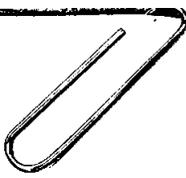


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STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING PROCEEDING

BETWEEN

2003 JUL 28 A 10: 26

AUSTINTOWN TOWNSHIP

(Case No.: 02-MED-10 1110

And

(
(Hearing Date: June 12, 2003

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

(
(Findings and Recommendations:
(July 28, 2003

Representing the Township:

Karen Gaglione, Esq.
Mahoning County Prosecutor

Dawn Durkin, Esq.
Mahoning County Prosecutor

Representing the Union:

Jeff Perry,
OPBA Business Agent

William J. Miller, Jr.
Fact Finder

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SUBMISSION

This matter concerns fact-finding proceedings between Austintown Township (hereafter referred to as the "Township") and The Ohio Patrolmen's Benevolent Association (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed William J. Miller, Jr. as Fact Finder in this matter. The parties agreed to extend the submission of this report until July 28, 2003.

The Fact Finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board, as amended. The Township and Union previously engaged in the collective bargaining process before the appointment of a Fact Finder. This Fact Finder had conducted mediation on May 23, 2003. Such mediation, which assisted in settling some of the outstanding issues, was unsuccessful and fact-finding occurred on June 12, 2003. The following issues were considered during fact-finding:

- | | | |
|-----|------------|-----------------------------|
| 1. | Article 11 | Layoff and Recall Language. |
| 2. | Article 17 | Overtime Scheduling |
| 3. | Article 33 | Scheduling Procedures |
| 4. | Article 19 | Insurance |
| 5. | Article 14 | Compensation |
| 6. | Article 12 | Leaves of Absence |
| 7. | Article 15 | Longevity |
| 8. | Article 21 | Holidays |
| 9. | Article 22 | Vacations |
| 10. | Article 34 | Promotions |

ISSUE NO. 1. **ARTICLE 11 LAYOFF AND RECALL LANGUAGE:**

TOWNSHIP POSITION

It is the proposal of the Township that language be added to Section 01 of Article 11 of the Agreement which would permit non-bargaining and non-Township employees to perform bargaining work in the event the Township decides to cease operating as a Public Service Answering Point (PSAP). The Township contends if this would occur, County employees would perform the bargaining unit's work. The reasoning of the Township for this proposal is due to the Township's bleak financial standing. It is the position of the Township that it needs the ability to cease operating as a PSAP. The Township would point out that since the beginning of 2003, it has made layoffs across the board and completed other decision making which has resulted in a reduction of services. The Township has no resurfacing program budgeted for 2003 compared with a prior

budgeting for resurfacing. The necessity to do what is done in this case is a result of a shortfall which has occurred in Township revenues. It is the position of the Township that it spent \$494,000 on dispatch during 2002, and all of such dollars came from the general fund. Because the general fund also subsidizes the fire department and police departments if the Township is prohibited from ceasing to operate as a PSAP then this will have the effect of reducing other levels of public service such as safety services who also rely on the general fund. The Township does not want any language which would prevent it from exercising its right under the Ohio Revised Code 4117.08 (C) and Article 6 of the Agreement.

UNION POSITION

It is the position of the Union that it is requesting a change in the language found in Section 01 of Article 11 which would preclude the Township from threatening to subcontract some or all of the duties presently performed by employees in the bargaining unit. It is the contention of the Union that the dispatching service which is provided by members of the bargaining unit clearly surpasses the kind of service which would be provided by other entities. The Union contends there is a question regarding the ability of the County to perform the dispatching work. This is due to the fact that the Township uses equipment which is not compatible with the equipment being used by the County. It is the contention of the Union that to make a change to County Dispatchers would result in astronomical cost to the Township which is unnecessary if the work remains within the bargaining unit. It is also the contention of the Union that there are ways to work out the changeover which is going to occur when a Dispatch Supervisor retires, but such changeover cannot be made in a manner which eliminates the bargaining unit work.

FINDINGS AND RECOMMENDATIONS

I have carefully considered the positions of the parties in light of the existing language. Upon considering the language which has been in existence between the parties, the Township does have the right in its discretion to lay off employees because of lack of funds, lack of work or job abolishment. However, the language does preclude the Township from having the work performed by non-bargaining unit employees except for the dispatch supervisor in such circumstances. To give the Township the right to not only lay off employees from the bargaining unit and have such work performed at another location could simply result in a situation where the bargaining unit would be decimated. While the Township has set forth its position related to its funding, this fact, in and of itself, should not be the basis for the Township having the unfettered right to reduce and/or eliminate the bargaining unit. The language which is in existence in the Agreement gives the Township the authority, when necessary, to reduce employees from the bargaining unit. This is a discretionary right of the Township but such right should not also include the right of the Township to eliminate the bargaining unit at its own

determination. It is my recommendation that the language proposed by the Township not be included in the Agreement.

Upon considering the suggested language by the Union, it is my considered opinion that such language to preclude the Township from having the authority to lay off employees when necessary would not be appropriate, and should not be included in the Agreement.

It also became evident during the fact finding process that the parties have had considerable discussion related to the possibility of eliminating certain work functions of a supervisor and having some of the duties performed by employees in the bargaining unit. In my considered opinion, this would provide an opportunity for the parties to provide a certain cost reduction for the Township while providing a basis for having the work performed by existing members of the bargaining unit. It is my recommendation that the parties further consider this matter and attempt to agree upon language which will accomplish the objectives of the Township and the bargaining unit related to this change.

ISSUE NO. 2. ARTICLE 17 OVERTIME SCHEDULING

TOWNSHIP POSITION

It is the position of the Township that the present overtime language be changed so that any language which is present cannot be interpreted as requiring minimum manning. It is the intent of the Township to clarify the ambiguous language of Article 17, specifically the term "vacant shifts" and the sentence "The intent is to maintain double coverage whenever possible". The Township believes that it should not have the requirement to fill work shifts beyond 21 shifts per week. It is the Township's position that it has the right to lay off individuals because of financial difficulties, and the Township wants to be sure that the existing language of the overtime provision does not provide a requirement to maintain double coverage in any specific situation.

UNION POSITION

It is the position of the Union that the existing language found in Article 17 of the Agreement was mutually created and accepted by the parties during the last round of negotiations. It is the contention of the Union that the language which has been arbitrated twice, has been clearly interpreted. The only existing problem with the language from the Union's perspective is related to the ability of the Township to refuse to pay compensatory time for the errors that have been made in the past when an employee has called in to refuse an overtime shift during the last 90 days. It is the contention of the Union that the 90-day period is too long of a time to go back. The mistake of a

supervisor should not penalize dispatchers, and in this case it is the Union's position that the language which permits the Township to refuse to pay compensatory time for errors that have been made in the past when an employee has called in to refuse an overtime shift in the last 90-days be removed from Article 17 of the Agreement.

FINDINGS AND RECOMMENDATIONS

Upon reviewing the positions of the parties, it becomes readily apparent that the Township is attempting to limit the number of shifts that are offered in a given week. Under the present language which had been bargained for by the parties, the limitations which were provided were more specific and indicated how vacant positions would be filled. The language in question already provides that the intent is to maintain double coverage wherever possible, and this language seemed to have worked for the parties over the term of the present contract. Furthermore, the limitation being sought by the Union regarding this language where it is asking that the clause related to an employee has refused an overtime shift in the last 90 days be eliminated would appear to be departing from the bargain which it entered into during the last contract with the Township. Upon carefully considering all aspects of the proposals by the parties, I can see no compelling reason to alter the existing language during the term of this present Agreement. The language in question has worked and has served the parties and neither party has been persuasive in showing why a specific change is needed. Management already has the right to manage its operation and determine its work force in accordance with the applicable provision of the Agreement, and the employees are subject to the specific clause in the overtime scheduling language. Consequently, it is my recommendation that there be no change in the existing language.

ISSUE NO. 3. **ARTICLE 33 – SCHEDULING PROCEDURES**

UNION POSITION

The Union proposes language which in its opinion has been in effect through policy in many instances. There are certain modifications provided by the Union, but such modifications would reflect the appropriate way to establish scheduling procedures. Specifically, the language proposed by the Union regarding scheduling is as follows:

A seniority list for employees shall be posted in the dispatch room at all times showing, date of hire, seniority ranking, total hours worked (for part-time employees), dates of classification change(s) and total years of service (full-time employees only).

This list will be updated every three months. All deadline dates will be clearly displayed on all forms, bid sheets, etc. that are posted. All forms will be filled out in pen. Full shifts will be awarded over partial shifts regardless of status, seniority, or shift preference order.

For the purpose of (full-time) shift bid selection, seniority shall be for all continuous years of service. Service that is broken for one (1) calendar year or more excluding any approved leave shall be counted from the last date of hire.

Full-Time Employees

Shift bid preference will be every three months. The new bid sheet for the next bid period will be posted the first Monday beginning the 4th week of the current bid period and will remain posted for seven (7) days unless the bid selection sheet is completed before seven (7) days. The next three (3) months schedule will be posted within fourteen (14) days of posting date (the end of the 6th week of the current bid period).

Full-time employees can choose which two (2) days off they will have off for each month of that bid turn according to seniority. Days off may be the same for any or all three months of the bid and may be consecutive or non-consecutive.

If a full-time employee requests days off during the next bid period before the full-time schedule is completed then those days will be made available for part-time employees to bid for after a full-time employees are given their bid shifts.

Once the full-time schedule is completed any changes will be filled pursuant to article 17 of the contract.

Dispatch Supervisor

This position will be limited to 24 hours of actual dispatching and 16 hours of non-dispatch (Supervisory) duties per week. The Dispatch Supervisor, as a bargaining unit member, will bid along with other full-time Dispatchers. If he needs to change a shift due to fulfilling the duties of the Dispatch Supervisor position, the vacant shift will be filled per Article 17.

Part-Time Employees

When the full-time schedule is posted, at the end of the 6th week of the current bid period, there will also be posted available shifts for Part-Time Dispatchers to bid for.

The attached form will be used for bidding purposes. There will be no more than one week on each form. The bid lists will remain posted for seven (7) days. Seven (7) days after the list is taken down, the shifts will be filled in on the main schedule.

A shift is bid for by the employee assigning a preference number to each shift with one (1) being the first preference, two (2) being the second preference, etc. Each digit can only be used once. If an employee can work a partial shift, it can be hand-written in and must be assigned a preference number as well. An employee cannot sign up twice for the same shift. For example: if an employee signs up for 7p-3a, he/she cannot also sign up for 7p-11p or 7p-12a for the same shift or vice-versa.

The person with the most hours is awarded his/her 1st choice.

The person with the 2nd most hours is awarded his/her 1st choice. If his/her 1st choice is not available then go to the 2nd choice. If the 2nd choice is not available then go to the 3rd choice. Keep going down the list until a shift is awarded or there are no other shifts he/she signed up for.

The person with the 3rd most hours is awarded his/her 1st choice. If his/her 1st choice is not available then go to the 2nd choice. If the 2nd choice is not available then go to the 3rd choice. Keep going down the list until a shift is awarded or there are no other shifts he/she signed up for.

Continue this procedure until you have gone through all the dispatchers once. If there are still shifts signed up for but not awarded then go back to the person with the most hours and start the procedure over again. This time you begin with the 2nd preferred shift. This continues until all shifts signed up for have been awarded.

If a part-time employee requests days off during the next bid period before the part-time schedule is completed then those days will be made available to all dispatchers pursuant to Article 17.

Any shifts still open will be filled pursuant to Article 17 of the contract.

If any shifts are still open they will be available to all dispatchers on a first come first serve basis.

For only the 3a-11a shift, if any part-time dispatcher who is scheduled 3a-11a uses any type of leave causing 3a-11a shift not to be filled, then only part-time dispatchers will be called in accordance with the contract provisions and established scheduling procedures to fill the 3a-11a shift. If the shift is not filled by a part-time dispatcher, the shift will remain unfilled and no full time dispatcher will need to be called.

If different times are to be designated for the shifts that dispatchers work, then it will be mutually agreed upon by the Township and OPBA in writing to which shift the above procedures for only the 3a-11a shift are applied, if the procedures need to be applied at all.

The Chief Dispatcher or other Dispatch supervisors, as a non-bargaining unit member, is only to dispatch in bonified emergencies. An emergency is defined as a natural or major disaster or catastrophe or in the event after all call out procedures are followed that no dispatcher would be working.

TOWNSHIP POSITION

The Township position related to the scheduling procedures which have been proposed provides that generally speaking such procedures will be acceptable to the Township. Several concerns have been raised by the Township. Initially, the Township is concerned that any language provided in these scheduling procedures not be inconsistent with the language which is found in Article 10 of the Agreement. Secondly, both with respect to full-time and part-time employees, the Township contends there is no basis for providing an absolute requirement that vacancies be filled in accordance with Article 17 of the Agreement. The concern of the Township in this regard relates to the fact that it is having difficulty with its financial basis and it does not consider it being acceptable to fill vacancies on a required basis in every instance. Finally, with respect to the Chief Dispatcher or Dispatch Supervisor, it is the contention of the Township that such position needs to have the opportunity to perform dispatching work any time after the minimum 21 shifts are filled. It cannot agree with the Union position that there be a limitation on the duties performed by such position as they relate to the performance of dispatch work.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering the positions of the parties and the language which has been submitted, it appears that most of the language which has been proposed by the Union is acceptable to the Township. It is my recommendation that this language be accepted by the parties. With respect to the concern of the Township regarding inconsistencies in the proposed language as such language relates to Article 10 of the Agreement, it is my opinion that the concern of the Township in such regard is persuasive. It would be inappropriate to change language in a new provision and provide inconsistencies in Article 10 of the Agreement. Therefore, it is my recommendation that while the language proposed by the Union be accepted, that a careful review be made by the parties to be sure that the language which is agreed to not be inconsistent with Article 10 of the Agreement.

With respect to the concerns of the Township concerning Article 17 of the Agreement, and that such language not be considered the final basis for the scheduling procedures, both in the case of full time and part time employees, it is my recommendation that the parties need not specify such language as the final end result of the procedures which are being applied. Of course, it is still possible that such language as found in Article 17 of the Agreement may still be considered and utilized under certain circumstances for positions to be filled either on a full-time or part-time basis. This, of course, will depend upon the specific circumstances which are present and will be determined on a case by case basis. Obviously, Article 17 of the Agreement will continue to remain in effect, and such language will have its applicability on a case by case basis as is determined to be appropriate under the specific fact circumstances of a particular case. Therefore, it is my recommendation that such proposal of the Union to utilize Article 17 to complete changes once the full schedule is completed, should not be referred to as the final step in filling certain full-time and part-time vacancies. Whether or not Article 17 will be applicable under a given fact circumstance will be dependent upon what has actually occurred in a given situation.

With respect to the final concern of the Township regarding the kind of work performed by the Chief Dispatcher, it is my recommendation that if, in fact, the Chief Dispatcher becomes a member of the bargaining unit, then such individual should have the opportunity to perform work after the minimum 21 shifts are filled. However, if such individual does not become a member of the bargaining unit, then it would only be appropriate for such individual to perform work during a bonified emergency in a given situation.

ISSUE NO. 4. ARTICLE 19 – INSURANCE

TOWNSHIP POSITION

Regarding insurance, the Township proposes to change the medical insurance coverage to Medical Mutual's option VI, Supermed Plus Plan, effective May 1, 2003. This plan provides for a number of changes in the coverages and also provides for differences in prescription drug co-payments. It is also requested by the Township that there be an employee premium contribution rate of \$30.00 per family per month and \$20.00 single per month. The Township proposal also gives employees a chance to opt out of the Township's health care plan, and contends it is necessary to implement this plan for all employees of the Township because of the cost savings which will result. The Township, therefore, proposes that this plan be accepted by the Union as it has been by non-Union employees within the Township and other bargaining units within the Township.

UNION POSITION

The Union position is that while it would accept the changes to the plan, it does not believe it would be fair for bargaining unit members to begin paying for the health care coverage. Furthermore, the Union specifically contends that laser eye surgery needs to be a part of this plan and also that the co-payments which are provided for prescription coverage be altered to what is being proposed by the Union.

FINDINGS AND RECOMMENDATIONS

Upon reviewing the positions of the parties, it is my considered opinion that the proposal being advanced by the Township related to a change in insurance is appropriate. The Township has shown a need to adjust its insurance program for the purpose of reducing costs which have increased significantly. The insurance program which has applicability to all employees within the Township should be accepted by the bargaining unit. Regarding the question of laser eye surgery coverage, it is evident that such coverage is not found in the insurance agreement, but specifically has been considered by the Township when there is a medical necessity for employees to have such surgery performed. The Township has made arrangements to have laser eye surgery covered for employees in job related circumstances involving medical necessity, and in my considered opinion, this would be appropriate for members of this bargaining unit who would also be covered under an insurance program which is identical to the insurance program applied to other employees within the Township.

ISSUE NO. 5 ARTICLE 14 - COMPENSATION

TOWNSHIP POSITION

It is the position of the Township that a three percent increase for each of the three years of the contract be made, but only with the following three conditions.

1. The new medical insurance plan the Township implemented as to its non-union employees, effective May 1, 2003 and tentatively agreed to by the fire fighters and as agreed to by the Teamsters become the insurance plan for the Union.
2. No minimum manning language should be part of the Agreement.
3. The Agreement needs to contain language allowing the Township to cease from operating as a PSAP.

The Township would point out that if this proposal is not acceptable to the Union then there should be no increases in wages during the term of the Agreement.

UNION POSITION

It is the Union's position that 4% increases be provided in each of the three years of the Agreement. The Union believes its evidence which has been submitted in the form of comparables shows that there is a justification for providing 4% increases for members of the bargaining unit.

FINDINGS AND RECOMMENDATIONS

Upon carefully considering all of the documentation and extensive arguments submitted by the parties, it is my recommendation that the employees in the bargaining unit be provided with wage increases of 3% per year during the term of the Agreement. These increases should be provided without any other conditions.

ISSUE NO 6. ARTICLE 12 - LEAVES OF ABSENCE

UNION POSITION

It is the position of the Union that employees should be permitted to sell back part of their sick time to the Township. The Union proposes that all employees who have at least 120 hours of banked sick time accumulated are to be eligible to participate in a sick leave buy back option. It is the position of the Union that such language would permit members of the bargaining unit to cash in some of the sick leave they have accrued during a given year. Because the Township would not have to replace the employees with overtime, it is the contention of the Union that the Township would save a large amount of money.

TOWNSHIP POSITION

It is the position of the Township that the current Agreement contains a provision for certain sick leave buy out. However, it is contended by the Township that the language being proposed by the Union is not in any other Township collective bargaining agreement. Furthermore, the Township does not agree with the Union's premise that the provision in question, if added, would result in a cost savings to the Township. The Township does not want to encourage employees to come to work when they are sick, and there has been no showing by the Union that there would actually be a cost savings to the Township. The Township, therefore, requests that the existing language be maintained and that there be no change in the sick leave buy back policy.

FINDINGS AND RECOMMENDATIONS

I have carefully reviewed the positions of the parties regarding this issue. Obviously, it could be argued that there are certain benefits to both sides regarding the proposal being made by the Union. However, it is also evident that there are certain downsides to the proposal of the Union from the viewpoint of the Township. In my opinion, when the entire Agreement is considered, it is my recommendation that the parties not adjust this specific provision during these present contract negotiations. I would agree with the Township that in the event the Union could establish to the Township that there is a specific cost savings then the Township should be interested at such particular time in making a contractual adjustment. Lacking such showing by the Union, the Township would not be in a position to make such change. In any event, when the entire matter is considered, it is my recommendation that there not be any change as requested by the Union.

ISSUE NO. 7 ARTICLE 15 - LONGEVITY

UNION POSITION

Basically, the Union makes two suggested changes in the existing longevity language. First, the Union proposes that effective January 1, 2004, the rates be changed from \$50.00 for each two years of service up to a maximum of 10 years to \$75.00, and for each two years over 10 years the \$100.00 allowance be increased to \$150.00. Additionally, the Union requests that in the event of a death of the employee, the money be paid to the surviving spouse or the members estate.

TOWNSHIP POSITION

It is the position of the Township that there need not be any adjustments made in the longevity rates. Specifically, the Township contends it would be unreasonable to make changes at this particular time due to the financial situation of the Township.

FINDINGS AND RECOMMENDATIONS

I have reviewed the positions of the parties and would agree with the Township that under the existing circumstances there would be no reasonable basis for increasing longevity payments as has been requested. Consequently, it is my recommendation that there not be any adjustment made in the rates, effective January 1, 2004, as suggested by the Union. However, with respect to the Union's proposal that the member's estate or surviving spouse share in any longevity payment that would be applicable, it is my opinion that it would be appropriate and fair to provide for such payment in the event of the death of a member under circumstances where the longevity amount has been earned by the employee. Therefore, I would recommend such change.

ISSUE NO. 8

ARTICLE 21 - HOLIDAYS

UNION POSITION

It is the position of the Union that Article 21, Section 05 provides that each non-probationary employee is entitled to 8 hours of personal leave each calendar year. It is the position of the Union that there be an increase in personal leave for full-time employees. The Union suggests that effective January 1, 2005, personal leave entitlement for full-time employees be 16 hours. Furthermore, the Union proposes that in the case of the death of the employee, the money shall be paid to the surviving spouse or the member's estate. The Union reasons that full-time employees should be entitled to at least twice as much personal leave as is provided for part-time employees.

TOWNSHIP POSITION

It is the position of the Township that there is no basis for extending the amount of hours presently received by employees for personal leave entitlement. The Township believes that the current contract language is acceptable, but it would propose that full-time employees be given 16 hours of personal leave if the employees agreed to give up their two days of emergency leave. The Township contends the employees have sufficient personal leave and there is no basis under the existing circumstances for providing increased personal leave.

FINDINGS AND RECOMMENDATIONS

Upon reviewing the positions of the parties, it is my considered opinion that the personal leave which is presently afforded employees in conjunction with the holidays which are also provided is sufficient, and it is my position that there need not be any increases provided as has been suggested by the Union. The leave being provided to employees is sufficient, and there does not appear to be any justification for increasing such leave amount. Furthermore, it is my position that there is no basis for requiring the Township to provide leave amounts in the form of money to a surviving spouse or an employee's estate because the leave is specifically provided for the purpose of an employee's own personal use while such employee is living.

ITEM NO. 9. ARTICLE 22 – VACATIONS

UNION POSITION

The Union proposes that a new schedule be provided related to vacation entitlement. Effective January 1, 2004, the proposal of the Union was as follows:

<u>Full-Time Employees</u>	
<u>Completed Years of Service</u>	<u>Paid Days Off</u>
1-5	10(2 weeks)
6-11	15 (3 weeks)
12-17	20 (4 weeks)
18-24	25 (5 weeks)
25 and up	30 (6 weeks)

The Union believes that this vacation proposal should be accepted because external comparables justify a vacation schedule as is shown. The practice which exists is unfair and should not be continued.

TOWNSHIP POSITION

It is the position of the Township that the current contract language related to the specific vacation schedule not be changed. It is the Township's contention that the existing vacation schedule is standard throughout the Township and any additional requirement for the Township to provide increased vacation would cause increased cost to the Township which is inappropriate because of the Township's inability to pay.

The Township also proposes to clarify language found in Article 22, Section 03 to avoid an employee receiving prorated vacation time for use in the following year if that employee does not complete a full year of service in the current year. It is the contention of the Township that the current language found in Section 03 and also in the police collective bargaining agreement resulted in an arbitrator awarding a detective an additional three and a half weeks vacation. The Township is willing to agree to language that guarantees employees their entire annual vacation in the last year of employment regardless of what time of year the employee retires. Any vacation credit beyond such amount would be opposed by the Township.

FINDINGS AND RECOMMENDATIONS

I have carefully reviewed the contentions and proposals of the parties regarding vacations. It is my considered opinion that it would be in the best interest of the parties to maintain the existing contractual language for the term of this Agreement. While I understand the concern of the Township related to a specific arbitration decision, it is my opinion that the language as has been submitted in the prior Agreement is not ambiguous and needs no clarification. Furthermore, the request of the Union to accelerate the vacation scale is not appropriate at this specific time.

ISSUE NO. 10. ARTICLE 34 - PROMOTIONS

UNION POSITION

It is the position of the Union that the following language regarding promotions be implemented:

Section 01. Available full-time positions will be filled from current Austintown Township Dispatchers unless no one accepts the position. The Chief Dispatcher or other Dispatch Supervisory position, when a position becomes available, will be filled from current full-time Austintown Township Dispatchers unless no one accepts the position.

The Union will agree to a limited Dispatch Supervisor position, a bargaining unit member, to perform LEADS/TAC functions, training, evaluations and scheduling. This position will be limited to 24 hours of actual dispatching and 16 hours of non-dispatch duties per week (TAC, training, evaluations, and scheduling). This position will pay an additional 15% per hour above the top rate available to a Dispatcher whether or not they are acting a Dispatcher or a Supervisor. Should this position be abolished this person will be returned to their previous full-time status. Any other duties placed on this position will cause the appropriate sections to be reopened concerning hours & wages.

It is the position of the Union that because the Chief Dispatcher is due to retire shortly, it is only proper to create a position from within the bargaining unit. The Union contends the approach being proposed will also provide cost savings benefit to the Township.

TOWNSHIP POSITION

It is the position of the Township that it objects to the inclusion in the Agreement of any language regarding promotions. The Township contends it wants to retain the ability to promote employees as it deems appropriate. Furthermore, the Township

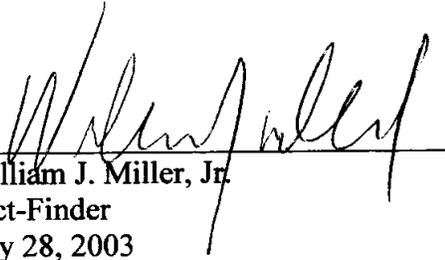
contends it will not agree to put the non-bargaining position of Chief Dispatcher in the bargaining unit. The Township argues that it does not want any language which would prevent it from exercising its right under the Ohio Revised Code, and it is the contention of the Township that it has the inherent right to determine whether or not the position in question will be filled.

FINDINGS AND RECOMMENDATIONS

The Union is requesting that management give up its inherent right to make a determination as to whether or not a particular position which is now a management position is to be filled. Upon carefully considering the matter at issue, it is my opinion that the management of the Township makes the determination as to who fills or does not fill a specific management position. Furthermore, management makes the determination as to whether or not such management position will be filled. If, in fact, the Township makes a determination to work with the bargaining unit to determine a specific position that will be created then this opportunity for creating an agreed upon position is also present. However, management is not obligated to give up its right to determine who will fill a specific management position, and if management makes the determination to fill such position to utilize who it deems appropriate. Therefore, it is my recommendation that the request of the Union not be granted.

CONCLUSION

In conclusion this Fact-Finder submits his findings and recommendations as set forth herein.



William J. Miller, Jr.
Fact-Finder
July 28, 2003

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FIRST CLASS

WILLIAM J. MILLER, JR., ESQ

LABOR ARBITRATOR

106 RAMPART LANE

LIGONIER, PENNSYLVANIA 15658

TO:

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