STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF CONCILIATION BETWEEN:

CASE NO. 03-MED-05-0574

CANTON POLICE PATROLMEN'S ASSOCIATION (CPPA)

"Employee Organization"

and

THE CITY OF CANTON

"Employer"

REPORT AND AWARD OF CONCILIATOR

DATE OF ORDER AND DATE OF MAILING: DECEMBER 10, 2003

APPEARANCES:

Representative on Behalf of Employee Organization:

Larry S. Pollak, Esq.
The Barrister Building
338 South High Street
P.O. Box 09681
Columbus, Ohio 43209
Telephone No.: (614) 222-0512
Telecopier No.: (614) 222-0044

Representative on Behalf of Employer:

Kevin L'Hammedieu, Esq.
Assistant Law Director
Canton Law Department
Canton City Hall - 7th Floor
218 Cleveland Avenue, S.W.
P.O. Box 24218
Canton, Ohio 44701-4218
Telephone No.: (330) 489-3251
Telecopier No.: (330) 489-3374

CONCILIATOR:
DONALD N. JAFFE, ESQ.
Terminal Tower
50 Public Square, Suite 1410
Cleveland, Ohio 44113-2204
Telephone No.: (216) 241-3737
Telecopier No.: (216) 241-0921

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I. INTRODUCTION.

These matters come before the Conciliator as a result of a referral on October 16, 2003 by the State Employment Relations Board ("SERB") pertaining to conciliation protocol between the Canton Police Patrolmen's Association on behalf of approximately 124 non-ranking police officers and the City of Canton, which is the principal city and county seat in Stark County.

The Conciliator has taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(G)(7)(a) through (f) and SERB Regulations 4117-9-06(H)(1) though (6). In addition, the Conciliator has reviewed and taken into consideration the Report and Recommendations by Fact-Finder James E. Rimmel which was filed with SERB on September 19, 2003. (See Revised Code §4117.14(G)(6).)

Revised Code §4117.14(G)(7) provides: "After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue by issue basis, from between each of the parties final settlement offers . . .." The Conciliator thus emphasizes that he is not at liberty to fashion his own remedy or his perception of what constitutes an equitable public sector settlement, but, rather, is required to accept or reject each of the parties' final offers, on an issue by issue basis, taking into consideration the statutory and administrative guidelines as referenced above, the parties' position statements, the testimony and the evidence presented.

As the Supreme Court cogently stated in *Fairborn Professional Fire Fighters Assn., IAFF Local 1235 v. Fairborn* (2000), 90 Ohio St.3d 170, 171-172: "Thus, the statute [R.C. 4117.14(G)(7)] requires that the parties submit in writing their final offers on disputed bargaining issues and that the arbitrator choose between those two offers in determining a resolution. There is

no splitting the baby on specific issues--the arbitrator must choose from one final offer or the other on each issue."

In addition to the representatives identified on the face sheet of this Report, the following were in attendance or testified:

On Behalf of the Association:

William Adams, Patrolman, City of Canton and CPPA Vice President
John C. Miller, Jr., Police Officer, City of Canton and CPPA President

On Behalf of the City of Canton:

Tad Ellsworth, Director of Management and Budget, City of Canton
Michael L. Miller, Director of Public Service, City of Canton

The Conciliator has received from the parties post-hearing briefs and reviewed a number of exhibits and documents which have been taken into consideration in reaching the award set forth herein. Included among those exhibits are the Collective Bargaining Agreement entered into between the CPPA and the City of Canton for the period July 1, 2002 through June 30, 2003. The hearing in the instant matters was held on November 24, 2003, at the City of Canton City Hall, 218 Cleveland Avenue, S.W., Canton, Ohio.

The Conciliator is acutely aware of and particularly sensitive to the high responsibility placed upon him and the eventual effect of his decision in light of the caveat mentioned by the Supreme Court in *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 192, Syllabus No. 2, wherein the Court stated: "Once it is determined that the arbitrator's award draws its essence from the collective bargaining agreement and is not unlawful, arbitrary or capricious, a reviewing court's inquiry for purposes of vacating an arbitrator's award pursuant to R.C. 2711.10(D)

is at an end."[1] See, also, *Union Township Bd. of Trustees v. Fraternal Order of Police, Ohio Valley Lodge No. 112*, 146 Ohio App.3d 456, 2001-Ohio-8674; *Johnson v. Ohio Patrolmen's Benevolent Assn.*, 2003-Ohio-4597, ¶14.

At the commencement of the hearing on November 24, 2003, the Association raised an objection to the Conciliator considering the City's Position Statement, asserting that the City had not fully complied with Ohio Revised Code §4117.14(G)(3) and SERB Reg. 4117-9-06(E) pertaining to the submission of position statements within five days prior to the hearing.

Revised Code §4117.14(G)(3) provides in pertinent part:

> "Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and the rationale for that position."

However, SERB Regulation 4117-9-06(E) states in pertinent part:

> "Upon notice of the conciliator's appointment, each party shall submit to the conciliator and serve on the other party a written statement. A failure to submit such a written statement to the conciliator and the other party prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing."

For purposes of this case, it is not necessary for the Conciliator to resolve the apparent differences in language, although the general rule is that statutory language trumps regulatory language where there is a conflict. Without setting forth in detail the discussion and positions that ensued, suffice to indicate that, ultimately, the Association withdrew its objections and the hearing proceeded.

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[1]The Conciliator also recognizes that Revised Code §4117.14(H) provides in pertinent part: "All final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117 of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employees as provided in Chapter 2711 of the Revised Code." Chapter 2711 is the Ohio Arbitration Act.

II. EVIDENTIARY EFFECT OF FACT FINDER'S REPORT

As previously noted, the Fact-Finder's Report and Recommendation in this case was filed with SERB on September 19, 2003. Under Revised Code §4117.14(D) and Ohio Administrative Code 4117-9-06(E)(4), the conciliation process addresses the unresolved issues that are asserted by the parties. In *City of Ashland and Ohio Patrolmen's Benevolent Association*, SERB Case Nos. 91-MED-10-1183 and 91-MED-10-1184, and the conciliator's decision in the matter of *City of Wooster and the Ohio Patrolmen's Benevolent Association*, SERB Case Nos. 98-MED-10-0938 and 98-MED-10-0939, the question as to the evidentiary effect to be given to the fact-finder's report was addressed. In the *City of Ashland* conciliation decision, the conciliator stated at page 4 of his decision:

> "It is clear to both sides that proceeding to conciliation has left the finalization of the unresolved terms to the undersigned [conciliator] in accordance with the precedential law that has been developed and followed in Ohio in recent years. That was formulated during the early period of proceedings under this law by Professor John Drotning, who, in a conciliation award, first espoused the need to show clear error on the part of a Fact-finder before overturning in a conciliation award terms contained in a duly arrived at Report and Recommendation. That is the guideline employed herein."

In the *City of Wooster* case, the conciliator stated at pages 4-5 of his award:

> "My immediate objective is to review the record for evidence that the fact-finder either made errors or omitted critical data in reaching his recommendations.
>
> * * *
>
> The required burden of proof to show inherent error has not been met and since the OPBA position accepts the total measure of the recommendation, I hereby grant it."

The clearly erroneous standard is one followed in the federal judicial system under Rule 52(a), Fed. R. Civ. P., which states: "Findings of fact, whether based on oral or documentary

evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." This provision is similarly followed in bankruptcy proceedings under Bankr. R. 8013. As noted in *United States v. Gypsum Co.* (1948), 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L.Ed. 746, 766, a finding is clearly erroneous when, although there is evidence to support it, the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been made. See, also, *In re Arnold*, 908 F.2d 52 (CA6, 1990). When there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous. *Anderson v. City of Bessemer City, N.C.* (1985), 470 U.S. 564, 574. If the fact-finder's choice is not clearly erroneous, then a reviewing court must accept the fact-finder's determination.

Significantly, the Rule 52 standard in the federal judiciary is not found within Rule 52 of the Ohio Rules of Civil Procedure although, generally, the Ohio Rules are patterned after and mirror the federal standard.

In the conciliation award of *Cuyahoga County Sheriffs Department and Ohio Patrolmen's Benevolent Association*, SERB Case No. 97-MED-05-0605, the conciliator departed from the clear error standard and stated that the more appropriate test was that deference should be given to the fact-finder's report. As the conciliator noted at page 6 of her award:

> "The Ohio Revised Code and the Administrative Rules of the State Employment Relations Board are silent as to the relationship between a fact-finder's determination and a subsequent conciliation proceeding. Nor has SERB taken an official position on the matter: conciliators are permitted to make their own determination of the issue.
>
> It is this Conciliator's view that deference should be given and that a fact-finder's recommendation should not be overturned lightly. The primary purpose of fact-finding is for the neutral to reach a fair and proper resolution of the matter(s) in

dispute, which will hopefully be acceptable to both sides based on the evidence presented. Giving deference would encourage such acceptance."

Revised Code §4117.14(G)(6) provides that SERB "shall submit for inclusion in the record and for consideration by the conciliator the written report and recommendation of the fact-finders." The Code and the corresponding SERB regulation under Administrative Code 4117-9-06 set forth a number of factors to be considered by the conciliator and do not distinguish between the fact-finder's report and other evidence taken by the conciliator. Although the fact-finder's report may be another piece of evidentiary material submitted to the conciliator, it cannot be gainsaid that it does represent an evaluation by another neutral.

It is also significant to note that under §4117.(14)(H), a conciliator's decision is subject to review by the common pleas court in accordance with Revised Code Chapter 2711 which is the state arbitration statute. Section 2711.10 sets forth the bases on which a court may vacate an arbitration award. These same standards are applicable when reviewing a decision by a conciliator. A conciliator's decision must therefore be issued cautiously and with forethought. In *Findlay City School Distr. Bd. of Edn. v. Findlay Edn. Assoc., supra*, the Ohio Supreme Court noted that once an arbitrator issues an award, such award is presumed to be valid unless it is determined to be unlawful, arbitrary or capricious. See, also, *Brumm v. McDonald & Co. Securities, Inc.* (1992), 78 Ohio App.3d 96, 103: "Generally, an arbitration award carries a presumption of validity."

In *United States v. Haggar Apparel Co.*, ___ U.S. ___ (decided April 21, 1999), vacating and remanding, 127 F.3d 1460 (CA, Fed. Cir.), the Supreme Court reiterated the general principle that if an administrative agency makes a reasonable interpretation of a regulation pursuant to statutory provision, the administrative action must be given judicial deference.

This Conciliator is of the view that a clearly erroneous test is an inappropriate standard by which a fact-finder's report should be reviewed or be entitled. Rather, in the absence of specific provisions dealing with the evidentiary weight to be accorded a fact-finder's report by either the General Assembly or by a SERB regulation, a fact-finder's report, at best, is entitled to deference when weighing the report along with all other evidentiary and testimonial material submitted.

III. ISSUES.

There were three issues presented to and addressed by the Fact-Finder, which were the same three issues presented to the Conciliator. In reverse order of significance, those three unresolved issues pertained to: (1) Article 80 - Duration of Contract; (2) Article 61 - Health and Life Insurance Coverage; and (3) Article 75 - Base Salary of Patrolmen.

IV. RECOMMENDATIONS.

Article 80 - Duration of Contract

The Conciliator finds that during the conciliation hearing, the parties had mutually agreed and, therefore, the Conciliator recommends that Article 80 be amended to read as follows:

> "The parties' Collective Bargaining Agreement shall be effective from July 1, 2003 through June 30, 2004, inclusive."

Article 61 - Health and Life Insurance Coverage

Here, also, the Conciliator notes that after some discussion during the conciliation hearing, the parties have mutually agreed and the Conciliator so recommends that Article 61 of the Collective Bargaining Agreement be amended to provide as follows:

> "Section 1.
>
> The City shall maintain health and life insurance coverage as existed under the parties' prior agreement for a period of eleven months, i.e., July 1, 2003 through May 31, 2004.

Section 2.

The City shall maintain health care and life insurance coverage in effect on June 1, 2004. Health care coverage includes: optical; dental; and a comprehensive medical plan subject to an annual deductible of One Hundred Fifty Dollars ($150) per person, Two Hundred Fifty Dollars ($250) per family, which is applied before medical benefits are paid to in-network or out-of-network providers.

After payment of the deductible, the plan will pay 80% of covered medical expenses to in-network providers. In-network co-insurance is subject to an annual out-of-pocket maximum of $1,000 per person/$2,000 per family. Once this maximum is met, the plan begins to pay covered medical expenses at 100%.

After payment of the deductible, the plan will pay 70% of usual, customary and reasonable covered medical expenses to out-of-network providers. Out-of-network co-insurance is subject to an annual out-of-pocket maximum of $2,000 per person/$4,000 per family. Once this maximum is met, the plan begins to pay 100% of usual, customary and reasonable covered medical expenses. Any medical expenses that exceed usual, customary and reasonable standards will not be covered by the plan.

Life-threatening emergency room visits will be covered at 100% after employee pays the $50 per visit co-payment.

For any employee whose spouse has other health coverage available through an employer, the City plan shall pay benefits secondary to the spouse's group coverage. All members must complete any documents required by the City.

Current life insurance coverage shall provide a minimum of Twenty Thousand Dollars ($20,000) term life insurance for all police officers.

Section 3.

The City agrees to maintain the same level of benefits as set forth above if it restructures health and life insurance during the term of this Collective Bargaining Agreement. The City retains the right to restructure health care and life insurance during the term of this contract as to cost containment procedures such as pre-hospital admission certification, mandatory second opinions, etc., but may not institute any change of coverage without mutual agreement of the parties herein.

Section 4.

To offset the increased cost of health and life insurance coverage set forth above, each full-time employee covered under the plan shall have deducted from each pay $22.33, commencing with the first pay issued after June 1, 2004.

An exhibit attached to the contract is incorporated herein explaining the changes further."

Article 75 - Base Salary of Patrolmen

As is so often the case, this single issue was the most contentious between the parties and, indeed, from all appearances, this issue was the "straw that broke the camel's back" in ultimately causing a rejection of a potential agreement which arose during the course of the parties' contract negotiations and prior to the commencement of fact-finding before Fact-Finder Rimmel.

The CPPA's final offer in conciliation was a 3.5% raise retroactive to July 1, 2003, which would be operative for the period July 1, 2003 to June 30, 2004. The CPPA sets forth a number of arguments to support its proposal.

The CPPA initially noted that the wage scale has been in effect since July 2001. Thus, there was a base salary wage freeze for the prior collective bargaining term of July 1, 2002 to June 30, 2003. The CPPA estimates that such a retroactive pay raise would average out to approximately $1,400 per patrolman, with a projected marginal cost to the City of approximately $100,000. The CPPA points out that the current wage scale for a patrolman, top level, is $41,216. The parties generally concede that a city considered most comparable to that of the City of Canton is the City of Youngstown, both on the basis of population (Canton being 80,000 and Youngstown being 82,000), geographical proximity, and the fact that both have been impacted by an economic downturn and having suffered the consequences of the 1970s in the downturn relating to steel manufacturing and related industries. The top level for a Youngstown patrolman is $44,896. (SERB

Clearinghouse, Benchmark Report dated April 3, 2003, Union Exhibit 1) The CPPA also contended that based on SERB's Benchmark Report, Canton ranks as 16th in compensation to its patrolmen and that, if a 3.5% raise were granted, its ranking would simply move one notch upward to 15th.

The Association also argues that the economic health of the City of Canton is improving as opposed to what was being experienced a couple years ago in that Canton's jobless rate has declined from 10.5% in July 2003 to 9.3% as of August 2003. (Estimated labor force: 39,900 of which 36,100 are employed and 3,700 are unemployed.) (Ohio Department of Job and Family Service, Bureau of Labor Market Information, Union Exhibit 1)

The CPPA also argues that now is not a time to be "stingy" nor myopic in terms of failing to retain the most efficient and best safety force in that failing to do so would simply invite more or greater perpetration of crime, a problem which they assert Canton already faces. In cities having a population of 75,000 to 100,000, it is estimated that the City of Canton ranks 8th as the most dangerous. (Union Exhibit 1)

The Union also asserts that based on the City's records, in the capital improvement fund, there is a carryover balance of $1.1 million available for appropriation, estimated as of November 20, 2003. (Union Exhibit 4) The CPPA has suggested that even utilizing a small portion of that $1.1 million to be applied for police officers' salaries would be but a "small dent" in the overall funds in that account, let alone in the City's overall budget.

The CPPA also argues that the City, as a self-insurer for its healthcare program, has experienced a decrease in claims. In support, the CPPA submitted Union Exhibit 8, a report from the City which stated, in pertinent part: "The overall total dollar figure for Jan.-Oct. 2003 *$4,625,142.62 for paid claims has decreased $-928,479.90 equaling - 16.72% from 2002 and

increased $14,621.27 equaling 0.32% from 2001." The CPPA further argues that the City maintains a reserve fund for workers' compensation liability claims of $5 million and that monies in this fund could be made available to allow for salary adjustments to the safety forces.

The City has argued for a continuation of the wage freeze that existed in the previous one year Collective Bargaining Agreement. The City points to a number of factors which they contend justify this conclusion. First, they argue that the City has suffered a declining population of approximately 110,000 in 1970 to approximately 80,000 today. Unemployment, on the other hand, has climbed from approximately 6% in 2001 to 9.3% as of September, 2003. During the middle and late 1990s, the City, like many other local governments, was experiencing some economic success, wherein the City's revenues were exceeding its expenditures. However, beginning in 1999 and continuing to the present, the City has been experiencing operating deficits. For 2003, the City is projected to have a deficit of $1 million and a deficit of $1.2 million for 2004.

Most of the City's revenues come from the City's income tax (2%). For the year 2002, the City's income tax yielded approximately 61% of total revenues for the City and that approximately 86% of general fund expenditures go for wages and fringe benefits. Real estate property tax is not a major component by comparison. For example, as reflected in City Exhibit 1, the City had real estate property tax of $1.724 million for 2001 as against $1.703 million for 2002, or a reduction of approximately $21,000. However, the City's income tax in 2001 was $28.197 million versus $27.757 million for 2002, or a reduction of $440,000, representing a 1.56% reduction. The City has also experienced a reduction in local government funds of approximately $500,000.

The City also indicated (City Exhibit 4) that for comparative purposes, during the period January 1 through October 30, 2002, it had general operating funds from the income tax of $23.443

million versus $23.343 million for the same period in 2003. Total revenues for the 10 month period of 2002 was $33.793 million versus $33.533 million for 2003. Thus, for the first 10 months of 2003, the City is projecting a difference of 0.77% or a dollar deficit of approximately $260,000.

Testimony also indicated that the other unions in the City (Fraternal Order of Police (representing officers), fire fighters, clerical union and service union) had agreed to a wage freeze and an agreement to commence paying a portion of the healthcare premium effective January 1, 2004, whereas, in the instant case, as indicated *supra*, the parties have agreed that CPPA's payment of health premium does not commence until June 1, 2004. Further, the City has indicated that it has what was referred to as a "*de facto* hiring freeze."

The Conciliator could go on and on with a continuing elaboration of various factual aspects which the City contends supports its rather gloomy economic picture, which would probably do nothing but illuminate the obvious that the City certainly is operating in a very restrictive financial condition.

The Fact-Finder recommended that the base salary schedule that existed under Article 75, effective July 1, 2002, was to be continued through June 30, 2004. In pertinent part, the Fact-Finder stated (Report, page 6):

> "The fact remains the financial data proffered by the City . . . suffice to conclude a wage adjustment, be it general or parity, simply cannot be accorded in this instance. In so holding, I am quite mindful that such a recommendation envisions a potential second year of no increases for Association members, said members having agreed to a wage freeze under the terms of their prior Collective Bargaining Agreement. I am also mindful that the City candidly acknowledged at hearing that parity would be appropriate under other circumstances where the ability to pay was not an issue."

One of the major arguments asserted by the Association was that the City has approximately $1.1 million in its capital improvement fund and has the ability to use those funds to finance any

proposed wage adjustment. The City, on the other hand, asserts in its Post-Hearing Brief, that Ohio law prohibits any transfer of capital improvements funds to the general fund. The City further relies upon a comment made by the Fact-Finder wherein he stated at page 5: "In fact, under O.C.R.C. §5705.14, it appears a city is not free to engage in such activity." [Transfer of funds from capital improvement account to general operating fund.] The Association, however, in its Post-Hearing Memorandum to the Conciliator, had contended that the issue was not whether the City was required to transfer the funds but, rather, that the City had the ability to do so.

With due respect to the arguments of the parties as well as the observation by the Fact-Finder, this Conciliator does not completely concur with either position, in that they are not entirely correct, but likewise, they are not entirely incorrect. Revised Code §5705.14 provides, in pertinent part:

> "No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:
>
> (A) The unexpended balance in a bond fund . . ..
>
> (B) The unexpended balance in any specific permanent improvement fund . . ..
>
> (C) The unexpended balance in the sinking fund or bond retirement fund of a subdivision . . ..
>
> (D) The unexpended balance in any special fund, other than an improvement fund."

Thus, the Conciliator does not read §5705.14 as constituting an absolute prohibition on a municipality's right to transfer funds from one account, a capital improvement fund, to another account, the general operating fund, however, the statutory restriction allows for the transfer only as to the "unexpended balance." Additionally, Revised Code §5705.15 and §5705.16 provide additional authority and procedure pertaining to the transfer of funds from one fund to another.

The Conciliator, however, need not specifically address the question of the availability of the capital improvement account of $1.1 million for two major reasons. First, there was no testimony or other evidence presented as to the availability of "unexpended balances." Secondly, based on the testimony of Service Director Miller, virtually all of the $1.1 million in the capital improvement fund has already been committed, although not necessarily disbursed. Thus, it is almost a moot issue for the Conciliator to ascertain the City's ability to utilize the $1.1 million. It is apparent to the Conciliator, without deciding so, that if, in fact, the $1.1 million had represented "unexpended balance in the capital improvement account," the City's legislature would have the authority to utilize the "unexpended balance" for general operating fund purposes. This Conciliator does not read §5705.14 as constituting an absolute prohibition of the utilization of any monies in a capital improvement account to be used for general operating fund purposes. More information is clearly required to reach such a conclusion.

The Association also argued that the City had, as potential available funds, the utilization of approximately $5 million which the City is holding in its workers' compensation reserve account pertaining to potential claims. In that regard, earlier this year, the City had retained the services of a workers' compensation consultant to determine the City's retrospective liability for the 10 year period 1993 through 2002, as regards the maintenance of a reserve addressing those potential claims. The actuarial consultant, CompManagement Incorporated, corresponded to the City on June 12, 2003 (City Exhibit 2) and stated, in pertinent part: "The remaining liability best case scenario would be around: $2,591,545. The remaining liability worst case scenario would be around: $15,510,363."

Continuing, the actuary stated: "Based on an average of the past retrospective policy years, the estimated total liability would be around: $955,000 per year (best case scenario). The average maximum liability would be around: $1,550,000 per year (worst case scenario)."

Concluding, the actuary stated: "Therefore, it is reasonable to maintain a fund balance around $5 million."

On June 13, 2003, the City's auditor and members of the council's finance committee corresponded to the Auditor of the State of Ohio pertaining to this reserve fund stating, in pertinent part (City Exhibit 3):

> "Please find enclosed the review provided by our consultants for the City's workers' compensation retrospective rating liability.
>
> Canton City Council and the members of the Finance Committee assigned to oversee the City's finances upon the recommendation of the administration and Comp Management transferred and/or refunded excess fund equity in the workers' compensation fund. In addition, we reduce premium payments from each operating fund in order to further accomplish this task.
>
> We remain committed to maintaining an adequate reserve of $5,000,000 in accordance with recommendations from Comp Management Incorporated."

Although it may be subject to academic debate regarding a detailed analysis of Comp Management's recommendation and the possible application of Revised Code §5705.14, however, at this juncture, this Conciliator is not prepared to conclude that the $5 million reserve constitutes an abuse of discretion, is overly excessive, unreasonable or constitutes a device by which the City can support its argument of no available funds.

The Conciliator is not unsympathetic to the Association's request for compensation relief, particularly since, as pointed out by the Fact-Finder, this would represent the second year of no adjustments to the base salary. The problems facing the City of Canton are not unique to this City

but, rather, appear endemic to any number of cities situated throughout Ohio and other economically depressed areas. For example, the City of Cleveland has likewise experienced recent economic pressures and, as recently noted by *The Plain Dealer* in its December 7, 2003 edition, page B-3: "Between 2000 and 2002, Cleveland lost more than 25,000 jobs. It would take 75,000 new jobs, each paying $40,000 a year, to generate enough income tax money to wipe out the City's $61 million general fund deficit. That shortfall has forced it to make dramatic cuts in its payroll and in city services."

Most reluctantly, and primarily because the Conciliator has no discretion in modifying either of the parties' final position statements, the Conciliator concurs with the ultimate conclusion of the Fact-Finder that a wage freeze in the basic salary schedule in Article 75 should continue through June 30, 2004. In part, the Conciliator reaches this conclusion on the basis that the present contract is for a one year period and will expire on June 30, 2004. Secondly, the agreement for Association members to commence payment of a portion of the health and life insurance premium will not begin until June 1, 2004. Ordering a 3.5% pay raise now would not only be applicable to the remaining 6-1/2 months of the present contract but also would be retroactive to July 1, 2003, which would require the City to obtain such funds (approximately $50,000) to fund those raises.

The Conciliator has reached his conclusion with great difficulty and forewarns the City that, in the course of the anticipated upcoming negotiations pertaining to a new Collective Bargaining Agreement, the City will have to come to grips with the issue of making some adjustments to the basic salary schedule (Article 75). If not, the City may be facing the double apocalypse of retention and recruitment, i.e., present police officers will seek retirement or look for employment

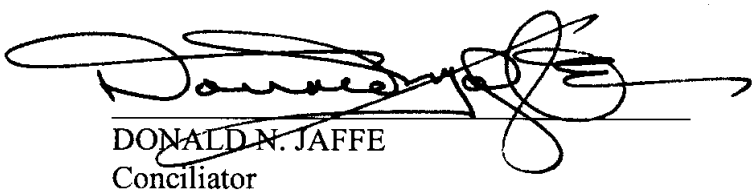
opportunities elsewhere and, at the same time, the City will have an inability to attract new recruits to fill its safety force ranks. The solution is not an easy one but one to which the City must address.

It is therefore the recommendation of the Conciliator as follows: "The present base salary schedule provided under Article 75 effective for the period July 1, 2002 to June 30, 2003 shall be continued for the period July 1, 2003 through June 30, 2004."

* * * * * * *

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 10th day of December, 2003.

Respectfully submitted,



DONALD N. JAFFE
Conciliator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report and Award of Conciliator Pertaining to Preliminary Issues has been forwarded via U.S. regular mail, postage prepaid, to the Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; and via U.S. express mail, postage prepaid, to Larry S. Pollack, Esq., The Barrister Building, 338 South High Street, P.O. Box 09681, Columbus, Ohio 43209; and to Kevin L'Hammedieu, Esq., Assistant Law Director, Canton Law Department, Canton City Hall - 7th Floor, 218 Cleveland Avenue, S.W., P.O. Box 24218, Canton, Ohio 44701-4218, this 10th day of December, 2003.

DONALD N. JAFFE
Conciliator