

INTRODUCTION

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on August 10, 2004, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D). There are ten (10) members in the bargaining unit employed by Springfield Township (herein also "Springfield" or "the Township" or "The Trustees") and represented by Local 3040 International Association of Firefighters (herein "the Union" or "IAFF"). The positions represented by the unit are all Lieutenants, full-time Fire-EMT Trainees, Fire-Medic Trainees, Fire-Medics and Shift Supervisors in the Springfield Township Fire Department.

Since 1987, the Trustees have recognized the International Association of Firefighters as the representative of the employees in the bargaining unit. The Township and the IAFF have been parties to six (6) collective bargaining agreements, the most recent of which covered the period of August 1, 2001 to July 31, 2004, effective February 7, 2002.

Springfield Township is located in Summit County, Ohio, situated in approximately 18 square miles of geographic territory. From its main fire station, and one ancillary location, the Township provides fire protection and medic services for its 15,168 residents. The Township answers approximately 2,116 calls per annum, of which 79% involve EMS response.

Bargaining commenced April 7, 2004 with further negotiations June 2, 2004, June 11, 2004, July 9, 2004 and July 16, 2004. Four issues remained by September, 2004.

MEDIATION

The parties agreed to mediation and proceeded with the assistance of the Fact Finder to address the Open Issues identified on September 14, 2004. The tentative agreement reached was subject to acceptance by ratification of each party. Specifically the mediated agreement was

contingent upon the Township obtaining mid-contract agreement from its other two unions, the Fraternal Order of Police and the Teamsters, on changes in a revised health care plan and premium payment mechanism. Both parties did not ratify the mediated agreement.

HEARING

The hearing was held on October 27, 2004, at Akron, Ohio. Both parties submitted position statements with proposals and exhibits. The parties reasserted their pre-mediation positions with respect to the inclusion of increased costs for holiday pay and the addition of language in the collective bargaining agreement providing for the payment of sick leave upon retirement. The result is that the issues remaining for consideration by the Fact Finder are:

- 1 Article 14 - Medical and Life Insurance
1. Article 24 - Wages
2. Article 29 - Holidays
3. Article 32 - Sick Leave

Both parties attended the hearing and elaborated upon their positions regarding the issues remaining at impasse through their representatives.

The Springfield Township Board of Trustees was represented by Harley Kastner, Esq. In attendance was Bruce Killian, Trustee, Richard Huber, Clerk, Robert Lamm, Insurance Broker and Vic Wincik, Chief. The Springfield Township Fire Fighters Local 3040 was represented by Susannah Muskovitz, Esq. In attendance was Brian White and David Straley.

Received in evidence as Joint Exhibit 1 at the hearing was the "Agreement Between The Springfield Township Board of Trustees and Local 3040 International Association of Firefighters," (eff. February 7, 2002 (*August 1, 2001*) to July 31, 2004) herein the "Agreement" or "CBA." The

Township Trustees offered nine exhibits.¹ Further the Township Trustees offered two exhibits, a binder with indexed subparts showing the breakdown of holiday pay and wage schedules and the Collective Bargaining Agreements of Coventry Township, Hamilton Township, Madison Township (Franklin County), Madison Township (Richland County), Painesville Township, Prairie Township and Union Townships. The other Union exhibit was a folder with each of the four disputed contract provisions identified with its current language and proposed changes backed by supporting data.

By agreement of the parties in conformity with OAC 4117-9-05(L), the date of issuance of the Fact Finder's Report has been extended to not later than December 3, 2004.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

1. Past collective bargaining agreements between the parties;
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;

¹ The Township offered the following received in evidence.

- TX1 Health Plan Comparison of Anthem, SummaCare, UHC, Hometown, Medical Mutual, COSE/MMO, QualChoice, AETNA and Kaiser dated 8-19-04.
- TX2 Health Plan Comparison of Medical Mutual dated 9-1-04
- TX3 Appropriation Status Report (summary) dated 10-26-04
- TX4 Appropriation Status Report (breakdown) dated 10-26-04
- TX5 Appropriation Status Report (continued) dated 10-26-04
- TX6 Reconciliation of Inter-Fund Transactions by Fund dated 10-26-04
- TX7 Reconciliation of Inter-Fund Transactions by Fund (Year 2001) dated 10-26-04
- TX8 Reconciliation of Inter-Fund Transactions by Fund (Year 2003) dated 10-26-04
- TX9 2004 Reserve Accumulated Leave

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard 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 in private employment.

TENTATIVE AGREEMENT

In their direct negotiations, substantial changes, clarifications and improvements were agreed based on the Union proposals covering approximately 19 different provisions of the agreement. Amongst these improvements were clarification of training pay, increases in the uniform allowance maximums each year of the agreement, and clarification of individuals assigned to overtime when the Fire Chief deems utilization of overtime as appropriate. These are contained as the first item in the Union's exhibit notebook. After the mediation failed to achieve full ratification, the parties were able to reach agreement on some additional issues, ie. Section 125 plan (Section 14.4) and language on a Joint Healthcare Committee (Section 14.5). Along with what had been agreed before on the 19 provisions, those agreed changes now compose the "Tentative Agreement" which is contingent on the ratification of the Fact Finder's recommendation on the remaining open issues.

OPEN ISSUES FROM NEGOTIATION

The parties position statements identified issues open for fact finding based on their negotiations as follows in sequence of the Collective Bargaining Agreement:

ISSUE ONE

HEALTH CARE

CONTRACT SECTION: Article 14, Section 14.1

During the term of this Agreement, the Township will offer to Bargaining Unit Members a hospitalization plan substantially similar to that in effect upon execution of this Agreement. The Township will pay for the duration of the Agreement up to Six Hundred Fifty Dollars (\$650) per month to maintain an individual plus one dependent coverage and up to Eight Hundred Fifty Dollars (\$850) per month to maintain individual plus more than one dependent coverage. If at any time during the life of this Agreement the monthly premiums for said insurance coverage exceed the aforesaid amounts, the amount of monthly premium in excess of Six Hundred Fifty Dollars (\$650) and Eight Hundred Fifty Dollars (\$850) will be split 50/50 between the employer and the employee.

UNION PROPOSAL:

The Union proposes the following language to substitute for the premium sharing formula:

Section 14.1

..... The Eight Hundred Fifty Dollar (\$850) for individual plus more than one (1) dependent coverage will be increased to Nine Hundred Dollars (\$900) effective September 1, 2005 and to Nine Hundred Thirty-Five Dollars (\$935) effective September 1, 2006.

TOWNSHIP PROPOSAL:

The Township proposes no changes

POSITIONS:

The Union: The language on premium participation has been in the CBA, without any increase, since at least August 1, 2001. It is the position of the Township that there be no increase for the term of the Agreement until July 31, 2007. It is the position of the Union that the formula for individual plus more than one dependent coverage should have an automatic escalation clause which increases the Township's contribution. The Union requests that contributions for employees plus more than one dependent (herein "family coverage") on September 1, 2005 to \$900 and on September 1, 2006 to \$950 per month be adopted contingent on a change of plan design with higher deductibles and co-insurance ("out of pocket") costs to the employee. (e.g. MM 15/100 plan). The Union provided comparable data with respect to the co-pays required of other IAFF locals.

Township: The Township has experienced dramatic inflation in the cost of providing health care for its employees. For approximately four years, employees have participated in a modest amount of premium contributions for one dependent and/or family coverage. Virtually all of the increased in the cost of providing health care has been absorbed by the Township. Employees have assumed a modest portion of the premium cost increases, but only for dependent coverages. The Township has obtained identical language through collective bargaining with its two police units and road crew.

The Township had committed that it would attempt to maintain substantially similar benefits to those previously in effect with the minimal impact upon out-of-pocket premium costs for both the Township and the employees. The Union has proposed an increase in the level of Township contributions for premiums in years 2 and 3 of the collective bargaining agreement. That increase is contingent upon the Township providing the lesser insurance plan (MM 15/100) than the existing (MM 10/100) plan. The Township believes that the most cost effective choice is to provide a uniform plan for all its employees. To grant the Union's request would split coverages for an extremely small employer group that renders providing of such split coverages impossible if the carrier's threshold plan participation limits are not met.

FINDINGS AND RECOMMENDATION:

Healthcare contracts renew on an annual basis, from September 1 to August 31 each year. The carriers provide renewal rates to the Trustees at least thirty days in advance. In late July, 2004, the Township was notified by its then carrier, Anthem, that the monthly premium of \$24,783.33 would be increased to \$28,038.94 or an increase of 13%. The projected future increases for insurance renewal for its Anthem provided coverage could exceed 20% per annum. The Township through the use of an outside consultant, Mr. Robert Lamm, engaged in an extensive canvassing of other insurance provisions. The consultant made presentations to the Joint Health Care Committee which agreed that it would explore (1) alternate insurance carriers (2) new plan designs. After numerous discussions, two possible alternative plans through Medical Mutual of Ohio (MM) were deemed the most practicable and affordable for implementation effective October 1, 2004. The first plan, the so-called MM 10/100 Plan provided for an approximation of benefits provided in the previous years by Anthem while providing premium increased savings over what Anthem proposed. The other plan, the so-called MM 15/100 Plan, which contained greater employee and/or dependent out-of-pocket costs, would have lower premiums than with the MM 10/100 Plan.

The IAFF expressed a desire for the MM 15/100 Plan but with an increase of the \$850 floor for family coverage in years 2 and 3 to \$900 and \$950 respectively. The intended effect would be that any employee contribution toward premiums for family coverage in years 2 and 3 would be minimized or eliminated but their out of pocket costs would increase.

The Township had agreed during mediation upon the proposed changes because it believed that the FOP bargaining unit would agree, mid-term, to change medical plans from the MM 10/100 plan to the MM 15/100 plan with the same change in the premium sharing formula. The police bargaining units later advised the Township that the change to the MM15/100 Plan would not, in their opinion, be providing a plan substantially similar to that in effect in the earlier part of calendar year 2004. Consequently, the Township Trustees adopted the MM 10/100 Plan for an 11-month contract term effective October 1, 2004 to comply with their collective bargaining agreement. The effect on the IAFF Agreement remained for fact finding.

The IAFF resumed its proposal in fact finding to change to the MM15/100 Plan in exchange for an increase in the employee's share of the family coverage premium. This would require the Township to split its coverage between two policies as long as the other units balk at the same change. Mr. Lamm testified that most insurance carriers, including Medical Mutual, would agree to provide a dual offer for an administrative charge. The Township would have to purchase a "shelf product." Both the MM 10/100 plan and the MM 15/100 plan are "shelf products." Carriers also have threshold plan participation limits which must be met before coverage could be written. The Township is concerned that carving off the IAFF unit would cause the IAFF to be too small for coverage or that the remainder may be too small for alternative coverage.

IAFF argues that the change from the MM 10/100 plan to the MM 15/100 plan would still save the Township a significant amount of money in premiums even after the administrative charge. Also the change from the MM 10/100 plan to the MM 15/100 plan made sense because the reduced premium cost would offset any increase in co-pays so that the employees affected would also realize a net savings.

There would be 10 or 12 Township employees affected by the IAFF proposal only a three or 4 of which would be subject to the dependent premium sharing. Neither the Trustees nor the Union nor the Fact Finder can calculate the savings for 2005 and 2006 from a change to the MM 15/100 with new premiums prevailing then even using the higher floors. The Union posits the savings for the Township according to the IAFF would be a total of \$16,876.68 if the same figures prevail as for the 2004 year. The Township points out that with the escalating floor before premium sharing the increased amount would offset the full premium, unless they very aggressively increase. Thus, the escalating floor would produce no premium sharing at all.

The controllable cost of health care, assuming carriers are relatively similarly priced due to competition, arises from premium sharing and from usage penalties (deductibles and co-insurance, ie out of pocket costs). Both induce market friction on the users' behavior to incentivize them to use the benefit cost effectively. Recognizing this, the carriers price the product to have larger premiums for low out

of pocket plans and conversely lower premiums for larger penalty plans. Based on the prior IAFF Agreement, and the police agreement, the Township is committed to offering substantially similar benefit designs, not substantially similarly priced plans. That is what it has done at least for the 11 months remaining in the insurance plan year. However, what remains for next year is all surmise. Since the Agreement does not have flexibility to consider pricing when a replacement plan is located, the IAFF's proposal has logic to it. Without the ability to consider price in context of the design, the supply / demand curve will never be effectively applied. In other words, the Township will be committed to providing the same plan over and over again, with fractional design changes, at higher and higher cost. In turn it will continue to demand contribution by the employees on price when the price is not a matter within the influence of either the employees or the Township.

The major detraction of the IAFF proposal is the prospect of splitting the coverage both from the standpoint of additional cost to the employer and from the carrier's participation requirements.² The latter will be self healing in that, if the carrier will not write the split coverage, the matter is closed. There is one other detraction that the IAFF admits. That is the uncertainty of what may be offered in the market in 2005 or 2006 or whether they would be the similar to each other. These contending concerns can be resolved in a recommendation that is designed in a formula.

Recommendation: Section 14.1 should become three subparts numbered 14.1, 14.1.1, 14.1.2 and 14.1.3 as follows:

14.1 During the term of this Agreement, the Township will offer to Bargaining Unit Members a hospitalization plan substantially similar to that in effect upon execution of this Agreement. The Township will pay for the duration of the Agreement up to Six Hundred Fifty Dollars (\$650) per month to maintain an individual plus one dependent coverage and up to Eight Hundred Fifty Dollars (\$850) per month to maintain individual plus more than one dependent coverage.

14.1.1 Effective September 1, 2005, the hospitalization plan that the Township offers shall be considered substantially similar to the one in effect before that date notwithstanding that there may be changes in design that increase out of pocket costs to the employee. Should a plan that is offered require increased out of pocket costs, then the Eight Hundred Fifty Dollar (\$850) for individual plus more than one dependent coverage will be increased to Nine Hundred Dollars

² The comparisons offered by the Union show only Copley and the Springfield Police had any premium sharing and so are not useful.

(\$900) effective on the first day of such coverage.

14.1.2 Any fee the carrier charges as administration for providing a separate program of benefits for the members of the Unit as distinct from other Township employees shall also be added to the aforesaid maximum monthly amounts to be paid by the Township, but in no event shall the additional administrative fee increase the amount paid by the Township to be more than Nine Hundred Fifty Dollars (\$950) per month before employee premium sharing as set forth below.

14.1.3 If at any time during the life of this Agreement the monthly amount paid by the Township for said insurance coverage exceeds the aforestated amounts, the monthly amount in excess thereof will be split 50/50 between the employer and the employee. Employee contributions will be deducted from the employee's regular pay.

ISSUE TWO

WAGES

CONTRACT SECTION: Article 24, Section 24.1 and Section 24.2

UNION PROPOSAL:

Revise the wage scale to reflect four percent (4%) annual increases effective with the pay period beginning nearest August 1, 2004, 2005 and 2006.

TOWNSHIP PROPOSAL:

The Township is willing to increase wages by 2% per annum in each of 3 calendar years.

POSITIONS:

The Union: The Union's evidence establishes Springfield Firefighters earn less per year than firefighters in comparable communities of Copley, Coventry, Franklin, Greene, Jackson and Tallmadge.

Unless the firefighters/paramedics receive the increases requested by the Union, the gap between their salary and the salary of firefighters in their neighboring communities will be exacerbated. Even with the 4% increase proposed by the Union, the firefighter/paramedics in Springfield Township will be earning substantially less than their IAFF counterparts in the region. If the firefighters only receive a 2% increase, they will not only stay behind their neighbors but the difference will be increased enormously.

Township: The Fact-finder is statutorily and administratively bound to consider the impact that any wage increase would have upon the public employer. The Township is not a city such as most of the comparables relied upon by the IAFF. It does not obtain revenue via income taxes. It does not have within its jurisdiction the tax proceeds of a large retail shopping area. The Township, in proposing the wage increase for the IAFF, differs from the increase for its other groups. During the life of the preceding collective bargaining agreement, the employees in the bargaining unit received a substantial increase in their hourly rate of pay in addition to the standard increases received throughout the Township. The effort is that the IAFF unit was paid more for working less time as compared to those not in the Fire Department.

The Township Fire Department has been unable to stand on its own financially, exacerbated by the extremely high benefit cost related to retirement and overtime costs. The Township still has the obligation and cost of providing staffing for its 24/7 operations. The Township is still willing to increase wages by 2% per annum

in each of 3 calendar years to compare to Coventry Township, Hamilton Township, Madison Township (Richland County) and Union Township.

FINDINGS AND RECOMMENDATION:

Both the Township and the Union agreed that the 2004 wage increase shall be retroactive to August 1, 2004 and subsequent wage increases shall be effective August 1, 2005 and August 1, 2006 respectively.

As a result of the 2001 to 2004 collective bargaining agreement, which was resolved through fact-finding and conciliation, Springfield Firefighters actively work fewer hours per month than they did prior to 2002. The IAFF unit earned a day off during each rotational pay cycle of 28 days. The effect elevated the actively worked hourly pay rate.

Salaries and other Fire Department expenses are then subsidized by the Township's general fund. The proceeds of collections of the three levies were insufficient to pay forth full operations of the Fire Department. The Township's general fund underwrites deficits in the Fire Department. In 2004 the Township transferred \$100,000 to the Fire Department. There are three levies which fund the Township Fire Department. On November 2, 2004 the residents approved a five year renewal of the 3.2 mill levy for ambulance service and a 1.8 mill, five year replacement levy for fire protection. The levy will generate an additional \$157,000 in revenue over the past years' level of tax receipts. Since the subsidy level has been about \$100,000, the true increase should be \$57,000 which is not a large gain.

On the other hand the IAFF demonstrated that a 2% increase is not evident with any of the peers.

Jurisdiction	2003	2004	2005	2006
IAFF Proposal:4%	\$42,460.00	\$44,158 (4%) \$43,733.80 (3%)	\$45,924.00 (4%) \$45,045.81 (3%)	\$47,761.00 (4%) \$46,397.19 (3%)
Copley Twp	\$50,175.92	\$51,932.08 (3.5%)		
Coventry Twp	\$44,460.49	\$45,794.30 (3%)		
Franklin Twp	\$46,286.76	\$47,675.36 (3%)	\$49,105.62 (3%)	
Green		\$48,169.00	\$50,095.00 (4%)	\$52,099.00 (4%)
Jackson Twp	\$41,090.54	\$42,528.70(3.5%)	\$44,017.21 (3.5%)	
Tallmadge	\$50,247.00	\$51,468.00 (2.4%)	\$53,316.00 (3.6%)	\$54,892.00 (3%)
Average		\$47,927.91	\$49,133.46	\$53,495.50

The Township objects to comparison to cities like Green and Tallmadge that have income tax revenue. It also objects to nearby Townships that have large commercial property evaluations driving property taxes such as Jackson and Copley. Even without confining the comparison to the Township's liking, it is clear that increases are not at the 4% level.³ When the Township proposed the 2% increase and placed the levies on the ballot, it must have known this trend. That is, the Fire Department subsidy could not be out of range of the complete Township budget even knowing that there are no 2% increases in the comparators.

In addition the IAFF points to the department as being the lowest of neighboring jurisdictions. However, the comparison to the nearest neighboring Townships, Coventry, Franklin and Jackson, Springfield Township firefighters show a favorable comparison to Jackson but near yet behind the other two.

Therefore, the increase in effective hourly rate and the undiminishing subsidy of the department by the Township are balanced with the trend of increases seen in other localities. A 3% increase is recommended.

Recommendation: Revise the wage scale to reflect three percent (3%) annual increases effective with the pay period beginning nearest August 1, 2004, 2005 and 2006.

³ The comparisons offered by the Township which, although similar in township structure and revenue, are not representative of the labor market for firefighters locally.

ISSUE THREE

HOLIDAYS

CONTRACT SECTION: Article 29

UNION PROPOSAL: The Union proposes by interlineation the following changes:

Section 29.2: Bargaining Unit Members shall receive ~~\$115.00, effective August 1, 2004; #125.00, effective August 1, 2005 and #135.00, effective August 1, 2006~~ ~~\$105.00~~ per holiday regardless of whether the employee is scheduled to work the holiday or not.

Section 29.4: Bargaining Unit Members who are on a 24/48 work schedule shall be regularly scheduled to work holidays that fall on their duty day. Bargaining Unit Members on 24/48 work schedules and who are scheduled to work a holiday, and actually work the holiday, shall receive one-half ($\frac{1}{2}$) ~~one-quarter ($\frac{1}{4}$)~~ hour of overtime for each hour of the holiday worked.

Section 29.5: Bargaining Unit Members who are on a 40-hour work schedule shall be regularly scheduled off for holidays that fall on their duty day. If required by Management to work a holiday, the employee under this work schedule shall be paid their ~~hourly rate plus their~~ overtime rate for all hours worked.

Section 29.7: Any Bargaining Unit Member taking leave on a holiday shall receive compensation for their leave request only and will forfeit compensation as provided by Section 29.2 of this Agreement.

Section 29.8: Any Bargaining Unit Members scheduled to work a holiday on overtime, shall receive their hourly rate plus their overtime rate for each hour worked.

TOWNSHIP PROPOSAL:

The Township proposes no changes

POSITIONS:

The Union: Because the staffing is so short in Springfield, employees are entitled to receive additional compensation for holidays, whether they work them or not (referred to as a "stipend" in the testimony). Employees who work the holidays are likewise entitled to additional compensation to recognize the sacrifice involved in working on days when most other employees are enjoying time with their families. The Union proposes a "package" of changes.

The Union relied both on internal parity (Springfield Police Department) as well as external parity (other comparable fire departments). A police officer receives eight hours off during the year or receives time and a half for all hours worked plus an additional eight hours off to be taken as requested. If it is not used, the officer receives compensation for the holiday time, the equivalent of double time and a half. Even with the Union proposals, the firefighters in Springfield Township will still be receiving less holiday compensation than the Springfield police and less holiday compensation than many of their neighboring IAFF locals.

The package is as follows. The CBA, Section 29.2, provides for the payment of \$105 per holiday. This was unchanged during the 2001-2004 CBA and the Township proposes it remain unchanged throughout 2007. The Union proposes to increase the holiday premium over 3 years to \$115, \$125 and \$135 in each contract year. Under Section 29.4 employees receive an additional six hours of pay if they work an entire 24 hour shift on a holiday. The Union proposes twelve hours pay for a 24 hour shift. In Section 29.5, as the Union proposes, members who work a forty hour work schedule are required by management to work holidays and then receive overtime for the hours worked. The language change proposed by the Union would provide employees with their hourly rate plus overtime for all hours worked. Section 29.8 provides that those scheduled to work a holiday on overtime should be entitled to receive his or her hourly rate plus his or her overtime rate for each hour worked. Section 29.7, proposed as part of the package, would create an economic disincentive for bargaining unit members to take leave on a holiday. The member would forfeit the compensation set forth in 29.2.

Trustees: Given the economic position of the Township, any expansion to the paid time off or premium pay for designated holidays will have adverse consequences on the Township budget, particularly as related to the Fire Department. Similarly, two-thirds of the employees on a rotational schedule will not be scheduled to work a holiday and yet receive, under the current contract, monetary compensation for same. This would further exacerbate the compensation distinction between members of the Fire Department and all other Township employees, with no economic justification for such a double payment.

The Township position is that it is comparable to fire departments in Coventry Township, Hamilton Township, Madison Township (Franklin County), Painesville Township and Prairie Township.

All employees are virtually assured of receiving a stipend for holidays even if they are not scheduled to work same. They receive the equivalent of six (6) additional hours of pay. The IAFF offers no justification for a 9% per annum increase in the stipend. Nor does it offer a reasonable explanation for justification for doubling of the premium hours compensation for employees scheduled to work on the holiday. Both points of improvement sought by the Union would doubly penalize the Township.

FINDINGS AND RECOMMENDATIONS:

The parties' positions are not very elucidating on the basis of the proposal. The IAFF's concerns are that the 24/7 operation means that its members must work one third of the holidays at least, without counting coming in to cover other leave or absences. The Township sees the paid time off benefits as already sufficient. The offered comparisons are not much more helpful. The comparisons offered by the Township are generally more distant locales, except for Coventry, and not representative of the labor market for firefighters locally. The IAFF offered the following:

<u>Jurisdiction (#days)</u>	<u>Stipend</u>	<u>Worked</u>	<u>Not Worked</u>	<u>Notes:</u>
Police Dept (11)		2 ½ x*	1x	*8hr taken as comp time
IAFF CBA (11)	\$105	1 1/4 x+stipend	1x+stipend	
IAFF Proposal(11)	1 st \$115 2 nd \$125 3 rd \$135	1 ½ x+stipend	1x+stipend	
		2 ½ x+stipend *		*For @8hr/da employees and for overtime on holidays Leave on holiday forfeits stipend 125 hr/yr bank *For 3 premium holidays
Copley Township(10)		2 x 2 ½ x* 2x @8hr/da	1x	
Coventry Township (10)	\$75	1x+stipend*	1x	*Stipend if work over 12 hrs
Franklin Township (10)		16 hr x 1 ½ = 24 +8 x 1 = 32	1x	288 hr bank per year
City of Green (10)		2x*	1x	*10 days paid/yr+ time worked
Jackson Township (11)		2x*	1x	*11 days paid/yr+ time worked also 2x if on vacation
City of Tallmadge (10)	\$240	1 ½ x+stipend 1 ½ x @8hr/da	1x+stipend 1x @8hr/da	

The above reveals mostly distinctions. There are three prevailing methods of paying for holidays: stipend based, annual hours banks and premium multipliers. The hours bank of paid time off is sufficiently distinct method as not to produce any basis for comparison. As for multiplier premium, some "pay" is taken in compensatory time rather than pay but the effect on the jurisdiction is similar. In the case of Jackson and Green, the work is paid at straight time but an additional day (of 8 or 24 hours) is paid in the form of compensatory day later. The same is true of the Springfield police except that the multiplier is 1 ½ x for worked time with a day taken later.

What the above comparison shows it that the concept of the stipend is to be a substitute for a premium multiplier. It effectively flat rates the multiplier in to a predictable number of dollars rather than have the cost driven by the hours worked

and then multiplied. It is an "additional" allowance given in addition to salary. The purpose is compensation for availability on the 24/7 operation with high likelihood of working long hours on a holiday or the risk potential thereof. In the case of Tallmadge the stipend is \$10.00 per hour which is what is paid for the holiday with any work done paid at $1\frac{1}{2}x$. The stipend is just under half the hourly 24/48 wage rate for the day. (See CBA wages in Union exhibit notebook) Thus, work on the holiday is never paid more than $2x = (1\frac{1}{2} + \frac{1}{2})x$ while non-worked holidays are paid at half pay (or half the hours, ie 12 hours pay).

The IAFF proposal is for an increasing stipend each year over three years. The current stipend is 28% of the hourly wage. That means that holidays not worked are paid at roughly under 1/3 pay (or 8 hours). The proposed stipends in relation to a 3% increase would produce the equivalent of 30% in the first year up to 33% in the third year. The proposal would produce eventually 1/3 pay or 8 hours pay for an unworked holiday.

The worked holidays are compensated at $1\frac{1}{4}x + 28%$ or 153% or roughly $1\frac{1}{2}x$. However, the police are paid with an additional compensation day off a rough equivalent of $2\frac{1}{2}x$. By comparison, the proposal for worked holidays to become $1\frac{1}{2}x +$ stipend means effectively 180% first year to 183% in the third year. That is roughly just over $1\frac{3}{4}x$ which is still less than the $2x$ for the police. That is reasonable especially since the value of a compensation day off is 8 hours to the employee but the flexibility to the employer would produce a discount to the cost of the benefit. In other words, in the optimum case, a comp day may very likely cost the employer 83% of a day and not 100%. The "savings" to the employer are chiefly administrative by virtue of using the comp day to off set some other cost such as planned or unplanned leave. This is also apparent in comp day buyout systems where the full value of the time off is not purchased but some discounted amount.

The 40/week proposal of $2\frac{1}{2}x$ hours of work is a reasonable parity to the police department even though there is no comp day system for the fire department holidays. Albeit the administrative flexibility of a comp day are absent, there is no basis to establish a comp system in the fire department for only one employee. The provision for overtime work on holidays as proposed is reasonable on this basis also.

The Factfinder has some hesitance on the 40 hour and overtime proposal because these employees are also paid the stipend. The equivalent of the stipend at 30% makes overtime work on holidays at $2\frac{1}{2}x$ effectively about $2\frac{3}{4}x$. To maintain comparison to the 24hr firefighter, the premium ought to be in the range of $1\frac{3}{4}x$. The stipend is given the 40 hour employee which is given to all Bargaining Unit members. On an 8 hour day, the stipend is the equivalent of 2/3 to 3/4 pay (or 5 hours). (See IAFF wage proposal : e.g. $\$135/8 = 16.88$; $16.88/22.96 = 73.5\%$) This makes the effective payment for worked holidays on a 40 hour schedule $2\frac{1}{2}x + \frac{3}{4}x = 3\frac{1}{4}x$. Since the stipend is not a multiplier that is a bit overstated depending on the hours worked. Nonetheless it is a hefty disincentive for the Employer to use 40 hour employees on holidays and for assigning overtime to 24 hr employees on

holidays. However, to change that, for example by eliminating the stipend in those cases, would be a concession not requested or supported. To reject the 2 ½ x proposal would put the firefighters out of symmetry with the Police department. The conclusion is that the parties must be comfortable with the heavy disincentives because overtime is not a routine matter, and there is only one 40 hour employee.

Finally, the forfeiture of the stipend for other leave time taken on a holiday is a cost savings to the employer that is beneficial to the Unit members that can avoid scheduling confrontations. It will be recommended.

Recommendation: The Fact Finder recommends that all the Union proposals on changes in Article 29 be incorporated in the Agreement.

ISSUE FOUR

PAYMENT OF SICK LEAVE UPON RETIREMENT

CONTRACT SECTION: Article 32, Section 32.10 (insert the proposed language)

UNION PROPOSAL:

The Union proposes that employees retiring from Township service shall be entitled to 50% of their accrued sick leave up to a maximum of 936 hours for employees on a 24/48 hour schedule and 720 hours for employees on a forty hour schedule.

TOWNSHIP PROPOSAL:

The Township proposes no changes

POSITIONS:

The Union: The Policy & Procedures Manual of the Township states that employees are entitled to a pay out of up to 50% of their accrued sick leave up to a maximum of 90 working days. The Union has urged the Township to make this provision applicable via the collective bargaining agreement. The Township's Policies & Procedures Manual applies to all employees unless it was addressed specifically by the CBA, in which case the language in the CBA took precedence.

The Manual defines the benefit for both 40 hour and 24/48 hour employees. The Union's proposal adapts this standard to the CBA. It proposes 720 hours as the equivalent of 18 weeks. Employees who work 24/48 hours are entitled to 936 hours (18 weeks x 52 hours/week = 936 hours) A forty-hour firefighter would be entitled to the same amount of money upon retirement as a fifty-two hour firefighter because of the rate differential. The hourly rate for a 52 hour firefighter is lower than the hourly rate for 40 hour firefighters (936 hours x 52/hour rate = 720 hours x 40/hour rate). The excerpts of the labor contracts from Copley, Coventry, Franklin, Green, Jackson and Tallmadge establish that sick leave buy out is a common benefit negotiated into labor contracts.

The Township has no retirement eligible members in the bargaining unit at present. The Union believes that this fact is propitious for adoption now to avoid internecine positioning for advantage in some future negotiation.

Township: The existing policy Manual in the Township very carefully delineates what is covered and what is not covered. The scope of the Manual does not encompass IAFF covered employees.

If there is a conflict between the Manual and the contract, naturally, the contract applies. The Police recognized the absence of this benefit and the inapplicability of the policy Manual to them by adopting provisions in their collective bargaining

agreement. The comparables submitted by the IAFF are devoid of comparability giving special treatment to 24-hour shift employees. If a new benefit is going to be created via fact-finding, then the benefit should equate to that offered to the Police Department.

Given the department's economic position and the fact that no employee is presently qualified for normal retirement, the proposal should not be incorporated. It serves to add a potential expense.

Bargaining unit members already earn a disproportionate amount of sick leave compared to employees on a traditional 40/5 work week since they are compensated while engaging in personal business including sleeping. This would further exacerbate the compensation difference between members of the bargaining unit and all other Township employees.

FINDINGS AND RECOMMENDATIONS:

The Township's Personnel Policies & Procedures Manual contains the following which the Union is proposing to incorporate into the CBA:

"Except for wages, benefits and conditions of employment, these Personnel Policies & Procedures shall apply to all Township employees except elected officials and independent contractors. In the event of conflict between these rules and any collective bargaining agreement, personnel services contract, department rules and regulations, Township resolution, state or federal law, the terms and conditions of that contract, rule, regulation, resolution, or law shall prevail. In all other cases these policies and procedures shall apply."

In addition there is a disclaimer that the Township reserves the right to repeal, modify or amend its policies. While this disclaimer may affect at-will employees, it does not constitute a waiver of the Trustees' obligation to bargain benefits provided apply to firefighters, so long as the CBA is silent on the issue. The CBA is silent with respect to sick leave buy out.

The Policies & Procedures appear to apply to the IAFF members unless there is countervailing language in the agreement. The IAFF is correct that the appearance of this benefit in the Manual is something that, unless it bargains it away, the members may rely upon. The Union now wishes to incorporate the benefit in the Agreement. The Township resists on its reading that it is inapplicable to the Unit. The Fact Finder cannot discern how that reading may be supported given the exception for union represented employees only refers to bargaining agreements and not to their status as organized employees. The incorporation is a reasonable proposal but remains to be defined.

The sick leave buy-out of the Manual at Policy 600.08 states:

Those employees retiring from Township service are entitled to a payout of sick time hours up to 50% of his/her accrued sick leave up to a maximum of ninety (90) working days.

The Township and the Union agreed the Manual has never been tested in practice, arbitrations or lawsuits.

The Township says the Manual defines a day as eight hours. Rather it defines hours of work as normally eight hours per day "except as otherwise provided by a labor agreement." Policy 200.03. The hours of work definition is insufficient to define hours of "sick time." Policy 600.08 states that "sick time" is granted at the rate of 10 hours per month or for firefighters at 30 hours per month but subject to the labor contract. The Agreement accumulates sick leave at "1 1/4 days (tours of duty)" per month up to a maximum of one year. Section 32.2. Thus the definition of a sick leave is the same, 30 hours per month for 24 hr/da employees or 10 hours for 8 hr/da employees. The problem is that the Manual mixes the payout of "sick time" calculated in hours with a maximum calculated in days. Since the maximum accumulation is one year as stated in hours, 50% would be 1040 (@ 8hr/da) or 1460 (@ 24 hr/da). Converting those to days it becomes 130 days (8hr/da) and 61 (24 hr/da). However, the policy allows a maximum of 90 days which is less than the maximum accumulated for 8hr/da employees and more than the maximum for 24 hr/da employees. Obviously because the payout was stated as a maximum, it was not intended to add "sick time" to the maximum allowable but to reduce the maximum allowable to a lesser number in consideration for payment. The intent of the Manual therefore must have been an 8 hour day definition. Hence the maximum is 90 x 8 = 720 hours.

The 720 maximum also aligns with the evidence presented by the IAFF for comparators:

<u>Jurisdiction</u>	<u>Rate</u>	<u>Maximum (Hrs.)</u>	<u>Notes:</u>
Police department	50%	200	Equivalent of 25 days @ 8 hr
IAFF Proposal	50%	720 (8hr) 936 (24hr)	
Copley Township		600	If over 10 years of service
Coventry Township	25%	720	
Franklin Township		700	
City of Green	5%	62.5	
Jackson Township		720	
City of Tallmadge	50%	1200	No cap for higher seniority

The remaining concern is that there are both 8hr and 24 hr employees in the Unit. The Union notes that 24 hr employees "burn" "sick time" at a quicker pace than 8 hr workers and that there is a pay rate differential as between the two. This ignores the fact that 24 hr employees also accrue more aggressively so the favorable pay

differential for the 8hr employee compensates for this. That is the 24 hr employees will naturally have more time to sell back and the higher day rate of the 8hr worker roughly puts him in some parity. The precedent of the police comparison cannot be taken into account since it was a result of bargaining and the inputs and compensations had not been reconstructed.

Recommendation: The Manual for "sick time" buy out should be incorporated as new Section 32.10 in the Agreement as follows:

"Those employees retiring from Township service are entitled to a payout of sick time hours up to 50% of his/her accrued sick leave up to a maximum of seven hundred twenty (720) hours. Payment for sick leave on this basis shall eliminate all accrued sick leave credits."

Recommendation: The Fact Finder recommends the adoption of the Tentative Agreement including the 19 provisions agreed before mediation and the Sections 14.4 and 14.5 submitted in mediation.


Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
December 3, 2004