

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

2003 MAR -4 A 10: 21

February 28, 2003

In the Matter of:)	
)	
AUSTINTOWN PROFESSIONAL FIREFIGHTERS LOCAL #3356)	CASE NO. 02-MED-10-0974
)	
and)	FACT FINDER
)	BERNADETTE MARCZELY, ESQ.
AUSTINTOWN TOWNSHIP TRUSTEES)	

FACT FINDER'S REPORT

APPEARANCES

FOR THE UNION:

Ed Carrozzino	Firefighter
Don Conroy	Firefighter
Mike DeRamo	Dispatcher/Assoc. Dir. OPBA
Dennis Haines	Atty. for Firefighters
Charles Hanni	Firefighter
Chris Ludt	Firefighter
Tom O'Hara	Firefighter
Dave Schertler	Firefighter
George Teutsch	Pres. IAFF Local 3356

FOR THE TOWNSHIP:

David Ditzler	Twp. Trustee
Michael Dockry	Atty./Admin.
Dawn Durkin	Atty./Repres.
Andrew Frost	Twp. Fire Chief
Karen Gaglione	Atty./Repres.
Michael Kurish	Twp. Clerk

BACKGROUND

This fact finding report addresses unresolved issues regarding wages and conditions of employment in negotiations between Austintown Township and the International Association of Firefighters, Local No. 3356. The bargaining unit consists of all Full-Time Fire Employees of the rank of Firefighter, Lieutenant, Captain and Assistant Chief, eighteen (18) in number, working for Austintown Township. The Collective Bargaining Agreement between Local 3356 and the Township expired on December 31, 2002, and although representatives from the Township and Local 3356 conducted a series of negotiation meetings, the parties were unable to reach agreement regarding several issues in the proposed contract which the parties have agreed shall cover the period from January 1, 2003, through December 31, 2005. Therefore, the parties requested fact finding, and a fact finding hearing was held on February 12, 2003, in a fire station conference room in Austintown Township. The hearing began at 9:00 a.m. and ended at approximately 3:30 p.m.

Prior to the fact finding hearing, both parties submitted prehearing statements clarifying their positions regarding issues remaining in dispute. As a result of testimony, evidence, and willingness to compromise, several of the unresolved issues originally submitted were settled during the hearing. This report will, however, discuss *all* items recognized as unresolved in *prehearing* briefs. Items resolved during the hearing will be duly noted, and the proposed settlement language will be summarized. For items remaining in dispute at the end of the fact finding hearing on February 12, 2003, the fact finder will review the present pertinent contract language, the Union's position as presented at the hearing and summarized in its post hearing brief, the Township's position as presented at the hearing and summarized in its post hearing brief, and all evidence presented supporting either side's position.

Party positions will be followed by the Fact Finder's recommendations and a discussion of the evidence presented and the factors supporting those recommendations. In keeping with Rule 4117-9-05, the Fact Finder will rely on the following criteria in making the recommendations included in this report:

- (1) Past collectively bargained agreements, if any.*
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work giving consideration to factors peculiar to the area and classification involved.*
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.*
- (4) The lawful authority of the public employer.*
- (5) Any stipulations of the parties.*
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.*

ARTICLE 10 - EMPLOYEE CLASSIFICATION

The Employer shall recognize the following classifications of firefighters:

- A: Assistant Chief*
- B: Captain or Captain/Inspector*
- C: Lieutenant or Lieutenant/Inspector*
- D: Firefighter or Firefighter/Inspector*

UNION'S POSITION

The Union proposes adding two new classifications to the present hierarchy of employee classifications, specifically:

- A: Assistant Chief*
- B: Captain or Captain/Inspector*
- C: Lieutenant or Lieutenant/Inspector*
- D: Engineer**
- E: Firefighter or Firefighter/Inspector*
- F: Firefighter/Maintenance**

The Union argues that the new classifications more clearly define work being presently done by firefighters, and provide for an improved organizational structure. While initially requesting additional compensation for these two classifications, the union, during fact finding, eliminated its request for additional pay for either position, and asked only that the Township agree to the creation of the two new classifications.

TOWNSHIP'S POSITION

The Township rejects the Union's request to assign the new titles "Engineer" and "Firefighter/Maintenance" to current union members without any wage increases at this time. The Township argues that the creation of such positions, or titles, in this contract will lead to additional negotiation problems in the next contract. The Township maintains that its current fiscal situation precludes the creation of new positions or job titles that may create demands for wage increases tied to position designations in the next contract.

DISCUSSION

The Township asserts that it has no money to create and fund new positions or titles. The Union's final proposal regarding Article 10, however, requires no additional funding during the term of the proposed contract, a period of three years. Only one contract at a time should be negotiated. The

Township's argument that it's present financial difficulties must be projected *ad infinitum* and preclude any change in contract language that could at some future date cost money would make meaningful collective bargaining impossible.

FACT FINDER'S RECOMMENDATION

The Union's revision to the Article 10 should become part of the new contract since it costs nothing and more clearly defines the work being done.

ARTICLE 16 - PERSONNEL REDUCTION

Employer agrees that no full-time bargaining unit personnel reductions shall occur during the term of this Agreement.

The Union agrees with the Employer that this refers to any permanent vacancies caused by retirement, permanent disability, and death. Not in the event of a long-term sickness, temporary leave, or other condition which is covered by another article in this contract.

UNION'S POSITION

The Union proposes the addition of the following paragraph to the existing language:

In the event that an opening is created by retirement, permanent disability or death, the vacancy shall be filled, through the testing procedure, within 60 days.

In support of its position, the Union offers a letter from Fire Chief Andrew Frost, dated September 24, 2001, in which Chief Frost says to Jeffrey Groat, Chair of the Austintown Township Trustees:

"I truly believe we are drastically under staffed for the amount of population in Austintown. We are definitely well below NFPA Standards. . ."

"I believe due to the economics in our valley we have approximately three part-time firefighters available during the daytime hours. We just added seven new part-time people, but none are available during the day. "

In addition, the Union offers an article taken from the August 15, 2000, edition of *The Vindicator* in which Trustee Ditzler is quoted admitting to the under staffing of the fire department:

"Our fire department is 25 percent to 30 percent smaller than fire departments in other communities our size."

The Union also argues that it obtained a no layoff agreement in exchange for giving up a previous fact finding order that members' wages be placed at parity with the police department. The Union maintains that it gave up substantial wage increases awarded by the fact finder only after the Township guaranteed there would be no layoffs and that it would maintain minimum manning at its present level.

TOWNSHIP'S POSITION

The Township proposes the deletion of Article 16 prohibiting personnel reduction or layoffs for the term of the Agreement. The Township argues that its bleak financial status may make layoffs necessary and, if they cannot be made in the Fire Department, they will have to be made in other Township departments.

The Township argues that its elected officials, responsible for the safety of employees and the community, can best evaluate staffing levels in the Fire Department, and should have the prerogative of reducing personnel.

DISCUSSION

The union argues that it obtained the no layoff agreement at issue in exchange for giving up a previous fact finding order that members' wages be placed at parity with the police department [Union Exh. following Art. 16]. At the hearing itself, the Township neither confirmed nor denied that it had made such an exchange with the Union in the negotiation of the last contract. That being said, the no layoff clause, i.e., Article 16, is part of the present agreement, and the Union has submitted, with its post hearing brief, a copy of Conciliator Harry Graham's award enforcing a similar exchange agreement between IAFF Local 283 and The City of Salem, Ohio [See p. 8, para. 3].

In its post hearing brief, the Township states that the "2002 Fire Levy Revenue and other Fire Department Revenue was \$1,630,000," and that "union personnel costs were approximately \$1,340,000. in the year 2002." These statements in the Township's brief indicate a surplus of \$290,000. in funds the citizens of Austintown Township earmarked for Fire Department use. The funded Fire Levy is an indication of public concern for fire safety. Fire Chief Frost's letter to Trustee Chair Groat warning that department staffing is "well below NFPA Standards" is further evidence that arbitrary reduction of an already inadequate firefighting force would be a danger to the community that funded that levy in the interest of its own safety.

The Township argues that if it does not retain the power to layoff firefighters, it will be forced "to make layoffs in other departments. . .instead of making layoffs according to the overall needs of the Township." It is politically irresponsible to seek a levy to fund a community's Fire Department, a Department recognized by both the Fire Chief [Union Exh. Letter to Groat] and Trustee Ditzler [Union Exh. *Vindicator* 8/15/00] as understaffed, and to then argue that firefighters should be subject to arbitrary layoffs in order to preserve workforces in other departments.

FACT FINDING RECOMMENDATION

The no lay off provisions provided in the present contract shall remain the same.

ARTICLE 17 - DISCIPLINE AND DISCHARGE

Withdrawn by the Union.

ARTICLE 18 - GRIEVANCE PROCEDURE, SECTION C, 2(d)

All costs shall be borne equally by the Employer and the Union, with the exception that the costs for witnesses, attorneys, the production of documents, or other fees, whether they be for consultants or otherwise, shall be borne solely by the party which requests such individuals or documents.

UNION'S POSITION

The Union proposes to change the arbitration provision of the contract to provide that the Loser in the arbitration will pay the fees and expenses of the arbitrator. The Union argues that the Chief and the Township Trustees, because of the "obey and grieve rule," force Firefighters to consume time and money in arbitrating even grievances that they know have merit. The Union maintains that the Chief and the Township Trustees make arbitrary decisions that ignore clear contract language, and force the union to arbitration to assert its rights under the contract.

While the Township argued that no other union has a loser pay provision, the Union, in its evidence packet submitted Article 7, Step 3, of the Road Department (Teamsters) contract with the Township stating that:

"The fee and costs of the Chairman [of a panel of three] shall be paid by the employer if the grievance is sustained and by the union if the grievance is overruled."

TOWNSHIP'S POSITION

The Township rejects the Union's proposal that the language in Article 18, Section C, 2(d) be changed to require the losing party in an arbitration to pay the fees and expenses of the arbitrator. The Township argues that the Union's proposal would have a "chilling effect" on the Fire Chief's decision making. That is, the Chief will be forced to weigh financial considerations against his authority to run an effective department. Therefore, the Township concludes that the current language splitting arbitrator fees and expenses should be retained.

DISCUSSION

Contracts exist to establish the negotiated rights of Union members. The clear language of the contract should not be ignored by either labor or management. The grievance process exists to clarify contract language in the context of the workplace, not to thwart management's authority or punish employees who disagree with management's interpretation of the contract. When management ignores the clear language of the contract and forces employees to assert their rights unnecessarily through a lengthy and expensive arbitration process, they defeat the very purpose of negotiations, wasting time and money for both parties. Likewise when employees grieve unnecessarily, they too defeat the purpose of collective bargaining and waste valuable time and resources.

Since neither party submitted evidence showing the number of grievances submitted to arbitration over this contract period, the nature of the grievances, or the tally of wins for each side, there is no evidence supporting either party's position. That being said, since the Township has repeatedly invoked its precarious fiscal position throughout this hearing, it behooves the Township to pursue grievances to arbitration *only* when the language of the contract is unclear in the context of the grievance. The Township would lose none of its authority or resources under a loser pays clause assuming it reads and respects the language of the negotiated agreement.

FACT FINDER'S RECOMMENDATION

Article 18, Section C, 2(d), should be revised as proposed by the Union, that is,

“All costs shall be borne by the party found to be at fault in the arbitrator's decision.”

ARTICLE 19 - SALARIES AND COMPENSATION

Rate of Pay

1. *The following are the annual salaries for each Employee classification in the Fire Department.*

<u>TITLE</u>	<u>+5%</u> <u>1/1/00</u>	<u>+5%</u> <u>1/1/01</u>	<u>+5%</u> <u>1/1/02</u>
<i>Asst. Chief</i>	46,314.35	48,630.06	51,061.56
<i>Captain</i>	44,119.69	46,325.67	48,641.95
<i>Lieutenant</i>	38,388.88	40,308.32	42,323.74
<i>Firefighter</i>	35,181.97	36,941.07	38,788.12
<i>Capt./Inspector</i>	44,119.69	46,325.67	48,641.95
<i>LT./INSPECTOR</i>	38,388.88	40,308.32	42,323.74
<i>FF/INSPECTOR</i>	36,181.97	37,941.07	39,788.12

Firefighter (First Year) - \$28,000.00

Firefighter (Second Year) - \$32,000.00

Firefighter (Third Year) - \$38,788.12

In addition to the above wage increases the employer shall pay or pick-up the following percentages of each rank's gross income to the appropriate state retirement system: 6% as it is now.

UNION'S POSITION

Prior to fact finding, the Union requested wage increases of 5% in each of the three years of the proposed contract. At fact finding, the Union accepted a wage increase of 3% in each of the three years of the proposed contract. As noted in the Union's post hearing brief, the Union's acceptance of a 3%, 3%, and 3% proposal was premised on "the Township's claim that its cash position had recently deteriorated."

While the Union's final position reflects its effort to respond to the Township's claim of recent fiscal jeopardy, the Union, in its post hearing brief remains unconvinced that the Township is indeed in dire financial straits. The Union refers to its submission of an outside audit of Township finances through October 31, 2002, which showed "the fire district fund had an unencumbered balance of \$413,577.75," and "the general fund balance for that same period showed unencumbered funds of \$1,064,993.64." The Union further points out that despite advances in and out of the Township's accounting system, in the final analysis, "there was 1.6 million dollars in a transferred out account in the general fund which the Township finally conceded was its 'discretionary money'." This money could be used at the discretion of the Trustees to fund prioritized interests.

In support of its post hearing position requesting a 3%, 3%, 3% wage increase over the life of the proposed contract, the unit also submitted *Vindicator* reports showing that wage increases for safety forces in the Mahoning Valley have run between 3 and 4 1/2% in 2002 and 2003 [Union Exh. folder].

TOWNSHIP'S POSITION

In its prehearing brief, the Township proposed "a wage increase in Article 19 of 3% for each rank for each year 2003, 2004, and 2005, of the contract." However, in its post hearing brief, the Township proposes "a wage increase in Article 19 of three percent (3%) for each rank for each year, 2003, 2004, and 2005, of the contract, contingent upon the Union agreeing to make concessions in their request for health benefits and medical insurance.

In its post hearing brief, the Township asserts that "a potential three percent (3%) increase in each year of the proposed contract will result in a total additional cost of \$215,000." In view of its bleak financial situation, the Township maintains that it will be unable to finance a three percent (3%) increase without concessions from the Union regarding its health benefits.

In support of its precarious financial position, the Township has submitted several artifacts [employer Exhs. 1, 2, 3, 4, 5, 6, 7, 8], and during testimony indicated that loss of revenue as a result of the TAMPCO decision [Twp. Exh. 8] played a significant role in causing its financial difficulties.

DISCUSSION

In its prehearing brief, the Township proposed “a wage increase in Article 19 of 3% for each rank for each year 2003, 2004, and 2005, of the contract.” In its post hearing brief, the Township proposes “a wage increase in Article 19 of three percent (3%) for each rank for each year, 2003, 2004, and 2005, of the contract, contingent upon the Union agreeing to make concessions in their request for health benefits and medical insurance.”

In its prehearing brief, the Township states that a three percent (3%) increase in each of the three years of the proposed contract will result in “additional costs of \$215,000. In its post hearing brief the Township states that “a potential three percent (3%) wage increase each year of the proposed contract will result in a total additional cost of \$215,000. By its own admission, nothing has changed regarding the cost of funding a three percent (3%) increase over the three years of the proposed contract, and no additional evidence is cited in the Township’s post hearing brief to indicate that its financial situation has worsened between the submission of the Township’s prehearing brief on February 10, 2003 and the submission of the Township’s post hearing brief on February 24, 2003. If the Township proposed a three percent increase in its prehearing brief with no mention of contingent cost-saving concessions in health benefits, the Township obviously maintained to the fact finder that it had the money to fund a three percent raise without such concessions.”

Since during the fact finding and in its post hearing brief the Union accepts the proposed three percent increase in each of the three years of the proposed contract, and the Township, by its own admission, had the money on February 10, 2003 [Twp. Position Statement] to offer and fund such an increase without concessions to the existing health benefit plan, it seems obvious that a three percent increase in each of the three years of the proposed contract would be acceptable to the Union and do the Township no harm.

In addition, in the Township’s prehearing brief’s comments dealing with Article 16, the Township notes that the 2002 Fire Levy revenue and other Fire department revenue was \$1,630,000, and in 2002 union personnel costs were approximately \$1,340,000. As noted in the discussion of Article 16, this leaves a surplus of \$290,000. in funds specifically designated for the use of the Fire Department. The voters and taxpayers who approved these revenues did so believing that they were voting in favor of a “FIRE LEVY.” Therefore this money can and should be used to defray the costs of this pay increase.

FACT FINDER’S RECOMMENDATION

Article 19 of the proposed contract should be changed to reflect a three percent (3%) increase in each of the three years of the proposed contract.

ARTICLE 27 - VACATION LEAVE

The parties agreed during fact finding to the following revision to Section C of Article 27.

“Employees shall be able to carry over a maximum of one (1) week of vacation to the next year if that week is used by or before May 1st of that year.”

ARTICLE 28 - TUITION REIMBURSEMENT

The Union withdrew its proposal that the language in Article 28 include a requirement for a written response from the Fire Chief to unit members wishing to attend classes, and noting that attendance would be subject to manpower availability as determined by the Fire Chief, but that approval for attendance would not be unreasonably denied.

ARTICLE 29 - HOLIDAYS

The Union withdrew its request to add September 11, 9/11, as a holiday in Article 29.

ARTICLE 30 - SICK LEAVE

A. All Employees shall earn sick leave in accordance with the provisions of the Ohio Revised Code Sections 124.38 and 124.39. These hours shall be accumulative without limit. Thirty-five percent (35%) of unused accumulated sick leave up to a maximum of eighty-five (85) calendar days shall be paid to an Employee upon retirement, resignation, for good cause, or death. Upon an Employee's death, payment shall go to the surviving spouse or estate of the Employee.

B. Sick leave shall be used by the Employee in accordance with Employer's policy applicable to all Township Employees.

UNION'S PROPOSAL

The Union proposes increasing the payout of unused accumulated sick leave upon retirement, separation, or death to a surviving spouse from a maximum of 85 days to 100 days. The Union argues that all of the Township's other bargaining units already have this benefit in their contracts. The Union has included a sample of the inclusion of this benefit in Article 11 of another Austintown Township bargaining unit's contract following its proposal.

The Union argues that attendance improves when employees have the opportunity to accumulate sick leave. Without a payout incentive, employees are more likely to use sick leave rather than lose it, and this practice results in overtime call out costs which ultimately will exceed the cost of the payout for 100 accumulated sick leave days.

TOWNSHIP'S PROPOSAL

The Township rejects the Union's proposal to increase the maximum number of days a firefighter can accumulate from 85 days to 100 days. The Township argues that this increase will create a "potential additional liability to the Township of 2,160 hours of wages and retirement costs for the present eighteen (18) union members upon separation from the Township, and that payout will be at a higher rate than at the time earned. Therefore, the Township requests that the current language in the contract remain unchanged.

DISCUSSION

The Township offers no defense to the Union's assertion that all other Township employees have contract clauses allowing the accumulation of 100, as opposed to 85, days of sick leave. No other Township contracts are cited to refute the Union's argument for parity. SERB benefit reports citing maximum accumulations in other cities does not address the Union's argument. Since the Township has failed to refute the Union's contention that this change is required to insure parity with other Township bargaining units, the fact finder must assume that this is the case.

While the Township argues that this increase creates a "potential additional liability to the Township of 2,160 hours of wages and retirement costs for the present eighteen (18) union members upon separation from the Township," no explanation is given as to how this number was determined. In addition, the Township submits no studies comparing the potential costs of increasing accumulated sick leave payout with the costs of overtime incurred if employees use sick leave rather than lose it.

FACT FINDER'S RECOMMENDATION

In order to establish parity between Township bargaining units, Article 30 should be changed to reflect an increase in the number of days of sick leave that can be accumulated from eighty-five (85) to one hundred (100). That is Article 30 - Sick Leave should read:

A. All Employees shall earn sick leave in accordance with the provisions of the Ohio Revised Code Sections 124.38 and 124.39. These hours shall be accumulative without limit. Thirty-five percent (35%) of unused accumulated sick leave up to a maximum of one hundred (100) calendar days shall be paid to an Employee upon retirement, resignation, for good cause, or death. Upon an Employee's death, payment shall go to the surviving spouse or estate of the Employee.

B. Sick leave shall be used by the Employee in accordance with Employer's policy applicable to all Township Employees.

ARTICLE 37 - PERSONAL AND EMERGENCY LEAVE

The Union withdrew its proposal for an increase in Personal days from one (1) to two (2) days and an increase in Emergency days from two (2) days to three (3) days.

ARTICLE 38 - HEALTH BENEFITS

A. Medical Insurance. For the period from January 1, 2000 through December 31, 2002, the Employer will provide to all eligible Employees hospitalization and medical insurance pursuant to a Preferred Provider Organization (hereinafter referred to as a PPO) with annual coverage of One Million Dollars plus a vision plan. The Township may change its Schedule of Benefits for Comprehensive Major Medical Non-Network Providers from 20% to 30% and its calendar year co-payment limit for a covered person from \$500.00 to \$1,000.00. The Employer agrees to continue to pay all necessary premiums for the maintenance of such insurance coverage through December 31, 2002.

B. Dental Insurance. For the period from January 1, 2000 through December 31, 2002, the Employer will continue to provide to all eligible Employees dental insurance to the same extent, the same coverage, and which provides the same benefits as are in effect at the time of the execution of this Agreement, which includes 100% preventative maintenance and annual coverage of \$1,000.00. The Employer agrees to pay all necessary premiums for the maintenance of such coverage through December 31, 2002.

C. Prescription Drug Insurance. For the period from January 1, 2000 through December 31, 2002, the Employer will continue to provide to all eligible Employees prescription drug insurance to the same extent, the same coverage, and which provides the same benefits as are in effect at the time of the execution of this Agreement, except that the co-payment at a network pharmacy may change from \$0.00 for Generic Drugs to \$3.00 and for Brand drugs may change from \$5.00 to \$10.00. The Employer agrees to pay all necessary premiums for the maintenance of such coverage through December 31, 2002. The Board of Trustees reserves the right to institute a voluntary mail-order prescription drug program for maintenance drugs only. The Board of Trustees further reserves the right to review the cost-effectiveness of such mail-order prescription drug program and to discontinue such program in its sole discretion.

D. Life Insurance. The Employer will provide and maintain in forced, by payment of the necessary premiums, life insurance in the amount of Fifty Thousand Dollars (50,000.00) for all Employees during the term of this Agreement.

E. Vision Insurance. For the period from Jan. 1, 2000, through December 31, 2002, the employer will provide and maintain to all eligible employees Plan B from the Vision Services Plan, P.O. Box 2487, Columbus, Ohio 43216-2487.

NOTE: The benefits to be in effect at the execution of this Agreement shall be the same benefits as provided for all Township Employees.

UNION'S POSITION

The Union adamantly insists that the present hospitalization plan be maintained by the Township over the course of the next three years without any contribution to premium costs from the Firefighters. In support of its position the Union presents a compilation analyzing the insurance plans of Mahoning County Political Subdivision Employers [Union Exh. - Mahoning County Insurance Information]. This study indicates that no political subdivision in Mahoning County requires bargaining unit employees to contribute to monthly hospitalization premiums as proposed by Austintown Township.

The Union also challenges the Township's evidence that a SERB report indicates that seventy percent (70%) of public employees contribute to their health plans. Specifically, the Union notes that the SERB report submitted by the Township is based on a survey sent to 1,286 public employers, and not quite half of those receiving the survey, i.e., 617 responded. Seventy percent (70%) of these 617 respondents, or 432 of the 1,286 public employers surveyed actually said that their public employees contributed to their health plans. The Union also notes that this report does not distinguish between bargaining unit and non-bargaining unit employees.

The Union also points to its willingness to accept the Township's wage proposal as stated in the Township's pre hearing brief for a three percent (3%) raise in each of the three years of the proposed contract, and questions the right of the Township to now change that wage proposal making it contingent on firefighter contributions to monthly hospitalization premiums. The Union asserts that because of the Firefighters' willingness to drop almost all its economic demands and accept the Township's wage proposal, the Firefighters should not now be additionally required to pay for hospitalization premiums.

Finally, the Union takes exception to the fact that the Township did not discuss options for saving money on insurance premiums during negotiations, and that the proposal made is not defined and specific.

TOWNSHIP'S POSITION

In its prehearing brief, the Township proposed that Article 38 be changed so that the sentence which currently reads "The Employer agrees to continue to pay all necessary premiums for the maintenance of such insurance coverage through December 31, 2002," be replaced in Article 38, Sections A, B, and C, to read as follows:

"The Employer agrees to pay an amount in premiums equal to the amount presently paid for single and family Preferred Provider Organization coverage plus a cost of living increase for each year of the contract."

Essentially, the Township further proposes that any amount over that cost would become the responsibility of the employees. In support of this proposal, the Township submits SERB's 2001 Annual Report on the Cost of Health Insurance [Employer's Exh. 13] which states that 70% of public employees contribute to the cost of their medical insurance.

The Township argues that it ended the year 2002 in debt, and that because of anticipated lower revenues due to a slow economy, either the cost of medical insurance must be reduced or the normal standards of public service must be reduced. The Township states that its last annual premium for the period May 1, 2002, through April 30, 2003, was approximately \$850,000, and the Township projects increases in the 15% to 20% range.

DISCUSSION

The Township is seeking a major change in Article 38 premised on ballooning premiums and diminishing revenues. It has proven neither. In a list of twenty-two (22) Employer exhibits, there is no copy of the actual premium paid for the period May 1, 2002, through April 30, 2003. The Township's statement that this premium was "approximately" \$850,000 lacks both specificity and substantiation without a bill. Surely those paying this premium have a copy of the actual and exact premium bill, and this bill should have been among the Township's exhibits documenting premium costs for the period in question. Also, during the fact finding session, considerable time was spent trying to reconcile the Township's claimed budget deficit with the outside audit commissioned by the Union prior to negotiations showing a surplus. Because the Township, as noted in the Union's post hearing brief, advances money in and out of various established accounts, it is difficult to definitively establish deficits and surpluses in individual accounts. This accounting system undermines both the Union's and the Fact Finder's willingness to accept the Township's claim that it has no money.

The Township similarly offers no documentation to support its premium increase projections in the "nonspecific" range of 15% to 20%. Among its exhibits there are no historical usage/claims studies over the last five or ten years supporting these projections, nor is there a letter from the insurance carrier projecting these increases based on their usage records. Employer exhibit 21, "Austintown Township Fire Department: Current Hospitalization Costs and Projected Increases," begins with rates in Year 2002 and simply increases these rates in years labeled 1, 2, and 3. To make a case for these projected rate increases, rates of increase over at least the past five years should be studied and provided as the basis for the Township's stated rate projections. Similarly, in the section of Exhibit 21 designated "Current Policy" and listing "Total Annual Cost" the total annual cost under the year 2002 is \$145,584., an amount significantly less than the \$850,000. premium noted in the pre and post hearing briefs submitted by the Township for the period May 1, 2002, through April 30, 2003. The numbers appearing on Employer Exhibit 21 appear to have no relationship to the figures quoted in the Township's Article 38 proposal in both the pre and post hearing briefs submitted by the Township.

In short, the Township has neither documented the premium nor the projected rates of premium increase it is using to justify this major change in Article 38. In addition, the Union has refuted the Township's claim that 70% of public employees contribute to the cost of their medical insurance with a much more on point report [Union Exh. - Mahoning County Insurance Information] indicating that no political subdivision in Mahoning County, political subdivisions sharing similar fiscal challenges and needs, requires bargaining unit employees to contribute to monthly hospitalization premiums as proposed by Austintown Township.

FACT FINDER'S RECOMMENDATION

Article 38 should remain as is over the course of the next three years of the proposed contract without any Firefighter contribution to premium costs. The Firefighters, in their post hearing brief, express a willingness to revisit this issue in the future when the Trustees provide the Union with a specific and detailed proposal. It is recommended that the Trustees use this next contract period to document problems and develop specific and detailed proposals addressing those problems.

ARTICLE 38 - HEALTH BENEFITS - LIFE INSURANCE

D. Life Insurance The Employer will provide and maintain in force, by payment of the necessary premiums, life insurance in the amount of Fifty Thousand Dollars (50,000.00) for all Employees during the term of this Agreement.

UNION'S POSITION

The Union proposes increasing Life Insurance coverage provided by the Township from \$50,000. to \$100,000. The Union does not mention this proposal in its post hearing brief and provides no evidence in its prehearing materials supporting this request by comparisons with Life Insurance coverage for Firefighters in Mahoning Valley communities.

TOWNSHIP'S POSITION

The Township rejects the Union's proposal because any increase in this benefit will result in an increased premium which the Township cannot afford. The Township supports its rejection of the Union's proposal with Employer Exhibit 13, the SERB Clearinghouse Benefits Report which shows that of the fifteen (15) fire departments listed, \$50,000. is the most that any township firefighter receives for life insurance, with only Copley and Franklin Townships actually having \$50,000. policies. Specifically, the Township cites Boardman, a township of similar size in Mahoning County, which provides only \$15,000. in life insurance.

DISCUSSION

The Township has supported its position that an increase in Firefighter life insurance from \$50,000. to \$100,000. would be unreasonable and excessive. When compared to life insurance policies in other communities, the present provision is generous.

FACT FINDER'S RECOMMENDATION

Section D of Article 38 dealing with Life Insurance should remain unchanged in the proposed contract. That is it should read:

D. Life Insurance The Employer will provide and maintain in forced, by payment of the necessary premiums, life insurance in the amount of Fifty Thousand Dollars (50,000.00) for all Employees during the term of this Agreement.

ARTICLE 49 - MINIMUM MANNING

Effective with the execution of this Agreement the Employer shall maintain the following manning schedule concerning the around the clock manning of crews at two (2) station (s).

A. Employer will man as follows one (1) Captain, one (1) Lieutenant, three (3) full-time firefighters, along with one (1) part-time firefighter for a total of 6 at two (2) stations at all times with the captain and lieutenant at different stations.

Notwithstanding other terms of this agreement only one (1) full-time employee of a crew shall be off work at a time on either Vacation, AT or Personal Day.

B. Notwithstanding any other terms of this agreement, if sufficient personnel are not available to meet the minimum staffing requirements of 6 crew members and such insufficiency is a result of the first day of Sick Leave, then full-time firefighters shall be retained or recalled on overtime first for a maximum of TWELVE (12) hours at the 2756 rate. After the first 12 hours of Sick Leave then part-time firefighters may be utilized to fill the vacant position.

If such crew staffing insufficiency is the result of the 2nd day or greater of Sick Leave, Vacation Leave, AT Leave, Personal Leave, Emergency Leave, or is the result of a bargaining unit employee unable to work the crew because in court on fire business or at EMS Council business or Union business or Fire Training or Arson related business or other similar related Fire department business or on a Leave of Absence or on long term disability regardless of the reason for the disability, then part-time firefighters may be utilized to satisfy the crew manning requirements. If part-time personnel are not available to meet the staffing requirements then bargaining unit Employees shall be used until part-time replacements become available.

The Township has the option to use non-crew (2080 hours) bargaining unit members during their regular scheduled hours as replacements for any of the reasons stated in the above paragraph and the township agrees to use the lowest ranked non-crew member to fill the vacant crew position.

If such crew staffing insufficiency is the result of any other reason not specified above then bargaining unit crew members (non 2080 hours) shall be used as replacements.

C. Any time a bargaining unit Employee replaces another bargaining unit Employee of a high rank; i.e., lieutenant replacing captain, the employee shall receive the higher rank pay (referred to as out-of-rank pay). If a higher rank replaces a lower rank; i.e., captain replacing firefighter, the higher rank will be paid the lower rank pay at time and one-half (1 1/2) at the 2756 rate and must take pay and has no right to AT time.

UNION'S POSITION

The Union withdrew its request for improvements in minimum manning, and in its post hearing brief proposes that the minimum manning provision remain the same as provided in the present Collective Bargaining Agreement.

In response to the Township's proposal to delete Article 49 Section A and B, requiring a minimum of five (5) union members on the crew, the Union again cites statements made by Fire Chief Frost and Trustee Ditzler, and noted in the discussion of Article 16 prohibiting layoffs [see Union exh. folder], admitting that the fire department is understaffed and well under prescribed safety standards for a community the size of Austintown Township. The Union argues that deletion of Article 49 will give the Township the option of inadequately staffing the department at will, and in doing so the Township will knowingly place the safety and welfare of the community, as well as that of the individual Firefighter in jeopardy.

Also, since a reduction in minimum manning is inextricably connected to Article 16 prohibiting layoffs, the Union again argues that it obtained a no layoff agreement in exchange for not acting on a previous fact finding order that members' wages be placed at parity with the police department because its concerns for community and firefighter safety outweighed its concern for fiscal parity. The Union maintains that it gave up substantial wage increases awarded by the fact finder only after the Township guaranteed there would be no layoffs and that it would maintain minimum manning at its present level. If the Union were to accept a deletion of Article 49 requiring minimum manning, it would have essentially made the sacrifice of wages awarded by fact finder for nothing. The no layoff clause, i.e., Article 16, is indeed part of the present agreement, and the Union has submitted, with its post hearing brief, a copy of Conciliator Harry Graham's award enforcing a similar exchange agreement between IAFF Local 283 and The City of Salem, Ohio [See p. 8, para. 3] in subsequent negotiations .

It is the Union's belief that the Township's position regarding both minimum manning and layoffs were designed "to pressure the Firefighters' unit to moderate its wage demands." The Union notes

that despite Township claims that continuation of these provisions will have a negative impact on the interest and welfare of the public because the Township may not have funds to spend on other township services, the Township failed to identify essential township services affected.

TOWNSHIP'S POSITION

The Township, in both its pre and post hearing briefs proposes deleting Article 49, Sections A and B, requiring the Township to man a minimum of five (5) union members on the crew. However, on page 3 of the Township's post hearing brief it proposes alternative language, as opposed to outright deletion of the article. Specifically, the Township proposes the following language in Article 49:

A. Effective with the execution of this Agreement, the Employer has the discretion to determine crew manning and scheduling.

B. (Former Section C). Any time a bargaining unit Employee replaces another bargaining unit Employee of a high rank; i.e., lieutenant replacing captain, the employee shall receive the higher rank pay (referred to as out-of-rank pay). If a higher rank replaces a lower rank; i.e., captain replacing firefighter, the higher rank will be paid the lower rank pay at time and one-half (1 1/2) at the 2756 rate and must take pay and has no right to AT time.

In the event, however, that the language in Article 49, Section A, remains, the Township proposes the deletion of the first paragraph of Section B in Article 49.

B. Notwithstanding any other terms of this agreement, if sufficient personnel are not available to meet the minimum staffing requirements of 6 crew members and such insufficiency is a result of the first day of Sick Leave, then full-time firefighters shall be retained or recalled on overtime first for a maximum of TWELVE (12) hours at the 2756 rate. After the first 12 hours of Sick Leave then part-time firefighters may be utilized to fill the vacant position.

The Township also proposes the deletion of the words "the 2nd day or greater of" in the first sentence of the second paragraph of Section B, Article 49.

The Township bases its proposal on its inability to pay for the staffing required by Article 49. The Township argues that maintaining Article 49 in the contract will have a negative impact on the interest and welfare of the public because it will force General Fund tax dollars to be spent on fire services while the needs of the Township may require the expenditure of these tax dollars on other Township services.

The Township maintains that, in the year 2002, the minimum manning requirement cost the Township approximately \$100,000. in overtime wages and accumulated time. The Township also notes that the General Fund had to subsidize the Fire Department in 2002 with \$232,000 [Employer's Exh. 3].

DISCUSSION

In view of the public statements made by both Fire Chief Frost stating that the Austintown Township Fire Department is “definitely well below NFPA Standards [Union Exh. at back of folder],” and Trustee Ditzler’s admission that the Austintown Township Fire Department “is 25 percent to 30 percent smaller than fire departments in other communities our size [Union Exh. at back of folder],” it would not be in the best interests of the public to eliminate present minimum manning provisions in the contract.

The Township’s second proposal regarding this article, i.e., replacing Section B with Section C, essentially has the effect of eliminating the requirement that full-time firefighters be retained or recalled at overtime rates in order to maintain the minimum staffing required in Section A. Section C discusses pay differentials among ranks, but does not distinguish between full-time and part-time firefighters. Replacing Section B with Section C would give the Fire Chief the right to call up part-timers to maintain minimum staffing rather than retaining or recalling full-time firefighters at overtime pay. There are safety problems with this cost-cutting plan, best described in Fire Chief Frost’s letter to Trustee Jeffrey Groat [Union Exh. back of folder]. In this letter Chief Frost, requesting the addition of three full-time Firefighters, says:

“In some cases we are faced with using full-time firefighters on turns that should be filled with part-time firefighters and paying them overtime, if none of the part-time firefighters are willing to work a shift. We are also using our full-time Firefighters to answer calls at home when the need arises and this again is more overtime. But I have documentation of the many times we would not have gotten a truck on the scene if it were not for the off duty full-time personnel responding from home.”

The underlined sections of this quote from Chief Frost’s letter emphasize the unreliability of turning first to part-time firefighters in emergency situations requiring skill and instant availability.

The Township’s other alternative noted in both its pre and post hearing briefs is that if Section A of Article 49 remains the same, requiring a crew of five or more union members, then the first paragraph of Section B of Article 49 should be deleted, and the words “the 2nd day or greater of” in the first sentence of the second paragraph of Section B should also be deleted. The end result would read as follows:

B.

If such crew staffing insufficiency is the result of Sick Leave, Vacation Leave, AT Leave, Personal Leave, Emergency Leave, or is the result of a bargaining unit employee unable to work the crew because in court on fire business or at EMS Council business or Union business or Fire Training or Arson related business or other similar related Fire department business or on a Leave of Absence or on long term disability regardless of the reason for the disability, then part-time

firefighters may be utilized to satisfy the crew manning requirements. If part-time personnel are not available to meet the staffing requirements then bargaining unit Employees shall be used until part-time replacements become available.

This change also effectively eliminates the requirement for full-time Firefighters stated in Section A. It essentially negates Section A by providing that if crew insufficiency is the result of any of the reasons listed in Section B, then part-time Firefighters may be utilized to satisfy the crew manning requirements of Section A, and only if part-timers are not available to meet staffing requirements will full-time bargaining unit Firefighters be used until part-time replacements become available.

This proposed language change does not address the reliability and safety issues presented in both Fire Chief Frost's letter and in his testimony at the fact finding hearing.

FACT FINDER'S RECOMMENDATION

In the interest of public safety, the language of Article 49 - Minimum Manning should remain unchanged.

ARTICLE 51 - AMBULANCE

The employer shall not during the term of this agreement require firefighters to respond to medical calls in ambulances. All responses to medical calls by firefighters shall occur in Fire suppression apparatus as in the past.

UNION'S POSITION

The Union is opposed to eliminating this Article as proposed by the Township. The elimination of this Article would have the effect of requiring Firefighters to respond to medical calls only in ambulances. The Union maintains that the only reason that the Township does not want firefighters to respond to medical calls in Fire Suppression Apparatus is to reduce wear and tear on the equipment.

The Union argues that the Township presently does not own an ambulance, and therefore uses private ambulance services, at no cost to the Township, to transport in the event of emergencies. If the Township had an ambulance, deletion of this clause would mean that part of the crew would be required to man the ambulance and transport in the event of an emergency, while the rest of a depleted fire crew would remain at the station with the Fire Suppression Apparatus. The Union argues that this undermanning would prove dangerous to the community, and the need to go to another location for the ambulance would prove dangerous to the person being transported.

TOWNSHIP'S POSITION

The Township proposes the deletion of Article 51 prohibiting the response to EMS calls by union members in an ambulance or non-fire suppression vehicle. The Township bases its proposal on the need to reduce wear and tear costs on the more expensive fire suppression equipment (pumpers) presently used for these kinds of calls. The Township notes that EMS calls are the Township's leading emergency calls and supports this claim with a "Situation Summary Analysis" [Twp. Exh. 10] showing that from January 1, 1999, through December 31, 1999, there were 688 emergency medical calls as opposed to only 100 structural fires.

DISCUSSION

The Township has not disputed the Union's statement that the Township presently doesn't own an ambulance and uses private ambulance services, at no cost to the Township, to transport medical emergencies. If this is the case, why is Article 51 an issue? Under the circumstances described and unrefuted, the only time Fire Suppression Equipment would be used to respond to medical emergencies would be when no private ambulance is available. In that situation, it would be a matter of public safety to use whatever equipment is available, including Fire Suppression Equipment, to transport the medical emergency as quickly as possible while remaining prepared to respond to fire emergencies.

If and when the Township purchases an ambulance, the location of the ambulance and the deployment of manpower in operating the ambulance will be pertinent in negotiations. Until that time, changing Article 51, as requested by the Township, would create a potential requirement for Firefighters to go to another location for an ambulance and then use it to transport a medical emergency, all the while depleting the fire station workplace which, as noted in earlier discussions, is already understaffed.

FACT FINDER'S RECOMMENDATION

Article 51 should remain unchanged.