

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 MAY -4 A 11: 33

# FACT-FINDER REPORT

Before the  
State Employment Relations Board  
State of Ohio  
May 2, 2005

In the Matter of:

GOSHEN TOWNSHIP PROFESSIONAL  
FIREFIGHTERS & E.M.S.,  
I.A.F.F. LOCAL 3932  
Employee Organization

and

GOSHEN TOWNSHIP  
BOARD of TRUSTEES  
Employer

Case No. 04-MED-09-0857

## I. HEARING:

**DATE:** April 25, 2005, 9:30 a.m.  
**LOCATION:** Goshen Township Hall

### APPEARANCES:

#### For the Employee Organization:

John C. Haynes, President, Local 3932  
William E. Quinn, V.P., Ohio Association of Professional Fire Fighters  
Shirl Reising, Vice President, Local 3932

#### For the Employer:

Ray C. Snyder, Administrator, Goshen Township

#### Fact Finder:

James L. Ferree

## **INTRODUCTION:**

The Board of Trustees of Goshen Township, Clermont County, Ohio (herein called “the Employer” or “the Township”) operates a Fire & EMS Department which employs 11 full-time, uniformed career employees who are represented in collective bargaining by the Goshen, Ohio Local Union #3932, International Association of Fire Fighters (“the Employee Organization” or “the Union”). The Employee Organization was certified by the State Employment Relations Board (“SERB”) on July 8, 1999. The Employer and the Union were parties to a collective bargaining agreement effective from January 1, 2002 through December 31, 2004. The parties met and bargained regarding terms of a successor agreement, and they agreed on most of the content of a new contract, but they failed to reach agreement on a few issues. Consequently, the parties selected the undersigned, who was appointed by SERB, to serve as Fact Finder in this matter, pursuant to Ohio Revised Code (“ORC”) Section 4117.14(C)(3). A fact finding hearing was conducted in the Goshen Township Hall at 9:30 a.m. Monday, April 25, 2005. At the hearing, the parties agreed to extend the time for fact finding to May 2, 2005. Having considered the evidence presented at the hearing, the Fact Finder hereby issues the following report and recommendations.

## **II. MEDIATION:**

At the hearing, the parties confirmed their tentative agreement on numerous articles of the proposed new collective bargaining agreement. It is hereby recommended that the parties include all of those agreed-upon articles in their new contract.

The parties discussed one unresolved issue, regarding Article 9, “Sick Leave”, and agreed that the Employer will maintain health insurance coverage for employees who are on sick leave due to an off-duty illness or injury, consistent with the Family Medical Leave Act. They further agreed that the last sentence of Section C of the Union’s proposed language will be struck because it is clear in other language that no doctor’s certificate is required for an employee to use a single “personal day”. It is hereby recommended that the agreed-upon language of Article 9, excluding the last sentence of the Union’s proposed Section C, be incorporated into the parties’ new collective bargaining agreement.

### **III. CRITERIA:**

Consideration was given to the criteria listed in Rule 4117-9-05 of the State Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

(1) Past collectively bargained agreements, if any, 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;

(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.

### **IV. ISSUES AND RECOMMENDATIONS**

The remaining unresolved issues are:

1. Article 14, Hours of Work and Overtime
2. Article 16, Holidays
3. Article 17, Wages
4. Article 19, Vacation, and
5. Article 23, Insurance.

## **Issue 1: Article 14, Hours of Work and Overtime**

Article 14 of the recently-expired collective bargaining agreement defines the standard 24 hour work day, or tour of duty, for employees; and provides that employees will be paid for hours worked outside their scheduled shift at the rate of “one and one-half (1-1/2) comp time”. The article continues:

- E. The Township reserves the right to require any/or all employees to work overtime when the operational needs of the department require it.
- F. If a fire employee is asked to stay over on their shift, or is required to work additional hours under Minimum Manpower (MMP) one and one-half (1-1/2) compensatory time for each hour worked. The two hours minimum pay does not apply to this section.
- G. Time held over will be paid in comp time ... .
- H. Assignment of overtime will be made on a rotating basis within all ranks. It is understood that those employees who possess the qualifications and who customarily perform such overtime work will be selected. A person has the right to refuse overtime, except in emergency. Only members of Local #3932 who are state-certified firefighters or EMT's shall be entitled to this overtime benefit.

### **Union Position:**

The Union proposes to expand the section defining the standard work day and week by adding the following:

Every three weeks, all 24/48 hour employees shall receive an EDO (Earned Day Off) to reduce the employees hours worked to 48 hours. EDO days shall be a scheduled day off. EDO may be any day of the week, the most senior employee may choose his/her day first. No more than two employees may have the same EDO day on the same unit day.

In addition, the Employee Organization proposes to eliminate Section F., above, and to add the following new sections:

- I. If an employee wishes to take time off using comp time, they must follow the vacation request guidelines in Article 19D. Comp time may be used at the discretion of the Employee throughout the year so long as they follow the Vacation guidelines
- J. If the employer wishes to reduce an employees' accumulated comp time down to (192) hours, said employee shall be paid for the amount of hours reduced. Employees may only carry over up to (192) hours of comp time. By the end of the Calendar year an Employee can have no more than (192) hours TOTAL. These hours cannot be accumulated from year to year. EXCEPTION-Denial of a request for comp time off. Those hours may be carried over to the next year also.
- K. Shift Trades: When an employee trades with another employee, both employees are to be of the same certification and qualification.

The Union proposes to expand the language of the above-referenced Article 19, Section D, which defines the vacation season and the process for requesting and granting vacations, by adding the following:

No more than two employees per unit day shall be off at the same time. If vacation/holiday/comp time request is submitted within one week prior to the requested day/days off, and maximum number of employees are not previously scheduled off, the request shall be granted. Exception allowing more than (2) off will be at the discretion of the Fire Chief. The drawing of all scheduled leave shall be according to seniority.

**Management Position:**

The Township proposes to eliminate a conflict between the language in Paragraph E, which reserves to management the right to require overtime when needed, and Paragraph H, which gives employees the right to refuse overtime except in an emergency, by striking the contradictory language in Paragraph H.

The Employer also proposes to “cap” accumulated compensatory time at 96 hours and to require employees to take time off to reduce their balances to that level

**Evidence and Arguments:**

In its pre-hearing submission, the Township argued that there are many times when an employee is needed to work overtime to fulfill minimum manpower requirements, but an “emergency” does not exist. The minimum manpower per shift was increased from five to seven, to ensure that calls for service are adequately covered. The Employer argued in its statement that it needs the ability to require overtime work to cover non-emergency staff shortages. The Township’s submission acknowledged that it owes employees for their overtime work, and expresses a preference to pay down any comp time accumulations in excess of 96 hours. The Township paid off this debt in the past by handing checks in the range of \$10,000 to \$20,000 to individual employees who would not take time off, and it does not want to be put in that position again. Three full-time and several part-time employees have been hired, and the Township is in a position to reduce the accumulated comp time owed to the unit employees, but the Union has resisted efforts to require firefighters to use their compensatory time off. In conclusion, the Employer’s submission contends that the Township should be given the opportunity to reduce its comp time debt to employees by providing them a day off with pay when it can.

The Employee Organization’s pre-hearing statement explained that the current contract’s comp time provisions came about because the Township did not want to pay

cash for overtime, at the time the recently-expired agreement was negotiated. Now, the Employer wants to put a 96 hour cap on the amount of comp time which can be accrued, but 96 hours is only 4 tours of duty for a fire fighter, at 24 hours per tour, whereas the Township's police officers are permitted to accumulate 8 12-hour shifts of comp time.

The Union made an opening statement at the fact finding hearing in which it faulted the Township for an excessive accumulation of compensatory time by employees who are required by management to work overtime hours, but who are not offered a monetary payment for their overtime hours. Many employees had accumulated over 300 hours of comp time, as of the date of the hearing, and the Fair Labor Standard Act permits only 480 hours (20 tours). The Union said that it is the Employer's responsibility to employ sufficient numbers of employees to prevent excessive use of overtime, and to schedule time off for employees with accumulated comp time. The Union disputed the Township's claim that it has made progress in hiring, inasmuch as there were 11 full-time employees three years ago, and there are currently 11 full-time employees (part-time employees are not cross-trained). The Union would agree to a limit of 192 hours of comp time for any employee at the end of the contract term, with the Township paying employees for any comp time in excess of 192 hours, but a cap of 96 hours is unrealistic in view of the Employer's reluctance to cash out excessive hours.

The Township pointed out that it has succeeded in filling three longstanding full-time vacancies, and has raised the minimum manpower level from five to seven since the current Administrator came on duty. The Employer recognizes that employees have a property right to their comp time. The Township wants to pay off that debt, and get the comp time under control. The FLSA limit of 480 hours is too high, and the Township would like to reduce current levels in stages over the three-year term of the new Agreement. The Employer is not refusing to pay for overtime, but the \$290,000 budget carryover is not much, in light of the other claims on funds and the recommended practice of carrying over sufficient funds to operate the government through the early part of the year when tax bills are being sent out. The Township's Police Department requires its employees to use their comp time, but Fire Department employees are not motivated to use theirs; instead, they consider it to be a wage supplement.

**Findings of Fact and Rationale:**

It is generally recognized that employers in both the public and private sector have the right to manage their operations as they see fit, to the extent that their actions conform to the law and the provisions of any collective bargaining agreement. The Fair Labor Standards Act allows employers to require their employees to work more than 40 hours per week, but requires that time worked after 40 hours in a week be paid at one and one half times the employee's normal wage rate. In the case of fire fighters, who are typically scheduled to be on duty 24 hours every third day, overtime eligibility may be calculated over a period of two weeks, and overtime pay may be offset by granting extra time off. Paid compensatory time off, or "comp time" is a commonly-used mechanism which enables an employer to meet its overtime obligation to employees while limiting immediate payroll costs. When an employee uses comp time to be off work, however, the employer has the problem of requiring another employee to work overtime to cover for the absent employee, thus creating more comp time debt.

The Union argues that the Fire Department has failed to expand the workforce sufficiently to enable it to manage its employees' schedules efficiently, which has resulted in excessive buildup of "comp time", and that the contract should impose restrictions on the scheduling of work and the use of paid compensatory time off. Thus, the Union has made proposals for earned days off, with no more than two employees off simultaneously, and for a detailed procedure in the Vacation article for granting time off, both of which are attempts to restrict management's ability to schedule paid time off.

It is apparent to the undersigned that both parties would like to see the Fire Department personnel scheduled in such a way that overtime can be reduced and the accumulation of comp time can be brought under control. A collective bargaining agreement is not well suited to prescribing detailed day-to-day management of an operation, and may be an impediment to efficient operations if it is too restrictive. Thus, I will recommend that the language of Article 14 remain essentially unchanged, with the addition of a provision enabling the reduction of comp time balances.

Finally, the provision that "Only members of Local #3932 who are state-certified firefighters or EMT's shall be entitled to this overtime benefit" appears to deny a benefit

to any members of the collective bargaining unit who may choose not to join the Union. Inasmuch as such a denial of benefits would be subject to legal challenge, and it appears that the parties intended to mean that the benefit will be limited to members of the collective bargaining unit (i.e., “all full-time, uniformed career employees of the Fire & EMS department, excluding the Chief, Assistant Chief, and any administrative office staff”), I will recommend clarifying the language to read, “Only members of the **bargaining unit** who are state-certified firefighters or EMTs shall be entitled to this overtime benefit.”

**Fact-Finder Recommendation**

It is recommended that the parties modify Article 14 of their agreement in only two respects, both of which can be accomplished by a revision of the language of Section H, to read as follows:

Assignment of overtime will be made on a rotating basis within all ranks. It is understood that those employees who possess the qualifications and who customarily perform such overtime work will be selected. A person has the right to refuse overtime, unless all other employees have more accumulated comp time. Only members of the bargaining unit who are state-certified firefighters or EMT’s shall be entitled to this overtime benefit.

Accumulated totals of comp time will be reduced by scheduling employees to use their compensatory time off, when it is consistent with the needs of the department, and by paying them for unused comp time in excess of the following goals: 350 hours on September 30, 2005; 300 hours on February 28, 2006; 250 hours on July 31, 2006; 200 hours on December 31, 2006; 150 hours on June 30, 2007; and 100 hours on December 31, 2007. Employees with accumulated comp time hours in excess of the next goal may be required by the Employer to take paid time off to reduce their accumulated totals. Employees carrying over comp time in excess of the goals will be paid for the excess hours no later than the second pay period after the date of the goal.

## **Issue 2: Article 16, Holidays**

Article 16 of the recently-expired contract provides that full-time employees of the Township are entitled to a full day's pay for each holiday after six months of service, and "will receive 8 hours comp in lieu of another day off" if the holiday falls on the employee's scheduled day off. Employees who work on a holiday "shall be paid his full day pay in addition to holiday comp time at a rate [of] one and one half (1-1/2) for each hour worked". Section B lists 13 holidays, which "are the same as for all full time Township employees". The article provides in Section C that holidays will be covered with part-time personnel, when possible, and in Section D that full-time employees who have to work "will be compensated at one and one half (1 ½) times comp time from 0700 hours to 0700 hours, to coincide with the tour of duty that begins on that holiday". In addition, Section E states, "Holiday pay will be given while an employee is on sick leave or vacation", but not during a leave of absence. Finally, F provides that a "40-hour employ employee will follow the Township holiday policy".

### **Union Position:**

The Union's proposal would modify Section A by limiting it to bargaining unit members and reducing the number of holidays from 13 to 10. The reference in A to employees who are scheduled to be off on a holiday would be stricken, along with the language quoted above, providing that Employees who work on a holiday "shall be paid his full day pay in addition to holiday comp time at a rate [of] one and one half (1-1/2) for each hour worked". Instead, the Union proposes to specify that employees will work the holiday if it falls on their scheduled work day, in which case "they will be paid double time (2x) for the full 24 hour shift". Further, the Union proposal states:

The employee will receive 4 tours of duty off to be taken at any time instead of getting a holiday off. They can consume these days off during the calendar year, on any day except a holiday.

Proposed Section B lists 10 holidays, which "are the same as for all full time Township employees", eliminating Martin Luther King Day, President's Day, and Veterans Day. Sections C and D would be replaced by a new Section C, which would provide that an employee cannot be mandated to come in if his scheduled vacation falls in the same week as the holiday. In addition to the language in Section E (which would be

redesignated as D), the Union would grant holiday pay to an employee who is off work, using compensatory time off. Finally, the Union proposes to strike the provision in Section F and replace it with the following:

If an employee is mandated to work a holiday that does not fall on his/her unit day. They shall be paid double time and a half for hours worked on said holiday. A mandatory holiday overtime work list shall be maintained. Any OT shall be rotated among unit day employees.

**Management Position:**

The Township proposes to expand the time during which an employee working a holiday would earn “holiday comp time” from 8 hours to the entire 24-hour tour, proposes to reduce the rate from double time and one half (i.e., time and one half, on top of straight time) to time and one half, and proposes to pay the holiday comp time in cash, rather than add it to the bank of time off. The Employer also would reduce the number of holidays from 13 to 10, but rejects the addition of four more days off with pay.

**Evidence and Arguments:**

The Employer pointed out that it is proposing the same holiday benefit as is given by the largest and most wealthy fire departments in the county, Miami and Union townships. Employees not scheduled to work on a holiday should not receive holiday pay.

The Union noted that the other Township employees, including police officers, get the same 13 holidays as currently in the Agreement, and they receive double time and a half if they have to work on a holiday. If the number of holidays is reduced, the loss should be offset by paid time off to be scheduled when the employee wants to use it.

**Findings of Fact and Rationale:**

There was no evidence of a problem with the pre-existing holiday system, which is the same as other Township employees enjoy. Unit employees are already familiar with the schedule, as are administrative personnel who must make it work. In such circumstances, I am inclined to leave well enough alone.

**Fact-Finder Recommendation**

It is recommended that the parties make no change in the language of Article 16 which existed in the recently-expired contract.

### **Issue 3: Article 17, Wages**

Article 17 of the recently-expired collective bargaining agreement provides that a schedule of wage rates is attached as “Appendix A”; that employees will be paid twice a month; that new employees “shall start at the appropriate pay scale in Appendix A according to their classification and years of full time service”; that new employees will be cross-trained before attaining full-time status; that first year of the contract began January 1, 2002; that “the salary of each employee shall be adjusted on the first pay period of the contract year”; and that the anniversary date of each employee, for purposes of this article, shall be January 1 of the year the employee was hired.

Appendix A reads as follows:

#### **APPENDIX A — WAGES**

A. The following hourly pay ranges for certain uniformed members of the Department within the service of Goshen Township Fire & EMS are established:

##### **Length of Service — Step Increases**

Establish pay scales as below for Firefighter / EMT/ MEDIC/ pay utilizing the following steps:

- Step 1. 240 hour FF/EMT- after three years \$ 33,790.18 or \$13.53 hour
- Step 2. 240 hour FF/Paramedic after three years \$ 35,535.00 or \$14.23 hour
- Step 3. A. Contract year one ( 2002 ) add 3% to current employees wages.  
B. Contract Year two ( 2003 ) add 3% to current employees wages.  
C. Contract year three ( 2004 ) add 4% to current employees wages.
- Step 4 Length of service for use in the above scales shall be derived from the Seniority list generated in Article 6 of this agreement.
- Step 5 Full time employees will be compensated according to the wages agreed upon at the 1<sup>st</sup> meeting of the Township in January and wages will be adjusted immediately.
- Step 6 Add \$0.25 per hour for Lieutenant & \$0.35 per hour for Captain & \$ 0.45 per hour for Asst. Chief
- Step 7 If a tax levy is passed during this contract the pay scale may be opened for negotiations.

Contract Period — Contract Year shall begin 01-01-02 and extend for three years.

The parties signed an agreement during their negotiations that “the provisions of O.R.C. 4117.14 (G)(11) are hereby waived and the effective date of any change in rates of compensation and other matters with cost implications awarded by a conciliator, shall be effective to the date of expiration of the present agreement, which is **Midnight, December 31 2004**” (emphasis in original).

**Union Position:**

In addition to updating the dates of the term of the contract in Section D to 1/1/05 – 1/1/08, the Union proposes to modify Schedule A to read as follows:

**LENGTH OF SERVICE – STEP INCREASE**

Establish pay scales as below for Firefighter/EMT/Medic pay utilizing the following steps:

**STEP 1. Full Time Employee 240/FF/Paramedic/EMT start wages:**

\$37,489.20 \$15.02 hour

**After one year of service:**

\$40,560.00 \$16.25 hour

**After two years of service:**

\$43,505.28 \$17.43 hour

**After three years of service:**

\$46,500.48 \$18.63 hour

- STEP 2.** A. Contract year one (2005) add 3% to current employees wages.  
B. Contract year two (2006) add 3% to current employees wages.  
C. Contract year three (2007) add 3% to current employees wages.

**STEP 3.** Length of service for use in the above scales shall derive from the Seniority list generated in Article 6 of this agreement.

**STEP 4.** Full time employee wages will be adjusted according to the pay Scale agreed upon at the signing of this contract and wages will be retroactive to January 1<sup>st</sup> 2005. All back pay of wages will be due within 60 days. Base pay wages will reflect the increase in pay before the 3% cost of living increase.

**STEP 5.** Add \$1.25 per hour for Lieutenant Position, \$1.50 per hour for the Captain position, \$1.75 per hour for the Asst. Chief position.

Contract Period – Contract Year shall begin 01-01-05 and extend for three (3) Years.

**Management Position:**

The Township proposes to retain the language of the previous contract, modifying it to reflect a three year term and increasing the wage rates by 4% in the first year, 3% in the second year, and 3% in the third year.

**Evidence and Arguments:**

The Union asserted that members of this unit perform more runs per station than other area fire departments, but are paid less. When the Township took control of a private emergency medical services provider in 1977, the full-time paramedics made large wage concessions. The Trustees held out the prospect of an increase when a tax levy could support it, but after the levy passed the police received a substantial across-the-board increase and firefighter-paramedics were given only a cost of living increase.

The Union presented data showing that the members of this unit are poorly paid, as compared with the Township's police department, and as compared with surrounding jurisdictions' fire departments. The Union's proposed wage scales would not put the unit in a leading position, but could help with the problem of recruiting and retaining new firefighter/paramedics. The Employer's starting pay rate for new hires is currently \$30,000 (\$12.02 per hour) compared with an adjacent township's beginning rate of \$37,859 for rookie firefighters. The Township's top rate is also below all other comparable jurisdictions surveyed; the Union is proposing to catch up with the poorest-paying of those departments. A survey of 11 area township fire departments showed that this unit's 2000 runs out of its single station last year was about double the number of runs per station at these comparable departments.

The Union presented evidence that the Township pays probationary police officers \$18.10 per hour, increasing to \$22.68 per hour after four years of service. The Employee Organization pointed out that the Employer's police officers make a higher hourly wage after their first year of employment than the Union's proposal would pay firefighters after three years. The Township's Fire Chief obtained a wage increase to \$12.00 per hour for part time employees, who are not in the bargaining unit, effective May 1, 2005.

The Township has granted 3% cost of living increases to its employees in each of the past 3 years, which is what the Union is asking despite the evidence that some area fire departments have received more in recent years.

The IAFF's research staff has examined the Township's finances and assures that the Employer's general fund balance, which increased 46.14% from fiscal year 2001 to 2003, more than meets the level recommended by *Moody's on Municipals*. The Union pointed out that the revenues generated by the EMS services was \$273,000, which contributed to the Township's cash balance of \$1,145,805 at the end of 2003. A U.S. Department of Labor study showed that the firefighter occupation is more demanding than police work, in many respects, yet the Employer compensates its police officers more generously.

The Employer surveyed the sources of funding for the fire department and concluded, "on an annual basis, all fire levies, all EMS levies, and the safety services levies are totally consumed fulfilling the operational needs of those departments". The

Township's \$225,000 carryover from the EMS medical billing must be looked at in the context of a \$2.1 million budget. The progress made over the past 18 months in replacing worn out equipment, and adding three full-time employees and other part-time employees has come at considerable expense. The fire department faces some large expenses in the immediate future for replacement of its front line engine (which is 22 years old) and two life squad units, as well as extensive maintenance on other vehicles. The Employer anticipates future costs for the establishment of a second station house.

The Auditor recommends that the Township should carry over 25% of its annual budget into the new fiscal year, to cover operating costs in the first quarter while taxes are collected. In 2003, the Township's general fund shows an artificially high level because it includes a \$3 million building loan, and considerable revenue from new housing starts.

Despite these demands on its resources, the Employer is willing to offer a 4% wage increase in the first year of a three year contract, to be followed by 3% in the next two years. The cost of living has increased on an average of approximately 2.4% in the past several years, so front-loading the 4% raise results in a generous wage increase. The Employer acknowledges that members of this unit perform admirably, and that historical circumstances resulted in them receiving less than they can justifiably claim, but it is not appropriate to attempt to fix this long-term situation overnight, at the expense of future improvements in their working conditions.

The Union responded that there is a carryover of \$654,000 from the levies which is available for wage improvements, and that equipment purchases should be made with proceeds from issuing general obligation bonds, not current revenue. The Township took over the operation with a promise to improve wages when levies could be passed, but when that happened, the Employer gave its police force a catch-up raise, all at one time, and failed to help firefighter/paramedics in the same way. The Employer has not made progress in reaching the needed staff level, merely hiring replacements for three vacant full-time positions, and adding part-time employees who are mostly emergency medical technicians, rather than paramedics. Besides, the Union argued, the new full-time employees will not stay at the current starting rate, even with a cost-of-living adjustment.

The Employer concluded by pointing out that the three newly-hired full-time employees filled positions which had been vacant for some time. A new fire station is definitely needed, and will be a substantial expense. The best approach will be to improve the wage scale incrementally, not all at once.

**Findings of Fact and Rationale:**

It is undisputed that fire department employees took a cut in pay when the Township hired them from a private company, and that they have not yet recovered from that transition. The Union has proposed a starting rate for newly-hired firefighter/paramedics which is \$3.00 per hour less than the Township's probationary police officers receive, and a little less than neighboring Miami Township pays its new firefighters, but significantly less than the rate at which neighboring Union Township starts new firefighters. The Employer apparently has experienced some difficulty in attracting and maintaining new hires in this unit, which probably has contributed to its struggle to contain overtime. Effective May 1, 2005, the Employer will begin paying unrepresented part-time firefighters about the same as newly-hired full-time employees in the unit, who presumably are better qualified than part-timers.

I conclude that the Union's point about the low starting wages is well-taken. However, the Union's proposal to make up the entire gap with a 25% increase in the first year of the agreement may discourage the Township from creating as many new positions as could be done with a less ambitious catch-up in the first year, and improvements in each of the following years. I will recommend the incremental approach.

In light of the recent history of moderate increases in the cost of living, the unit's 4% raise last year, and my recommendation to raise the starting wages of new and recent hires, I will recommend an across-the-board increase of 3% in each of the three years of the term of the contract. In accordance with the agreement of the parties, the wage improvement should be made retroactive to the first of the year.

The parties have agreed to exclude the position of Assistant Chief from the unit. Consistent with that agreement, I will omit any recommendation regarding that job.

## **Fact-Finder Recommendation**

It is hereby recommended that the parties amend Article 17, Section D, to reflect that the first year wage rates will be effective retroactive to January 1, 2005. It is further recommended that Appendix A of the parties new contract read as follows:

### **LENGTH OF SERVICE – STEP INCREASE**

Establish pay scales as below for Firefighter/EMT/Medic pay utilizing the following steps:

#### **STEP 1.**

##### **Effective January 1, 2005**

**Full Time Employee 240/FF/Paramedic/EMT start wages:**

\$33,790.18 \$13.53 / hour

**After one year of service:**

\$35,535.00 \$14.23 / hour

**After two years of service:**

\$37,334.75 \$14.95 / hour

**After three years of service:**

\$39,308.93 \$15.74/ hour

##### **Effective January 1, 2006**

**Full Time Employee 240/FF/Paramedic/EMT start wages:**

\$35,535.00 \$14.23 hour

**After one year of service:**

\$37,334.75 \$14.95 hour

**After two years of service:**

\$39,308.93 \$15.74 hour

**After three years of service:**

\$41,334.72 \$16.55/ hour

##### **Effective January 1, 2007**

**Full Time Employee 240/FF/Paramedic/EMT start wages:**

\$37,489.20 \$15.02 hour

**After one year of service:**

\$39,308.93 \$15.74 hour

**After two years of service:**

\$41,334.72 \$16.55/ hour

**After three years of service:**

\$43,461.85 \$17.40 hour

- STEP 2.** A. Contract year one (2005) add 3% to current employees wages.  
B. Contract year two (2006) add 3% to current employees wages.  
C. Contract year three (2007) add 3% to current employees wages.
- STEP 3.** Length of service for use in the above scales shall derive from the Seniority list generated in Article 6 of this agreement.
- STEP 4.** Full time employee wages will be adjusted according to the pay Scale agreed upon at the signing of this contract and wages will be retroactive to January 1<sup>st</sup> 2005. All back pay of wages will be due within 60 days. Base pay wages will reflect the increase in pay before the 3% cost of living increase.
- STEP 5.** Add \$1.25 per hour for Lieutenant Position, \$1.50 per hour for the Captain position.

Contract Period – Contract Year shall begin 01-01-05 and extend for three (3) Years.

## **Issue 4: Article 19, Vacation**

Article 19 of the recently-expired contract prescribes the length of service necessary to earn vacations of 2 to 5 weeks, defines when vacation credit accrues, establishes the calendar year as the vacation season, provides that “each employee can submit vacation request” in January, and that requests will be processed “by seniority”. The parties agreed that the reference to recognizing credit earned in “another political subdivision of the State of Ohio” is intended to refer to prior service in a Township, as required by ORC Section 9.44 (2). Further, the article reads as follows, in part:

E. Generally, an employee shall take vacation leave during the year in which it was accrued. Employees may carry over up to forty-eight (48) hours of their annual accrual, but only one (1) succeeding year.

\* \* \*

G. Vacation leave that is not used, scheduled for use or able to be carried over to next year by December 1<sup>st</sup> in the year of accrual, shall be paid out to the employee on the first check of December, up to a maximum of forty-eight (48) hours.

### **Union Position:**

In addition to the vacation accrual schedule in Section A, the Union proposes to add a one-week vacation earned after one year of service. The Union proposes to expand the language in Section D which defines the vacation season and the process for requesting and granting vacations, by adding the following:

No more than two employees per unit day shall be off at the same time. If vacation/holiday/comp time request is submitted within one week prior to the requested day/days off, and maximum number of employees are not previously scheduled off, the request shall be granted. Exception allowing more than (2) off will be at the discretion of the Fire Chief. The drawing of all scheduled leave shall be according to seniority.

The Union proposes to expand on the above-quoted language of Section G by adding the following new language:

By the end of each Calendar year an employee cannot have more than a GRAND TOTAL of 48 hours. These hours cannot be accumulated from year to year. EXCEPTION – Denial of a request for Vacation time off. Those hours may be carried over to the next year also.

In addition, the Union proposes two new sections, as follows:

- H. An employee who separates from employment shall be eligible for his/her annual vacation leave in the calendar year in which separation occurs should that person be in active employment one (1) day of the calendar year in which separation occurs. Compensation for accrued but unused vacation credit shall be at the employee's base rate of pay.
- I. An employee reassigned to another shift at the invitation of the Chief of Fire shall be permitted vacation leave as previously drawn on her/his original shift.

**Management Position:**

The Township proposes to change the provision in Section E which reads, “Generally, an employee shall take vacation leave during the year in which it was accrued”, to make it mandatory that vacation must be taken in the year it is accrued. The Employer would continue to allow employees of carry over up to forty-eight (48) hours to the succeeding year.

**Evidence and Arguments:**

The Union agreed to continuing the maximum annual carryover of vacation credits to 48 hours. Other fire departments buy out any unused earned vacation time when an employee leaves the department; it is an earned benefit, and the Township is obligated to pay it. The Fire Chief already follows the practice which is proposed in Section I.

The Employer said that earned but unused vacation time is like comp time: employees do not ask for the time off, and prefer to treat it as a savings account. The Employer argues that paid time off should be taken off, which is the intended goal of vacations, and the Employer should be able to require it be taken off, except for a maximum carryover each year.

**Findings of Fact and Rationale:**

In the opinion of the undersigned, there has been no showing of a need to further restrict the Employer’s management of the use of paid time off by embodying such procedures in the collective bargaining agreement. There is apparently a problem with vacation time similar to the issue of unused compensatory time off, examined above. The purpose of vacation time is to afford the employee an extended period away from the stress of the job, to refresh and rejuvenate the employee so he or she can perform with more energy upon return from vacation. The Union’s evidence regarding the demands on firefighters supports the idea that the health of employees requires periodic rest periods away from the environment of the workplace. Some employers require employees to use the bulk of their vacation time every year, for this reason. I believe the Township needs to have its right to do so clearly spelled out in the contract, in a manner similar to that recommended for the use of comp time, above.

### **Fact-Finder Recommendation**

It is hereby recommended that the language of Article 19 remain the same as in the recently-expired contract, except for Section E, which should read as follows:

- E. Employees shall take vacation leave during the year in which it was accrued, except they may carry over up to forty-eight (48) hours of their annual accrual to the succeeding year. The Employer may require employees to limit their accumulated total of earned vacation time by scheduling employees to use their vacation time, consistent with the needs of the department.

### **Issue 5: Article 23, Insurance**

Article 23 of the recently-expired collective bargaining agreement provides as follows:

- A. All fulltime regular employees are entitled to receive health insurance coverage to be paid at 95% by the Township and this amount may be changed at the discretion of the Township Trustees.
- B. The choice of insurance carriers(s) shall be solely within the discretion of the Employer.
- C. Current insurance policies for medical, dental, liability, disability and cancer will be in effect unless changed by the Township Trustees.
- D. All full time employees have the option to accept the medical insurance (through self or spouse) provided in this Article, or to decline such coverage and receive a lump sum annual payment of One Thousand Dollars (\$1,000.00). All payments provided for in this paragraph shall be made on or before the fifteenth (15<sup>th</sup>) day of December of each calendar year.

#### **Union Position:**

The Union proposes to strike the last phrase of Sections A and C, so that the Township Trustees would not have discretion to change the percentage of the health care insurance premium paid by the Employer or the current insurance coverage. The Union also proposes to add the following to Section C:

If the Township anticipates a change in the insurance carriers, the union would require a notification in advance and request that a union representative be permitted to attend any meeting the Township has with prospective carriers.

Finally, the Union proposes to add a sentence to Section D: "This is provided that the spouse is not also a full time township employee and is provide the primary insurance."

#### **Management Position:**

The Employer opposes eliminating the right of the Township to change the percentage of the insurance premium which it pays. With respect to a possible change in the insurance carrier, the Employer opposes adding verbiage in Section C which would require the Union's participation in meetings to select a new insurance carrier.

**Evidence and Arguments:**

The Union submitted evidence that the Township's written policy is, "All full time regular employees are entitled to receive health insurance coverage paid for in its entirety by the Township." The recently-expired contract provided that the Employer will pay 95% of the insurance premium, but there was no protection against the Employer shifting the burden to the employees, at its whim. Employees are less able to absorb an increase than is the Township, and they need the certainty of a limit on their liability. The members of this unit should be treated as well as other Township employees, and their advice should be sought if the Employer contemplates changing insurance carriers or the type and level of coverage.

The Employer said that the Township has annually experienced double digit increases from its health care vendors, and has continued to pay 95%. The history of double digit increases, and the volatility of the health care industry, prevent the trustees from making a commitment to 95% for the next three years. The Employer does not discriminate against the firefighters. The trustees try to look out for all Township employees, and even the trustees are covered by the same plan as firefighters have. The trustees have employed an insurance broker to gather package and pricing information, and to make a recommendation. The Union's proposal to participate in meetings with prospective carriers would not apply to this scenario. Why would the Union need to be at the table, without a vote?

The Union responded that the Employer could instruct its insurance broker to meet with Union representatives who could voice their priorities. The Fire Chief will not fight for the firefighters, so other Township employees receive favored treatment. Insurance is paid out of the General Fund, which is up 46% since 2001 (the 2001 balance was \$179,679 compared with 2003 balance of \$262,574). A 95% cap is not out of line.

**Findings of Fact and Rationale:**

Employers in both the public and private sector have experienced inordinate increases in the cost of health care insurance, and the widespread trend has been to shift larger portions of the annual premiums on to employees. The rationale often given is that employees will not misuse their medical benefit if they have a stake in keeping costs down. On the other hand, employers have access to more resources than employees to

cover these increasing costs, and employees have a greater need to ensure some limit on the size of their share of the premium increase. In line with the general trend I have seen with other public employers, I will recommend a cap on increases of employee portions of the insurance premium.

Health care insurance is a legitimate concern of employees, and an employer is obliged to listen to a labor organization which represents its employees when considering a change in these benefits. The Township will have greater leverage in negotiating a health care insurance package if that package covers a larger group, such as all employees of the Township, and if it can speak with one voice. Therefore, it is to the advantage of the members of this bargaining unit to be covered by the same plan as are other Township employees, and to voice their concern to the Employer's spokesman prior to the search for a new insurance carrier or a different package of coverage. I will recommend that the parties include in their new agreement a procedure enabling the Union to voice the concerns of unit members prior to any discussions which may result in a different carrier or package of benefits.

**Fact-Finder Recommendation**

It is hereby recommended that the parties modify Article 23 of their new collective bargaining agreement to read as follows:

- A. All fulltime regular employees are entitled to receive health insurance coverage, 95% of which is to be paid by the Township at the beginning of this contract term. The amount of an employee's contribution may be increased no more than 10% annually, at the discretion of the Township Trustees.
- B. Employees in the bargaining unit will be entitled to the same coverage as other Township employees, provided by the same insurance carrier(s). The choice of insurance carriers(s) shall be solely within the discretion of the Employer. Current insurance policies for medical, dental, liability, disability and cancer will be in effect unless changed by the Township Trustees. If the Township anticipates a change in the insurance carriers or the type and scope of coverage, the Union will be notified in advance and permitted to meet and confer with the Employer on such potential changes before the Township initiates any change.
- C. All full time employees have the option to accept the medical insurance (through self or spouse) provided in this Article, or to decline such coverage and receive a lump sum annual payment of One Thousand Dollars (\$1,000.00). All payments provided for in this paragraph shall be made on or before the fifteenth (15<sup>th</sup>) day of December of each calendar year.

## **CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing Fact Finders Report regarding the findings of fact and recommendations on the unresolved issues has been sent by overnight mail carrier to the Employer's Representative, Ray C. Snyder, Administrator, at: Goshen Township, 6759 Wood Street, P. O. Box 267, Goshen, Ohio 45122; and to the Union's representative, John Haynes, at P. O. Box 169, Goshen, Ohio 45122. A copy of the report has been sent by regular mail to Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213..

Issued at Columbus, Ohio this second day of May, 2005

  
James L. Ferree, Fact Finder