending that which currently paid is provided by contract, a contract involving give and take bargaining. In this regard, it notes the following chronology:

- a) prior to the 96 Agreement, the bargaining unit’s members received ten (10) hours of comp time for shooting proficiency;
- b) the foregoing benefit was incorporated into the 96 Agreement (29.05 at page 21);
- c) the City ‘amended’ the 96 Agreement, through Ordinance 145-97 by increasing the benefit to sixty (60) hours of comp time but only ‘until the City is able to

- provide . . . a shooting range or until the termination of the [96 Agreement] whichever comes first.’
- d) The 96 Agreement terminated on March 31, 2000;
 - e) the City provided a shooting range in its new Justice Center as early as June 2000;
 - f) both (d) and (e) above occurred prior to the parties entering into the Agreement on November 20, 2000;
 - g) in the Agreement, the parties agreed to continue the sixty (60) hours for 2000 and 2001 and to provide only forth-four (44) hours for years 2002 and beyond.

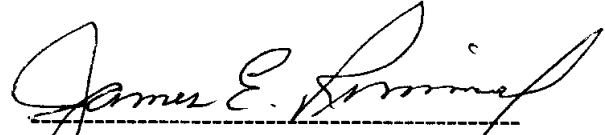
DISCUSSION AND FINDINGS

While it is true the existence of an ordinance sunset provision is of little import given the parties decision to incorporate this benefit into their agreement, the cited chronology, and related testimony, demonstrate the extent of this benefit was primarily rooted in the need for officer to travel in order to practice for their minimum firearms qualification testing. It is noteworthy that the parties reduced this benefit from 60 to 44 hours during their last round of bargaining, bargaining that occurred after the Justice Center opened in June 2000.

The City obviously believes there is no longer a need for this benefit, a benefit it contends costs approximately \$190,000 annually. In any event, while Professor Ruben found this benefit flowed from “trade-off of some of the Association’s other economic demands”, neither he nor the Association has provided any cogent support for this averment. In any event, with the opening of the Justice Center the Association bears the burden of cogently demonstrating why this benefit should be continued. In other words, the Association is obliged to demonstrate the needfulness of this benefit beyond the provided for stipend. This it has not done on this record. Additionally, it is relevant that the City’s Police Gold Unit is and has not been provided this benefit, a fact not argued to and/or considered by Professor Ruben.

AWARD

The City proposal calling for the elimination of Article XXIX, Section 29.5 is adopted and awarded.



James E. Rimmel

JAMES E. RIMMEL, CONCILIATOR