

INTRODUCTION -

On July 9, August 17, and August 18, 2004, fact-finding hearings were conducted at the Pleasant Township, Ohio Fire Department. The hearings began at 9:30 a.m. Present at the meetings were:

EMPLOYER

Donald C. Slowick, Esq.
Paula J. Wilking
Richard M. Welch
Keith Goldhardt

EMPLOYEES

Russell Carnahan, Esq.
David A. King
Douglas Ison

The parties were duly advised as to the law and administrative rules under which the hearings were to be conducted by the Fact-Finder.

BACKGROUND

The bargaining unit in question has been represented by the IAFF, Local 2937 (hereinafter referred to as "Union") for approximately eighteen years. This Union is defined as all regular full-time employees employed by Pleasant Township, Franklin County, Ohio (hereinafter "Employer"). The Union includes the categories of captains, lieutenants, and firefighters and currently consists of nine members with six firefighters, two lieutenants, and one captain.

The parties have a mature collective bargaining relationship and they are engaging in the negotiation of a successor collective bargaining agreement. The last collective bargaining agreement between the parties expired on July 1, 2002. Since that date the parties have been negotiating toward a new agreement without success. While the parties were able to reach tentative agreements, the tentative agreements were not approved by the Employer.

Pleasant Township is a rural township located in the southwest corner of Franklin County, with Pickaway County to the south, and Madison County to the west.

According to the 2000 census the population of Pleasant Township was 6,704 with another 326 individuals living within Harrisburg Village. These figures place the township among the least populous in Franklin County.

ISSUES

The parties mutually and orally agreed to amend their respective position statements to reflect a mutually agreeable contract date for this successor agreement to be July 1, 2004 ending at midnight December 31, 2005.

All remaining issues, save one, are economic in their nature. Accordingly, and pursuant to SERB rules and the appropriate statute the Fact-Finder must first determine if there are available funds for any or all of the economic proposals made by either or both parties.

It is noted that this was a rather lengthy fact-finding and required meetings on July 9, August 17, and August 18, 2004 at which the parties made extensive and exhausted arguments on this particular issue.

Pleasant Township's position is that it is in severe financial stress as a direct result of past fiscal practices. The Township further argues that any substantial raises in compensation or other expenditures on behalf of the Fire Department could not be funded as there must be a surplus left to fund the months of January through March, 2005 when the Employer receives anticipated tax revenue. This issue is one of cash flow not funds availability. It is noted that the Township has the ability to request an advance of funds from the Franklin County Auditor, or could shift unused funds from other items, included, but not limited to the General Revenue Fund, which would provide the Employer with sufficient funds for

that three months period. The issue of available funds is whether or not, in the aggregate, during the contract period the Employer has funds available for any recommendations herein.

The Employer submitted nineteen separate exhibits in addition to its written statement, many of which relate to this particular issue.

The Union asks that the Fact-Finder look at the Franklin County Auditor's estimated revenue for Pleasant Township for calendar year 2004. That document indicates that the Auditor anticipates the Township will receive \$1,599,064 dedicated to the Fire Department. The current carry-over is \$44,857 and therefore the projected receipts for the Township are \$1,644,461. This projection indicates that there will be a surplus in excess of \$300,000 in the Township Fire Department fund at the end of calendar year 2004. The Employer does not necessarily agree with the projected revenue or expenses herein listed above, but states that if there is any surplus it will be completely gone by the end of the calendar year because of several factors and they are listed herein below:

1. The potential award to the Union of back pay in the approximate amount of \$30,000 arising from a pending labor arbitration;
2. The need to create two additional part-time positions costing \$166,440;
3. \$50,000 set-aside for possible terminations or retirements;
4. One new full-time position costing \$60,000;
5. A tank truck in the amount of \$150,000;

6. A repayment of \$135,000 that was "loaned" to the Fire Department fund by the General Revenue Fund;

7. A \$25,000 pledge to the local YMCA on which a \$5,000 payment must be made;

8. A set-aside of \$50,000 for contingencies as recommended by the Franklin County Auditor;

9. A recommended set-aside of \$50,000 for possible disasters recommended by the Federal Emergency Management Agency.

10. The need for a surplus carry-over to 2005.

When adding up these figures the projected surplus is virtually wiped out. However, one must closely examine each individual item. There is without a doubt a need for the full-staffing of this Fire Department at its minimal level which is six employees per shift. This was ably testified to by the Fire Chief who has over four decades of experience, the last seven of which were with the Employer. The Union did not disagree or present any counter argument to that matter. Accordingly, it will not be further discussed. In this Fact-Finder's opinion, minimum manning levels at this Department, and at any department, is absolutely essential and a first priority. Accordingly, that sum has been deducted from any projected surplus.

As it relates to the issue of a possible award against the Employer by the arbitrator in a pending matter in the amount of \$30,000, the Fact-Finder has been advised by the Executive Director of SERB that he may not speculate on the outcome of any pending matter in making his fact-finding report.

As it relates to the retirement "set-aside" the contingency "set-aside" and the disaster "set-aside", the Fact-Finder is struck by the fact that it was not until these current negotiations that the Employer determined that these were necessary items. Of course, that may just be a coincidence. However, there has been virtually no turnover in this unit over the last three years and, while several members are eligible for retirement, there seems to be no indication that they will do so as of the date of this report. Accordingly, setting aside such a huge amount for a matter which is purely speculative does not seem prudent. However, for purposes of this report only, the Fact-Finder will consider a set-aside of \$25,000.

The Fact-Finder finds that there is no shortage of part-time employees willing to work to keep staffing levels as there current needs dictate and therefore disregards the deduction for \$166,440 for two part-time positions.

As it relates to the tanker truck, again the Fact-Finder will defer to the expertise of the Fire Chief who states that it is something that he would like and is necessary. However, there is absolutely no need for the new tanker to be paid for in cash, and although desirable to do so, the much talked about cash flow would be greatly improved if it were financed over a three-year period. Accordingly, only \$50,000 in deduction from the projected surplus is allowed for this item.

Accordingly, adding in those other matters listed herein above which the Fact-Finder has agreed must be funded, there still exists a healthy surplus in the Fire Fund available.

However, the Employer urges the Fact-Finder to remember that \$135,000 was "loaned" to the firefighters from the General Revenue Fund and needs to be repaid. However, it only "needs to be repaid" if the General Revenue Fund is in need of it.

There was, agreed among the parties, that there is no legal reason why General Revenue Funds may not, if available, be used to fund the Fire Department. The only issue that would inhibit this would be a political decision by the Township Trustees that they did not wish to do so.

This brings the Fact-Finder to a discussion of the "moral obligations" of the Employer. Among the items that the Township argues must be deducted from any Fire Fund surplus, is a \$5,000 payment due to the YMCA. This is certainly a worthy cause, but when asked to provide a contractual obligation on this pledge, the Township could not do so. Therefore it appears to this Fact-Finder it is simply a "moral obligation". To this Fact-Finder the Employer's first "moral obligation" is to its employees ("charity begins at home"). These firefighters have gone a number of years without a raise and a contract. They have patiently, and in good faith, attempted to bargain with the Employer and this has been unsuccessful. The Fact-Finder believes that this "moral obligation" is not binding upon the Township, nor is the Auditor's "recommendation" of a \$50,000 set-aside, nor the FEMA

recommendation of a set-aside of \$50,000 legally mandated. Furthermore, if the latter two items are absolutely necessary the question must be raised why haven't those items been funded previously?

GENERAL FUND REVENUE

The Employer argues that not only does it not wish to fund the Fire Fund from General Revenue, but that there are not available funds therein and furthermore that it absolutely had to be paid \$135,000 previously transferred to the Fire Fund. However, upon close examination of the financial records, the Fact-Finder notes that while we are through the month of July and a substantial portion of August, the General Revenue Fund expenditures are less than 41% of the total budget for general revenue. The Employer argues that it will spend the additional 49% over the next three and one-half months, but could not explain why that would, or should occur. There was a substantial argument made by the Employer that there was an urgent need to fund "other projects". However, it did not provide details. Accordingly, under the rules of SERB, this averment will be disregarded. That is not to say that "other projects" are not essential items which must be funded. However, if either party wishes a Fact-Finder to consider a particular item it must present something more than an unsupported assertion that some undefined projects will have to be funded before December 31, 2004.

The Fact-Finder indicated to both the parties in written communication, as well as several oral discussions prior to the hearing that any assertion made by either party as to a fact must be supported by **some** supporting data.

Accordingly, the Fact-Finder believes that the proposed repayment of \$135,000 from the Fire Fund to be General Revenue Fund, it is, at least in this point in time, unnecessary.

FINDING OF FACT:

The Fact-finder finds there are sufficient funds available to fund the economic findings herein.

KELLY DAYS AND WAGES

The issue as to Kelly Days and wages would normally be treated separately, however, as will be seen below they are inextricably linked.

The Kelly Days provision is contained at Article 14, section 14.5 of the expired contract and states:

The employee would have the option of being compensated at one and one-half (1.5) times his regular hourly rate of pay in lieu of the Kelly Day.

A Kelly Day is defined as a provision in the Agreement that says that the Employer arranges work schedules for employees so that a normal work week averages fifty-three hours per week over the course of a year within a three platoon system. This is accomplished by scheduling a Kelly Day every nineteenth work day.

The Kelly Day is a twenty-four hour work period where the employee is relieved from duty. An employee receives an average of 6.33 Kelly Days a year.

When Section 14.5 was added to the contract it was the intent of the Employer to encourage firefighters to work their Kelly Days, but only if they were asked to do so. However, it has been a custom and practice since that provision has been inserted that some employees began working their Kelly Day simply to obtain the time and one-half pay, regardless of being asked. The Employer has opposed this interpretation, but up until October of 2003 acquiesced to the practice. However, in October of 2003, based on fiscal necessity, the Employer stopped paying for Kelly Days where the employee was not asked to work and that cessation is the subject of a pending arbitration which lies outside the scope of the authority of this Fact-Finder.

Normally this Fact-Finder would not disturb contract provisions which the parties bargained for in the past. Furthermore, custom and practice is an integral factor to be considered by the Fact-Finder. However, in this case, this Fact-Finder will give this issue a de novo review for three reasons: first, it was properly raised by the Employer in its prehearing statement; secondly, it has a direct fiscal impact on the ability of this Employer to fund other economic matters within this contract; and finally there is ambiguity in the current language.

It should be noted that when employees do not work their Kelly Days and, only if necessary, a part-time employee is available, that part-time employee is used at a lesser dollar rate than would be paid to an employee who is working his Kelly Days at time and one-half. This is an obvious advantage to the employees and an obvious financial disadvantage to the Employer. The Fact-Finder's problem with the employees' interpretation of Section 14.5 is that it appears that it impinges on the management rights of the Employer. The Employer has an obligation to the taxpayers of Pleasant Township to be fiscally responsible and to use the "least cost" options where they are available. The interpretation of Section 14.5 by the employees negates management's right to be fiscally responsible as it might otherwise be.

FINDING OF FACT

There are sufficient facts to support the Employer's position to strike the language currently contained at Article 14, section 14.5 from the new contract.

This brings us to the issue as to wages overall. Notwithstanding the availability funds, no raises can be given to employees in any bargaining unit unless there is the additional factual finding that there are sufficient merits to those raises.

The employees assert that the wages of this bargaining unit have fallen significantly below those of other comparable central Ohio fire departments. Furthermore, they point out that the

firefighters have sacrificed wage increases over the last three years and therefore should be rewarded monetarily for their patience.

There are seventeen township fire departments within Franklin County. Based on their current rate of pay firefighters in Pleasant Township are sixteenth in wage scale out of the seventeen townships. Furthermore, as demonstrated by the employees' Exhibit I, they lag the Columbus Fire Department by approximately \$13,000 and Worthington by \$10,000. Recognition must be given to the fact Pleasant Township is one of the least populated townships in Franklin County, however, offsetting that is the fact that it is one of the largest geographically.

The Union proposes that all unit members receive a two percent (2%) wage increase effective July 1, 2002, a zero percent (0%) increase on July 1, 2003, and a six percent (6%) increase effective July 1, 2004.

The Employer proposes to provide the employees a three percent (3%) wage increase effective January 1, 2005.

The Union points out that Pleasant Township passed a new fire levy in November, 2003 by the narrowest of margins and that all of the bargaining unit worked hard to make the levy passage possible. It now appears that that new levy should bring to the Township nearly \$600,000 more than it received in 2003.

The Employer correctly points out that the current wage scale has led to virtually zero turn-over in the last eighteen months and therefore wages do not appear to be a problem as firefighters are not exiting to go to other fire departments with higher wage rates.

Both parties gave strong and cogent arguments for their positions.

However, considering the inflation factors, as well as the fact that this recommendation is effectively taking away a seven percent (7%) premium that all firefighters have been enjoying by being able to force their employer to pay them for Kelly Days, the Employer's recommendation is not adequate. In fact, if the Kelly Days are taken away as recommended herein, the Employer's proposal would result in a four percent (4%) pay cut for these employees. Granted, it may have been a premium which they never should have received in the first place, however, the Employer will realise a substantial savings. This coupled with the finding that there is a healthy surplus available in both the Fire Fund and the General Revenue Fund argues against the Employer's position. The Union's wage proposal would result in an increase in base wages and pension contributions which they estimate would be approximately \$42,763 in 2004. However, neither proposal takes into consideration the fact that the parties have now agreed that this contract term will run from July 1, 2004 through December 31, 2005.

Instead the Fact-Finder upon reviewing all the facts finds that there is a factual basis for the following recommendations.

RECOMMENDATION

ARTICLE 25 - WAGES

All bargaining unit members shall receive a six percent (6%) increase on their base wages effective the first full pay period following June 30, 2004, provided, any retroactive pay due from July 1, 2004 to the signing of this contract shall be paid to the bargaining unit members at the first full pay period following the signing of this Agreement.

Members of the bargaining unit shall receive a four percent (4%) wage increase effective at the beginning of the first full pay period following December 31, 2004.

Assuming that each one percent (1%) wage increase costs the Employer \$5,357 this means that the cost for the 2004 raise would be approximately \$32,142. As indicated above, there are more than sufficient funds within the Fire Fund to fund that increase.

The Fact-Finder calculates that the cost for the additional four percent (4%) raise in 2005 will cost the Employer an additional \$70,872.

Assuming again that the Fire Fund will have a projected surplus of approximately \$315,000 at the end of the year 2004 and assuming that the Township sets aside \$60,000 for an additional full-time employee, \$25,000 for retirement, \$25,000 for emergencies, and \$50,000 for a tanker, this still leaves an available balance of \$180,000 which they can expect to carry-over into 2005, which more than adequately funds the recommendations contained herein. Once again it is pointed out that the Employer will have additional substantial savings by the elimination of "forced" Kelly Days. While this Fact-Finder would not normally entertain a wage increase of ten percent (10%) over an eighteen

month contract, there are mitigating factors that bring him to this level. Those mitigating factors include the fact that there have been no raises for the last eighteen months, the dedicated firefighters worked hard to pass a new levy, and if they agree to this recommendation they are, in effect, giving the Township a "give-back" by conceding their right to use Kelly Days without the permission of the Employer.

This does not mean that the Fire Fund should not make its next priority repaying at least some, if not all, of the funds that were transferred to it from the General Revenue Fund. However, inter-fund transfers, where allowed by law, lie strictly within the discretion of the Township. Even with these raises it is anticipated there will be a surplus carry-over in the Fire Fund on December 31, 2004. At that time the trustees may chose to either leave it in the Fire Fund, or if they so desire, transfer it to the General Revenue Fund. Likewise surpluses that the Fire Fund may have over the calendar year 2005, even after funding these wage increases, would be entirely available to them for use in the General Revenue Fund. In any event, there are sufficient funds available to fund each and every recommendation made herein.

TERMINATION OF EMPLOYMENT - ARTICLE 28

The current language at Section 28.2 of this particular Article provides that of the employee's accrued but unused sick leave, upon completion of fifteen years of continuous service when the employee retires or resigns.

The Union proposes that the language be modified so that the employees will receive one-fourth (1/4) of sixty-eight (68) days or a total of seventeen (17) days. This differs from the current language as the maximum in the current language only allows for fifteen (15) days. Therefore, the Union's proposal would be to add two (2) additional days to the maximum pay-out of fifteen (15) to seventeen (17) days.

This issue has a minimal fiscal impact upon the Employer. Furthermore, although not directly relevant to this fact-finding, there are indications that at one time during negotiations the Employer had at least tentatively agreed to this change and therefore one must assume it is not entirely opposed to this change.

The Union further proposes that language be added to the existing language at Section 28.3 concerning the employee's obligation to reimburse the Employer for the costs of tuition of Medic School if he voluntarily terminates his employment prior to one year of completion of said school. The Union would add the language "The employee would not be responsible for such reimbursement if grant monies were used to pay for Medic School." Neither party provided sufficient written or oral arguments to support, or to oppose this language. Accordingly, the Fact-Finder must opt for the status quo.

There can be no doubt that educational incentives are both good for the Employer as well as employee morale. However, there appears to be no rational reason why an employee who takes the

benefit of the Medic School should not be responsible for repayment of that tuition whether the funds come from General Revenue or grant money.

FINDING OF FACT

There are sufficient facts to support the Union's proposed change to Section 28.2. There are not sufficient facts to support the Union's proposed change to Section 28.3 of Article 28.

SURVIVOR BENEFITS - SECTION 29.1

The current contract language provides that if an employee dies while in paid status, any unused vacation hours and holiday hours shall be paid in a lump sum to the surviving spouse or designated beneficiary. It further provides that unused sick leave shall also be paid to the surviving spouse or designated beneficiary in accordance with the payout ratio outlined in Article 28, Section 28.2 (discussed herein above).

The Union proposes that rather than using the payout ratio in Section 28.2 of Article 28, that the last sentence of Section 29.1 read as follows:

Unused sick leave shall also be paid to the surviving spouse or designated beneficiary in a lump sum to a maximum of twenty days or 480 hours at the employee's rate of pay.

Here again the Fact-Finder finds that this would have a minimal fiscal impact on the Employer in any given year, but certainly would make a difference to a surviving spouse and children. Also,

there are indications that sometime during the negotiations the Employer appeared to be willing to accept this proposal. Even more relevant is the fact that this Employer, unlike many other public employers, apparently does not provide life insurance for its employees. The standard labor agreements throughout the state usually provide for a life insurance policy equal to one year of the employee's salary. In lieu of that provision being in the Agreement now before the Fact-Finder and in recognition of the minimal fiscal impact upon the Employer and its previous agreement to provide this additional benefit, it appears to be factually supported.

FINDING OF FACT

There is sufficient facts to adopt the Union's proposed change to Article 29, Section 29.1.

UNIFORM MAINTENANCE ALLOWANCE - ARTICLE 30

The Union argues to retain the current language in the contract which in summary provides that the Employer on the second pay in January of each calendar year provide each employee a cash payment of \$492.00 and that the employees' provide receipts for purchases of uniforms on or before December 1st of each calendar year to verify the proper use of the uniform allowance that was paid to them earlier in the year.

The Employer wishes to amend Section 30.1 to read as follows:

The Township will provide a uniform maintenance allowance to each employee of up to \$492.00 per calendar year as follows. During the course of the year, the employee shall provide the Township with original receipts for the employee's uniform purchases and maintenance. The Township will timely reimburse proper expenditures up to a total of \$492.00 per calendar year.

The employees feel they should not have to advance funds for uniform allowances, but should have the funds already in hand so that there is no necessity of using their personal funds and waiting for reimbursement. The Township on the other hand wishes to pay out uniform allowances based on receipts received as the items are purchased. The Township correctly points out that it is an "in and out" procedure which causes totally unnecessary bookkeeping.

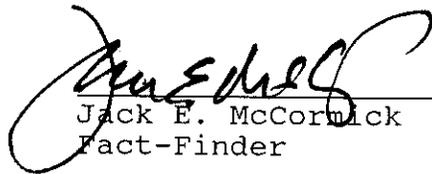
This has no great fiscal impact on the employees as the Employer is required to timely reimburse them and since the amount involved is relatively small, there appears to be no rational reason why the Employer's language should not be adopted.

FINDING OF FACT

There are sufficient facts to support the Employer's amendment to Section 30.1 of Article 30 provided that one additional sentence were added to that which reads: "This provision shall become effective on January 1, 2005."

DURATION OF AGREEMENT - ARTICLE 40

As stated earlier in this report all the parties agreed for administrative purposes it would be preferable to have contract periods to run parallel to budgetary periods, that is, the calendar year. Accordingly, the parties have agreed that the duration of this Agreement shall be from July 1, 2004 through midnight December 31, 2005.



Jack E. McCormick
Fact-Finder

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report of Fact-Finder was filed with the State Employment Relations Board and mailed by regular U.S. Mail, postage prepaid, this 27th day of August, 2004, to:

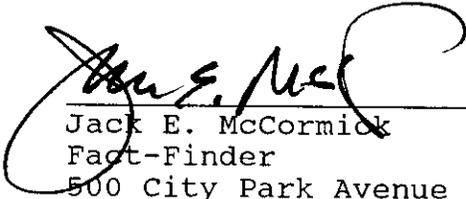
Russell E. Carnahan
HUNTER, CARNAHAN, SHOUB & BYARD
3360 Treemont Road, 2nd Floor
Columbus, Ohio 43221

Attorney for IAF, Local 2937

Donald C. Slowik
SLOWIK & ROBINSON, LLC
250 East Broad Street, Suite 250
Columbus, Ohio 43215

Attorney for Pleasant Township, Ohio

Dale Z. Zimmer
Administrator Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213



Jack E. McCormick
Fact-Finder
500 City Park Avenue
Columbus, Ohio 43215
(614) 221-2718
Fax (614) 221-2719

FIRST CLASS MAIL

Jack E. McCormick
Attorney at Law
500 City Park Avenue
Columbus, Ohio 43215

To:
Dale Zimmer
Administrator Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213

