

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2003 NOV 13 A 10: 26

In the Matter Between)	Case No. SERB-02-MED-12-1259
)	
MADISON FIREFIGHTERS IAFF)	
LOCAL 3141)	
)	
and)	REPORT AND RECOMMENDATIONS
)	OF FACT FINDER ELMER G. COWAN
MADISON FIRE DISTRICT)	
)	

Report and Recommendations of Fact Finder pursuant to a Hearing between the parties before Fact Finder Elmer G. Cowan at the Township Hall of the Township of Madison, Ohio.

Two mediations were held prior to the final fact finding hearing, the first mediation was held on August 12, 2003 the second was August 26, 2003 and the final hearing of the fact finder September 26, 2003. The fact finding hearing began at 10:00 a.m. at both of the August 12 mediation and August 26 mediation. The parties were unable to agree on other than a couple of issues and therefore fact finding was schedule for September 26,2003.

APPEARANCES

On behalf of the Madison Fire District,
Madison, Ohio:

Tom Grabarczyk
Employed by:
Labor Relations Management Inc.
6800 West Central Avenue
Suite L-2
Toledo, Ohio 43617

Walt Zilke
Chief, Madison Fire District

Jacklyn Reznak, Fire District Clerk

On behalf of the Union

Jim Astorino, President
Northern Ohio Firefighters
17703 Grovewood Avenue
Cleveland, Ohio 44119

Greg Shannon, Firefighter
Terry Sopko, Madison Local
Union President

Ted Baker, Madison Local Union
Vice President

Quoting from the position statement of the Madison Fire District, the Fire and EMC services are provided by a total of 39 Employees employed with the Madison Fire District Twenty-six (26) part-time Employees are covered under a separate Collective Bargaining Agreement.

This bargaining agreement includes (12) full-time Employees of which (3) are lieutenants and (9) are firefighters in the full time unit (9) are paramedics.

The Madison Township is the largest township based on square miles in the State of Ohio. The Fire District is responsible for 48-1/2 square miles. Fire and EMS services have historically been provided by a part-time department. Full-time staffing as we know it today began in 1998. The Fire District has (3) stations of which (2) are manned (24) hour per day. Station manning includes total of (4) full-time Employees and (3) part-time Employees during day hours (2) part-time during evening hours. The current bargaining agreement which was made a part of this hearing was the first agreement between the Fire District and the full-time Firefighters. The parties are now negotiating the first successor agreement. Unlike area City Fire Departments, Madison Fire District must operate entirely within its funds received from levies. Area city Fire Departments operated under a number of revenue sources including but not limited to general fund Income Tax(levies,capital improvement funds,pension funds,special assessment/bond retirement funds and other sources). Madison Fire District operates on a (2) mil levy passed in 1985 continuing; (2.4) mil levy passed in 1999 continuing; and a (2) mil levy passed in 1997(5 years renewed in November 2002 as a continuing levy).

The position statement presented by the employer Madison Fire District contained 12 issues to be resolved and the position statement by the Northern Ohio Firefighters contained 10 statements however the fact finder will proceed using the outlines furnished by the Madison Fire District as follows:

1. Article 1 - Work Related Injuries
2. New Article Fitness for Duty
3. Article 14 Hours of Work
4. Article 15 Rate of Pay
5. Article 17 Officer in Charge Additional Pay
6. Article 18 Health Insurance Benefits
7. Article 20 Pension Benefits
8. Article 21 Holiday Leave

9. Article 22 Vacation Leave
10. Article 23 Sick Leave
11. Article 25 Uniform and Uniform Allowance
12. Article 30 Lay-Off and Recall Procedure

The Madison Fire District in their position statement introduced 29 exhibits. The Union in their position statement introduced 13 exhibits. As I proceed through the various articles I will introduce in my opinion the exhibits which are pertinent for each article as presented by both the Fire District and the Union.

- Work Related Injury
- Item 1 There may be some confusion as to Exhibits. My notes indicate that the township Exhibit 1 is actually the International Contract effective April 1, 2001 and expiring March 31, 2004. There was also another Exhibit attached to the Township's Position Statement which they had titled 1 also have added Exhibit 1A to that document and am attaching it to my report. This deals with work related injuries and the union indicated that they were in agreement with Exhibit 1A and therefore I find that said work related injury article is not in dispute between the parties.
- Item 2 Fitness for Duty. The employer has proposed a package, a new article as Exhibit 2 which was attached to their Position Statement, in addition they have attached Exhibit 1 dealing with various communities within the area and indicating how they handle Fitness for Duty problems. The Union's position is that the Fitness for Duty provision as set forth in the contract remain the same. As to the proposal being, Exhibit 2 of the employer dealing with Fitness for Duty I am inclined to agree with the Union and although it was proposed to include Fitness for Duty in the Sick Leave provision in Article 23 of the contract. I am in agreement with the Union that the Article 23 should remain unchanged.
- Items 3 Article 14 dealing with Hours of work. The Union proposes that the work be reduced from 53 hours as provided for in the contract to 51.7 hours per week. The Township is opposed to this, however has proposed a new Section 3 in Article 14 dealing with hours of work in which their Exhibit 3 proposes full time Employees shall be permitted to be schedule off for a vacation or holiday at any time provided certain conditions must be met. The fact finder finds the reduction of 51.7 hours per week proposed by the Union is hereby denied and the proposal by the Township to amend Article 14 Hours of Work and add Section 3 should be granted and Exhibit 3 is attached here to.

Item 4

Article 15, Rates of Pay. This is probably the most crucial item to be considered in the whole negotiations. The Madison Fire District under their Item 4 made a comprehensive proposal, which The Fact Finder reviewed all of Madison Township Fire Exhibits 2 thru 29 along with the Exhibits furnished by the Union being Exhibits 1 thru 13. Each Exhibit has been examined. The Union seeks an annual increase of 5 percent for 3 years, also creating an officer's differential of 10 percent and establishing longevity payments. The employer Madison Fire District proposes expand the pay grade schedules, proposed annual increase of 3 percent over 3 years proposal and officer differential of 1.25 per hour as opposed to longevity payment . The Employer under their Article 15 has indicated that Article 15. 03 effective March 5, 2002 would be:

non probationary Fire Fighters	12.57 per hour
non probationary Fire Fighters/Paramedic	13.17 per hour
Probationary Fire Fighters	10.98 per hour
Probationary Fire Fighters/Paramedic	11.52 per hour

There had been negotiations and mediation of both parties pertaining to part-time Fire Fighters schedule for grade steps and their wage schedule based on these discussions the employer proposes a new scale be initiated over the 3 year life of the agreement resulting in wage steps. It was further proposed by the employer that paramedic pay be separate and apart from wage scale and be added to the base rate determined by step and or rank. Wage increases are proposed to be retroactive for Employees employed upon execution by the Board of Trustees. The employer's proposal proposes the following schedule be adopted which reflects a 3.5 percent increase in base pay in each year of the contract and a paramedic pay supplement which has been increased from 50 cents per hour to 70 cents per hour. In their employer position there is set forth the grades or year

Firefighter 2003		Firefighter 2004		Firefighter 2005	
Probationary	11.00	Probationary	11.00	Probationary	11.00
Grade 3	13.01	Grade 3	13.01	Grade 3	13.01
		Grade 2	13.47	Grade 2	13.47
				Grade 1	13.94
Lieutenant		Lieutenant		Lieutenant	
Grade 3	14.26	Grade 3	14.26	Grade 3	14.26
		Grade 2	14.72	Grade 2	14.72
				Grade 1	15.19

It is further proposed that all Employees who possess and maintain paramedic certification shall be paid an additional 70 cents per hour while certified and online. Employees promoted from Fire Fighter to Lieutenant shall be placed at grade 3 level of

the Lieutenant wage scale and advanced annually on the anniversary date of the promotion. Any Lieutenant reduced in rank shall be placed in the Fire Fighters schedule at the same grade number assigned at the time of the reclassification. It is the contention of the Employer that the Fire Fighters with paramedic certification reflects a 4.1 increase in the first year followed by 3.5 percent the second year and 3.5 percent the 3rd year, and further contends the net effect for a Lieutenant with paramedic certification reflects a 8.25 percent increase in the first year followed by 3.5 percent the second year and 3.5 percent the third year.

The Union is arguing that the overall effect of the wage of the annual increase should be 5 percent for 3 years and they further argued that there should be raises each year in grades 1,2,3, and 4 with figures furnished by the Union in their position statement that reflect the same circumstance as the Employer has proposed except they are basing their figures on a 5 percent 3 year increase. In reviewing all of the Exhibits furnished to the fact finder, it is the opinion of the fact finder and he so finds that the proposal of 3.5 percent for the first, second and third year of this contract would be recommended by the fact finder due to the fact that the actual implementation of the grade system the wages are increased beyond 3.5 percent in the overall picture.

Item 5 Article 17 Officer in Charge Additional Pay. It is the Unions position that effective 2003 the increase in pay for Officer in Charge will be .75 cent per hour, in 2004 .80 cents per hour and 2005 .85 cents per hour. The Employer contends that the wage schedule as proposed in the above Lieutenants compensation grade rates set out that their wage schedule increase reflects an increase of 1.25 per hour. The fact finder is unable to follow this logic and in examining Articles 17 Employer's Exhibit Number 5 is of the opinion that the increase set forth in the Union proposal should be accepted being 2003 .75 cents per hour, 2004 .80 cents per hour and 2005 .85 per hour. The proposal by the Employer that the Lieutenants rate is increased to \$1.25 per hour. I am unable to follow and therefore I feel that the Union's proposal is more in line with the general intent therefore and find for the Union on this particular matter.

Item 6 Article 18, Health Insurance Benefits. The Union has proposed that the Employees are presently paying 20 percent of Health Insurance Premium and they propose that this percentage be reduced to 10 percent for Health Insurance Coverage and that the parties share equally in a Dental Plan Option. To establish an IRA 125 plan to cover costs and to create an opt out plan for Employees. The Employer is opposed to this general request under Article 18 by the Union. The employer agrees that they would investigate and implement if possible an IRA section 125 pre-tax Employee premium co-pay provisions and this would be agreeable to both sides and the fact finder so finds. However, in the co-pay it is the fact finders position that the contributions that is 20 percent should be reduced to 10 percent for Health Insurance Coverage and the City would pick up the difference in premium costs. This is partially covered by Employer's Exhibit Number 6 and the Union's Exhibit Number 1 . The Union proposal for a Dental Plan Coverage, and for compensation for members who do not need a Health Plan, the Fact Finder finds in favor of Employer on these issues.

- Item 7 There was a discussion pertaining to the pension benefits and by agreement of both the Union and the Employer the proposal being Exhibit 7 by the Employer so amended was accepted and the Fact Finder finds and approves said Exhibit 7 as being binding on the parties. Exhibit 7 is here to attach and made a part here of this finding.
- Item 8 Article 21, Holiday Leave; There was a great deal of discussion by both the Union and the Employer after reviewing all the exhibits, it is the finding of the Fact Finder that Holiday Leave Sections 21.01, 21.02 and 21.03 be amended as per the Employer's Exhibit Number 8 which had some corrections made on it and is so accepted and made a part of the finding of the Fact Finder.
- Item 9 Article 22, Vacation Leave; Both sides seems to be generally in agreement and the proposal by the Employer being Exhibit 9 which is here-to attached covering Vacation Leave Section 22.01, 22.02, 22.03, 22.04 and 22.05, should be incorporated into the agreement and the Fact Finder so finds.
- Item 10 Article 23, Sick Leave; After some discussion the Fact Finder was advised that the Union 's position and the Employer's position are in agreement and the Employer has furnished an amendment to 23.01-23.08, The new section 23.09 cover sick leave being Employer's Exhibit 10 is here by attached to this finding and made a part here of. Both parties having agreed to this new section 23.09.
- Item 11 Article 25, Uniforms and Uniform Allowance; The Fact Finders finds that the Employer's proposal for a \$600.00(Six Hundred Dollar) increase for the life of this agreement is here by approved and that Article 25.2 should be amended accordingly. The proposal by the Employer to amend or include an item under the Employer's Exhibit 11 is hereby rejected.
- Items 12 Article 30, Lay Off and Recall Procedure; There is presently in the contract provisions 30.01, 30.02, 30.03 and 30.04. There is a proposal by the Employer to amend these sections and after a lengthy discussion, by the Union and the Employer, it is the Fact Finders opinion that the amendment proposed under Employer's Exhibit 12 be incorporated into the contract in place of Article 30.01, 30.02, 30.03 and 30.04 and the Fact Finder so finds.

Respectfully submitted,



Elmer G. Cowan
 2639 Wooster Road
 Rocky River, Ohio 44116

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ARTICLE _____

WORK RELATED INJURY

Section 1.

In the event of a service related injury by an employee resulting in loss of work by the employee, the Employer shall continue to pay the employee full compensation for the time lost at work for a period not to exceed six (6) weeks or a total of (15) fifteen duty shifts. Compensation shall begin on the third (3rd) consecutive scheduled shift of absence as certified by a physician. If the resulting absence is greater than two (2) weeks or five (5) consecutive scheduled shifts, such time will be credited back to the employee's sick leave account (if used) or paid.

Section 2.

Injury leave shall be offered on a one (1) time basis per incident to be used within a one (1) year period from the date of the injury.

An employee initially, using a portion of said leave, shall be entitled to use the remaining period of time available, within one (1) year, if additional absences as certified by a physician require the employee to be off for a period of one (1) week or two (2) consecutive shifts for the same injury.

Section 3.

Employees may be required to file a loss of time claim with

the Ohio Bureau of Worker's Compensation and periodically thereafter provide satisfactory proof of continuing disability.

The employee agrees to turn over to the Employer any weekly compensation check which represents wages paid him by the Bureau of Worker's Compensation until the employee returns to work or the period of compensation represents the aforementioned six (6) weeks, whichever event occurs sooner.

Any payment received by the employee for Permanent Partial Disability related to the injury shall remain the property of the employee.

Section 4.

The Employer may require an employee to submit to an examination/evaluation by a physician or health care organization to determine eligibility or continued disability. Such examination will be at the Employer's expense.

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ARTICLE 14

HOURS OF WORK

Section 3. - New.

Two full-time employees shall be permitted to be scheduled off for a vacation or a holiday at the same time, provided the second full-time employee has given his supervisor at least thirty (30) days written notice of the date and time he desires to take off, and further provided that the position will be filled by another part-time employee and that such substitution does not adversely affect the safe operation of the Madison Fire District.

Elmer G. Cowan
September 23, 2003
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The net effect for a Firefighter with Paramedic certification reflects a 4.1% increase in the first year followed by 3-1/2% and 3-1/2%.

The net effect for a Lieutenant with Paramedic certification reflects an 8.25% increase in the first year, followed by 3-1/2% and 3-1/2%. (Employer #4 - attached).

5) Article 17 - OFFICER IN CHARGE ADDITIONAL PAY

Under the current contract, Lieutenant pay is determined by the Officer in Charge (OIC) rate. Currently, that rate is 65¢ per hour.

The Employer has proposed that Lieutenants be compensated at rates set out in the wage schedule reflecting an increase to \$1.25 per hour. Having separated Lieutenant pay from OIC pay, the Employer proposes that Firefighters assigned to OIC duty continue to be compensated for such service. The Employer proposes to maintain the current rate of OIC pay. (Employer #5 - attached).

6) Article 18 - HEALTH INSURANCE BENEFITS

The Union has proposed to modify the employee co-pay and offer the ability to have deductions not be subject to taxation. The Union has also proposed to pay employees a monthly stipend who do not need hospitalization.

The Employer is opposed to paying a stipend to employees who do not need health insurance. Such practice is termed adverse selection which results in the remaining group to be rated higher causing overall insurance cost increases.

The Employer will agree to investigate and implement, if possible, IRS section 125, pre-tax employee premium co-pay provisions.

The Employer is opposed to any modification in the current insurance premium co-pay.

SIDE LETTER TO AGREEMENT

PENSION DEFERRAL METHOD PICKUP

Upon ratification, where a majority of all eligible Bargaining Unit employees vote for the tax deferred method of Pension deductions, as a part of the Agreement, the Fire District will:

Send a copy of the plan description (ordinance or resolution) and a cover letter stating the date upon which the Employer intends to commence picking-up (Deferral method) contributions to PFDPF.

The plan must state whether all employees or only certain classes are included. The plan also must meet the requirements of IRS Revenue Rulings 81-35 and 81-36. ~~The IRS requires the following language from these two Revenue Rulings to be incorporated into the plan:~~ 9/26/03
out

9/26/03

- ~~the~~ Employer must specify that the contributions, although designated as employees' contributions, are being paid by the Employer in lieu of contributions by the employees.
- ~~the~~ employee must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the pension plan.

If, after this review, PFDPF determines the plan does not meet the specifications as required above, the Employer will request a Private Letter Ruling from the IRS confirming the plan meets the specifications of IRC Section 414 (h) (2) and Revenue Rulings 81-35 and 81-36.

Agrees to deferral method.

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ARTICLE 21

HOLIDAY LEAVE

Section 21.01

Employees ~~regularly assigned to a forty (40) hour work week~~ shall be entitled to the following paid holidays:

- | | |
|-------------------------------|------------------|
| New Year's Day | Labor Day |
| Martin Luther King's Birthday | Columbus Day |
| President's Day | Veteran's Day |
| Memorial Day | Thanksgiving Day |
| Independence Day | Christmas Day |

Section 21.02

Employees who regularly work an average work week of fifty-three (53) hours shall receive five (5) twenty-four (24) hours of duty off with pay in lieu of the ten (10) specified holidays. Employees shall have the option of electing to take either the time off with pay or to be paid for the holidays at their straight time rate of pay and shall notify the Fire Chief of their election. ~~An employee who works New Year's Day,~~

~~Independence Day, Thanksgiving Day, or Christmas Day who elects to take the time off instead of pay for said holidays shall be entitled to an additional twelve (12) hours off. To be credit to the Employee Holiday Account~~ Should an employee elect to take the time off instead of pay for the holidays, the employee shall designate the days he wishes to take off, which shall be subject to the advance approval of the

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Fire Chief as to when and how they may be taken provided that the election to take the time off will not create an overtime situation. Selection of days taken off in lieu of holidays shall be on a seniority basis.

Section 21.03

Employees who do not elect to take any of the five (5) tours of duty, ~~or the additional twelve (12) hours,~~ ^{no charge store the same.} off by December 1st of each year, shall have the unused holiday time paid at the employee's straight time rate of pay in the employee's first pay check in December of each year.

Section 21.04

An employee will be entitled to time and one-half for hours worked Christmas Day, Thanksgiving Day, and Independence Day.

Time will be earned commencing at the beginning of the tour of the specific day and ending at the end of tour the following day. The employee is required to work the full tour on that day to be eligible. Any employee working a shift exchange on the specified day will be eligible for compensation under this article.

There will be no additional pyramiding of time or rates for additional time worked on the designated holidays.

#9

ARTICLE 22

VACATION LEAVE

Section 22.01.

Add after yrs./hrs. schedule.

The amount of vacation an employee has accrued at the beginning of each year shall be reduced by one-twelfth (1/12) for every 230 hours in the previous year in an unpaid status.

Section 22.02 - No change.

Section 22.03 - No change.

Section 22.04.

Vacation shall normally be used within one year of an employee's anniversary date of full-time hire.

Any vacation leave, accumulated and not used within one year of an employee's anniversary date of full time hire, may be carried over to the following year, not to exceed a maximum of forty-eight (48) Hours which may be carried over from one year to the following year. An employee's accrued vacation bank shall not exceed a total of forty-eight (48) hours above an employee's annual entitlement.

Section 22.05.

For purposes of vacation leave accrual only, each three (3) years of continuous part-time service shall be converted to one (1) year of full-time service. There shall be no service credit for any other political subdivision.

ARTICLE 23

SICK LEAVE

Section 23.01 through 23.08 - NO CHANGE

NEW - Section 23.09

Any full-time employee who has accumulated ten (10) years of full-time continuous service and who transfers from a full-time employee to a part-time employee, and who has accumulated unused sick time at the time of transfer shall have such unused sick time carried on the records of the Employer. At such time that said employee returns to full-time employment, the employee's unused sick leave time shall be reinstated.

In the event said employee does not return to full-time status and employment with the Employer in good standing, the employee shall be paid in full for any unused sick time carried on the records of the Employer to a maximum of two hundred forty (240) hours. / ^{UPON TERMINATION.} Said payment shall be made based upon the employee's rate of compensation at the time employee transferred from full-time to part-time with ten (10) or more years of continuous full-time service.

#12

ARTICLE 30

LAYOFF AND RECALL PROCEDURE

30.01 When the Employer determines that lay offs or a reduction in the work force is necessary, it shall first **lay off** ~~discontinue the use of probationary part-time Firefighters, then part-time Firefighters, then~~ probationary full-time Firefighters. If further reductions are required, full-time Firefighters shall be **laid off** ~~removed~~ in the inverse order of seniority.

30.02 In cases of lay off or reduction in the work force, the employees who are retained must have the skill, ability, and qualification to immediately perform all of the work required satisfactorily and efficiently and shall be required to work as scheduled and assigned by the Employer, so that the Employer staffing patterns and needs as determined by the Employer shall be fully met.

30.03 In the event it becomes necessary during lay offs or reduction in the work force for full-time Firefighters to be reduced to part-time Firefighter status, such reduction shall be made in the inverse order of seniority. }

30.04 Recalls from lay offs or reductions in the work force shall be made in the inverse order of lay off or reduction. In other

words, the last employee laid off shall be the first employee recalled, provided that the recalls from lay offs or reductions in the work force shall be subject to the criteria for lay offs and reductions in the work force set forth above. **Employees shall be eligible for recall to the classification they were laid off or reduced for a period of one (1) year.**