

# FACT FINDERS REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

2006 MAR -8 A 10: 59

## IN THE MATTER OF FACT FINDING:

International Association of Fire Fighters (IAFF) Local 3389

And

Delhi Township

Case Number: 05-MED-09-1033

Before Fact Finder  
N. Eugene Brundige

## PRESENTED TO:

Craig R. Mayton, Executive Director/  
Administrator Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup>. Floor  
Columbus, Ohio 43215-4213

And

W. Joseph Scholler, Esq.  
Frost, Brown, Todd LLC  
For Delhi Township Trustees, Employer  
300 North Main Street, Suite 200  
Middletown, Ohio 45042  
[jscholler@fbtlaw.com](mailto:jscholler@fbtlaw.com)

And

Leslie Elizabeth Ghiz, Esq.  
Kohnen & Patton LLP  
For Ohio Association of Professional Firefighters  
Local 3389  
201 East Fifth Street, Suite 800  
Cincinnati, Ohio 44202-4190  
[lghiz@kohnenpatton.com](mailto:lghiz@kohnenpatton.com)

N. Eugene Brundige was selected by the parties to serve as Fact Finder in the above referenced cases and duly appointed by the State Employment Relations Board in compliance with Ohio Revised Code Section 4117.14 ©(3) on December 21, 2005.

The parties informed the Fact Finder that time extensions would be filed. In pre-hearing discussions the parties raised the possibility of having a day of mediation prior to the hearing. A date of January 27 was subsequently established. After extensive discussions, it was decided that January 27 would be considered as a day of mediation and that the parties would reconvene on February 10 to conduct the actual Fact Finding Hearing. The parties timely filed the required pre-hearing briefs in advance of the February 10 hearing date and were able to supplement materials submitted on or before January 27.

At mediation and in their pre-hearing filings one or more of the parties identified the issues, which each party believed were unresolved. The lists were reviewed and it was determined that the unresolved issues included:

1. **Wages & Compensation (Article 26)**
2. **Hours or Work and Overtime (Article 25)**
3. **Insurance (Article 18)**
4. **Expiration (Article 32)**
5. **Layoff/Termination (Article 11)**
6. **Child Leave [Article 22(2)(4)]**

7. **Bereavement Leave [Article 22.7 (a)]**
8. **Union proposal regarding items allegedly left out of last agreement. (also Article 25)**
9. **Paid Leaves (Article 22)**
10. **Holidays (Article 21)**
11. **Uniforms (Article 27)**
12. **Personnel Files (Article 15)**
13. **Alcohol & Controlled Substance Abuse Policy & Testing Procedures (Article 10)**

Due to the extensive amount of discussion and information presented on January 27 during mediation, the parties entered into an agreement that said (in pertinent part)

*“The parties further agree that all presentations and information shared with the Fact Finder during the mediation process on January 27, 2006, the Pre-hearing statements and documents, the supplementary statements and documents and the presentations made at the hearing on February 10, 2006 may be considered by the Fact Finder in the preparation of his report and recommendations.”*

The Township was represented by Joe Scholler, Attorney with the firm of Frost, Brown and Todd; Gary Schroeder, Acting Township Administrator and Budget Director; and Fire Chief Mike Edwards. Township Trustee Michael Davis was able to participate during much of the proceedings on January 27.

The Union was represented by Leslie Ghiz, Attorney with the firm of Kohnen & Patton; Local President, Doug Campbell; Local Vice President, Scott Vinel; and Local Secretary-Treasurer, Andrew Ihle

**Preliminary Statement of the Township:**

The Township explained the financial situation from their perspective. Recently they had to close two of their three firehouses and terminate fifty-five part-time firefighters and ask the firefighters and other township employees to take wage freezes. This occurred in late 2004 with the wage freezes in place for 2005.

After much hard work on the part of many persons including the participants in the Fact Finding hearing, the residents passed a fire levy in May of 2005. The amount of the levy was calculated in anticipation of a 3.0% annual increase for fire fighters. Because of developments since the passage of the levy, the Township is now concerned that they may not be able to afford 3%.

At the time of the hearing the Township had rehired nineteen part time fire fighters and reopened one of the two closed firehouses. They are anticipating opening the other firehouse in early March.

The Township felt that, in light of the current financial situation, the demands of the Union at the bargaining table were unreasonable. The demands, as the Township understood them, was for a 5% increase in each of the two years of an agreement or 3% per year plus eight additional 24-hour days off with pay.

The Township acknowledged that the members of the bargaining unit agreed to a wage freeze in 2005. From the Township's perspective this action allowed them to avoid laying off any bargaining unit members. They go on to note that 55 part-time firefighters were eliminated.

The Township explained that these difficult economic times have been caused by several factors:

They note that almost all public sector jurisdictions have suffered from the national recession. They go on to point out that the cutbacks in personal property taxes have hit the township particularly hard.

Because of these factors which have had a very negative effect on the General Fund, The Trustees decided that the safety forces must become more self-sufficient.

**Preliminary Statement of the Union:**

The Union offered a review of the most recent negotiations which resulted in a contract for the period of January 2002 through December 2004.

They note that the union was approached in the fall of 2004 and requested to take a one year wage freeze for 2005 due to the failure of a fire levy. The bargaining unit members agreed to do so.

They supported and worked for the levy that was passed in May 2005. This levy expects to realize approximately \$1.36 million for five years.

The union believes that their willingness to accept a wage freeze and their support for the levy should be recognized.

The union proposed a package that they could have accepted which would consist of 3% increases in each of the two years of the agreement, the union would take on more financial responsibility for medical insurance and the Township would replace the earned day off system with the adoption of a Kelly Day arrangement thus allowing more time off for all firefighters.

When this proposal was rejected, the parties reached impasse.

#### **CONSIDERATION OF OPEN ITEMS:**

The Fact Finder will discuss each open item noting the position of the Township and of the Union, and will then offer a recommendation, based upon the facts ascertained, regarding each issue.

#### **WAGES & COMPENSATION: (Article 26)**

##### ***Position of the Union:***

IAFF proposes a 5% increase in each year of a two year agreement. They argue that the income generated by the Fire Levy would cover the cost of such an increase.

The Union offered external comparables which compares Delhi Township Firefighters with Green, Colerain and Sycamore Townships for 2005 and 2006 (assuming a 3% increase in 2006). In each case Delhi is significantly lower.

The Union also offered a comparison for Police Officers comparing Delhi Township with Green Township, Colerain Township and Hamilton County Patrolmen. This comparison shows that Delhi Patrolmen compare much more favorably within this group than do Firefighters.

The Union argues that the financial uncertainty of Delhi Township and the higher salaries offered by neighboring jurisdictions makes it difficult for Firefighters to remain in Delhi Township. They listed four firefighters who have left the Township recently.

***Position of the Township:***

The Trustees offer an external comparison of nearby townships that shows the small size of Delhi and the very low revenue available. Out of eight townships Delhi is seventh in both population and revenue.

By comparison, Green Township has 55,600 population and \$25,541,580 in revenue, compared to Delhi which has a population of 30,104 and revenue of only \$13,349,900.

The Township also offers internal comparables. Using a baseline of 1997, first-year firefighters wages have increased by 40.1% and top-level by 39.54%.

In the same period Police Officers have increased 28.8%, Public Works employees by 30.5%, and non organized employees by 28.5%.

Finally, the Township argues that the significant increase in energy costs, which was not anticipated by anyone when the levy was passed, has further strained a very tight budget and complicated the financial situation of the Township.

After reviewing their current economic situation the Township proposes a wage increase of 2% per year for each year of a two year agreement.

The Township also proposes a change in Salary Differential (Step-Up Pay) (Article 26.3). They argue that the premium offered when a firefighter temporarily fills a higher position, (10%) is very lucrative and out of line with comparables submitted. They propose this compensation be fixed at \$1.00 (1

assume the proposal is \$1.00 per hour but the language in the Township proposal is not clear.)

The Township also proposes to reduce call in pay from four hours to two hours. This, too, is a cost saving proposal to help manage an extremely tight budget.

#### **DISCUSSION OF RECOMMENDATION:**

Even after passing a levy Delhi Township is in a serious economic situation. They are fortunate to have an Acting Administrator who is knowledgeable and skilled in financial management and who seems to have the confidence and support of this Union.

It is also easy to understand the position of the Union. They readily agreed to a wage freeze to protect jobs and to aid in the passing of a new levy. There is a right to expect consideration after such an action.

But the loss of anticipated income combined with out of control energy costs make it totally impractical to recommend the union's proposal regarding wages. While the union argues that the 5% increases could be paid for by the levy, such expenditures would eat up the entire amount and would not allow the Township to honor its other commitments of reopening firehouses and paying for other needed fire expenditures. It also would put the Township in an untenable position for future years as the increases are incorporated into the base salary.

The parties see the issue of recruitment and retention differently, and while such issues are a factor, the current economic realities also must be considered.

But a deal is a deal. It appears many people knew the levy intended a 3% increase for firefighters. Citizens understand commitments, and while it will certainly require continued vigilance, the Township should be able pay 3% per year for two years.

They have been able to grant 3% increases to other units.

**I recommend a 3% increase effective January 1, 2006 and an additional 3% increase effective January 1, 2007.**

While I can understand the logic of the Township in their attempts to reduce step-up pay, and the number of call in hours paid, I do not recommend these changes with the fair but modest recommendation of 3%. They would save very limited dollars and would certainly have a demoralizing effect on the employees.

**HOUR OR WORK & OVERTIME: (Article 25)**

Both the Union and the Township have proposals on this issue. I will consider the position of the Union first:

***Union Position:***

The Union has several concerns regarding time off. They note that in February 2004 the Union brought a grievance regarding the unilateral revision of EDO days. The grievance was settled in a non-precedent settlement agreement that said the Chief would not change EDO days without the agreement of the affected person. The Union would like this language included in article 25 of the Collective Bargaining Agreement.

The second proposal in the section offered by the Union would replace the EDO language with language adding the concept of *Kelly Days* to Article 25.

The Union argues that the City of Cincinnati, Harrison and Sycamore Townships each have *Kelly Days*.

They note that the Kelly system is much more predictable for firefighters and allows them to know for certainty when they will have time off.

The Union argues "*In the event the Township cannot pay increased salary, free time should be substituted.*" (Union pre hearing statement, page 10)

***Township Position:***

The Township argues that the addition of eight more days off (the result of a Kelly Day system) is "outrageous" (Management Pre-Hearing Brief Page 6).

They note that the department is currently operating on a "bare bones" basis with barely enough firefighters on duty at a given time. This proposed system would make matters worse.

The township notes that firefighters currently get 9 days off per year and they believe that this is too much time.

They propose reducing the time off to the minimum required by the *Fair Labor Standards Act* which they believe to be 6.5 days per year. They argue this would improve the available number of firefighters.

They see a significant cost savings to the Township if this provision were to be included in the Collective Bargaining Agreement.

To further support their argument they point to December 30, 2005 when the Township experienced one of its worse fires ever. In the view of the Township full time firefighters did not respond when called to the scene.

The Township recommends several additional changes to Article 25.

They recommend the elimination of the language: "*overtime compensation shall accrue to any employee who works in excess of the standard work day.*"

The Township also proposes the elimination of the Compensatory Time program. Noting that it is necessary for the Township to save money and this would be an additional way to do so.

#### **DISCUSSION AND RECOMMENDATION:**

It is hard to believe that either side is serious in its proposals regarding changes in Article 25.

I can understand why any firefighter would want more time off and I am acquainted with the *Kelly Day* system. But most of those systems that work successfully have many more firefighters available than does a small department like this one.

While I understand the view of the Union that the Township would just not schedule additional persons, that argument begs the question of the overall service being provided to the citizens of the Township.

The Union has simply failed to convince this Fact Finder, under the statutory criteria of ORC 4117, that there is a problem that needs correcting and that there are relevant comparables that would support it.

While 3% wage increases are not huge, they are fair in this economy and under these circumstances. Therefore there is no entitlement to additional time off because the Union would like a larger wage increase. I reject the union's proposal to replace the EDO system with a Kelly Day system.

Likewise I reject management's attempt to reduce the number of days currently being offered to some artificial floor only because the FLSA sets that as a minimum. There is every evidence that the department is working adequately and management has not come close to convincing me that there needs to be such a draconian action.

After listening to both parties regarding the unfortunate incident of the December 30 fire, I fail to see the connection to the proposed reduction of time off to the response time. I am persuaded that the low response of Delhi firefighters was related more to a communications system that failed than to any conscious determination on the part of the firefighters. Testimony was presented to this Fact Finder that even those off duty firefighters who responded did so because they learned of the call from colleagues in other departments.

Another issue in this article relates to the ability of the Chief to unilaterally change EDO's.

To recommend the inclusion of language from a settlement agreement (which contains a specific sunset clause) is asking this Fact Finder to rule on an outdated grievance that he has not even seen. This is not the forum to do so.

The Township attempts to gain several take backs in this Article aimed at saving money at the expense of the Firefighters.

While I recognize the serious financial issues facing this township, and while I have tried to deal with some of those in other parts of this report, it is not practical or fair for the Township to just take back benefits that have been negotiated in the past and that employees have accepted as part of their compensation package.

**Recommendation:**

As it relates to the issues discussed in this section, I reject the proposals of both parties and recommend the *status quo* with no changes in the contract language of Article 25.

**INSURANCE: (Article 18)**

***Position of the Township:***

Based upon the skyrocketing increases in health care the Township recommends changing the employee contributions from the current flat rate basis to a cost sharing that would require the employees to pay 5% of premium in 2006 and 10% in 2007.

The Township notes that this would actually be a net saving for employees in 2006 but would show an increase in 2007.

The employer cites a myriad of reports and studies all of which show the increasing share of premiums being paid by employees in all kinds of industries and jurisdiction.

The Township cites a report from Hewitt and Associates, as far back as 1992, which notes: "*employers simply cannot afford to continue to absorb these*

*types of rate hikes and, unfortunately, that means employees will have to pay a lot more for health care."*

They also cite the 2004 SERB Health Insurance Survey which shows that public employees in the Cincinnati area pay an average of 11.9% of premium for single plans and 13.3% for family coverage.

*Union Position:*

The official position of the Union is to request the status quo guarantee contained in the current Collective Bargaining Agreement.

#### **DISCUSSION AND RECOMMENDATION:**

While the Union had to put forth its official position it is apparent to this Fact Finder that the Union realizes the Township needs to make adjustments in Health Insurance Premiums.

This proposal is modest enough and gradual enough to be reasonable.

I recommend management's proposal with the exception of the "me too" language contained therein. The language is clear enough without adding a possibly confusing statement.

I recommend Article 18.1 be modified as follows:

*First paragraph remains the same.*

*Delete second paragraph and replace with*

***Beginning September 1, 2006 employees will pay a 5% premium share. Beginning September 1, 2007 employees will pay a 10% premium share.***

#### **EXPIRATION: (Article 32)**

*Union Position:*

The Union proposes a two year agreement.

***Township Position:***

The Township does not oppose a two year agreement but rather uses their argument to caution the Fact Finder not to be too generous in the recommendations regarding the financial package.

**DISCUSSION AND RECOMMENDATION:**

It is apparent from the presentations and discussions that both parties expect a two year agreement. I recommend such. Article 32 should read:

***32.1 This Agreement shall be for the period ending on December 31, 2007. It is agreed that this Agreement shall renew itself automatically from year to year after calendar year 2007 unless either of the parties hereto notifies the other party within thirty (30) days prior to the expiration date (December 31, 2007) of its intention to terminate or modify the Agreement.***

**LAYOFF/TERMINATION: (Article 11)**

***Position of the Union:***

During the recent financial crisis the Union became aware that, under the current contract language, full time firefighters could be laid off before part time.

While the Township did not take that action, but rather laid off part time firefighters, the Union would like the Collective Bargaining Agreement to include language that would insure part time firefighters be laid off first.

***Position of the Township:***

The employer notes that they did not lay off full time firefighters in the last financial crisis but rather went with part time employees. They do want to retain

the flexibility to have a mixed department of some part time and some full time firefighters if the financial situation worsens and becomes more permanent.

#### **DISCUSSION AND RECOMMENDATION:**

Language such as the Union has proposed is not unusual in public sector contracts and is also seen in fire contracts in larger departments.

The difference in this situation is that the small size of the department requires the Township have a level of flexibility beyond the norm in order to assure minimum services are still provided to the residents.

On the other hand it is not acceptable for full time firefighters to lose their livelihood while part time persons continue to draw some limited income from the Township.

I recommend the following as a partial protection for members of the bargaining unit in the unfortunate situation that layoffs are necessary.

Article 11.5 should read:

11.5 In the event of a layoff, probationary employees will be laid off first without regard to their individual periods of employment. Non-probationary employees shall be laid off next in order of their career seniority. ***If the Township continues to employ part time firefighters during a layoff, the laid off bargaining unit member shall have the opportunity to move to a part time position even if such move necessitates displacement of a current part time employee.***

**CHILD LEAVE: (Article 22.2(2)(4))**

***Position of the Union:***

Currently an employee is granted the day off when a child is born and another when the child is brought home. The Union proposes that the time be given in two consecutive tours.

***Position of the Township:***

The Township argues that in a "bare bones" operation this change could lead to unnecessary expense. They argue that the change is unnecessary.

**DISCUSSION AND RECOMMENDATION:**

The birth of a child is a significant occasion in any employee's life. The employee is still utilizing earned sick leave when they are on Child Leave. While it is true that the Union's proposal may justify the use of additional sick leave, the employer will not suffer unduly in allowing a new parent two consecutive tours to care for, and get acquainted with a new child.

I recommend the Union's proposal. Article 22.2(2)(4) should read:

***22.2(2)(4) The spouse may utilize two consecutive tours off beginning on the day of the birth of the child.***

**BEREAVEMENT LEAVE: (Article 22.7 (a))**

***Position of the Union:***

The Union believes the three calendar days currently available under the contract are not adequate and that two consecutive tours of duty would allow more time for a person to deal with their loss.

***Position of the Township:***

The Township believes the three calendar days are adequate but argues that if one of the two changes is to be granted it should be this one.

As part of a broader proposal the Township recommends bereavement leave be charged to sick leave.

#### **DISCUSSION AND RECOMMENDATION:**

Bereavement leave is as important to the employer as to the employee. Employees facing the loss of a loved one need time to cope with that loss in order to be effective and safe in the performance of their jobs.

The amount of time being asked for by the Union is not unreasonable.

I recommend the Union's proposal. I reject the efforts of the Township to charge Bereavement Leave to sick leave.

Article 22.6 (a) should read as follows:

Death in the immediate family (spouse, parent, step-parent, parent-in-law, child, step-child, sibling, half-brother, half-sister, grandparent, grandparent-in-law, grandchild, brother-in-law, sister-in-law, legal guardian or a member of the immediate household): ~~three (3) consecutive calendar days near the death or burial, one of which will include the burial or interment.~~ ***Two (2) consecutive tours near the death or burial.***

#### **UNION PROPOSAL REGARDING ITEMS ALLEGEDLY LEFT OUT OF LAST AGREEMENT. (Also Article 25)**

##### ***Position of the Union:***

The Union asserts that in 2002 during the negotiations of the prior Collective Bargaining Agreement, some specific language was left out of Article 25. The Union, at the time raised the issue.

The Union recalls that the then-Township Administrator threatened to pull all tentative agreements if the Union did not sign the Agreement. They recollect

that a verbal agreement was made to put the language back into the next Collective Bargaining Agreement.

During the discussions of this Agreement, the Fire Chief disagreed that this was the understanding in 2002 and so the parties were unable to resolve the matter.

***Position of the Township:***

The Township has a totally different recollection of the matter. They say, as a part of negotiations in 2002, when the Township agreed to grant 9 paid days off, they also submitted an entirely different Article 25 which intentionally excluded the four clauses in dispute.

**DISCUSSION AND RECOMMENDATION:**

This is a very unusual situation. This Fact Finder lacks authority or ability to rule on a supposed verbal agreement that occurred four years ago. Nothing in the Ohio Revised Code or the Administrative Rules gives me the basis for making such a recommendation.

I could consider each of the four clauses on their own merits as new proposals to be inserted into this Collective Bargaining Agreement but the materials submitted lacked any substantive discussion of the statutory criteria Fact Finders apply to such proposals.

These are matters that should be negotiated by the parties on their merits.

I do not recommend the inclusion of these disputed clauses in this Collective Bargaining Agreement.

**PAID LEAVES: (Article 22)*****Position of the Township:***

The Township proposes to reduce sick leave accrual from 13.85 hours every two weeks to 6.925 hours. They note that Delhi Township has the most generous accrual rate in the area. Their 360 hours per year is nearly double the next highest jurisdiction submitted (Anderson Township – 182 hours). The lowest submitted on the list of comparables was Miami Township at 111 hours.

The employer notes that no other Delhi Township employee gets a sick leave benefit anywhere close to that received by this Union.

The Township also argues that the accumulation of sick leave to a maximum of 240 days is "equally outrageous" (Township Pre-Hearing Brief page 16) and creates a significant financial liability on the Township.

***Position of the Union:***

The Union argues these are long standing benefits that have been negotiated and therefore should not be changed.

The Union notes that when a firefighter takes a sick day he uses 24 hours of leave whereas a 40 hour per week employee uses only 8 hours.

**DISCUSSION AND RECOMMENDATION:**

The current sick leave situation requires a serious look. The comparables are so out of line and the amounts of time involved do have a serious financial impact on the employer.

In order for this Fact Finder to recommend changes to previously negotiated benefits a problem must first be demonstrated, and the comparables must support such a change.

The employer has been able to demonstrate both regarding sick leave accumulation.

The only question is how much of a change can be justified. Is it practical to cut the accrual in half?

The current accrual would allow a bargaining unit member to take fifteen (15) twenty-four hour days off per year. The unique schedules worked by firefighters do allow some flexibility for pre scheduled medical visits that five day per week employees do not have.

But to reduce the rate by half to 7.5 days seems too much too fast to this fact finder.

Therefore I recommend a change that would reduce the accrual to ten (10) days per year or 9.23 hours per pay period.

The question of carryover accumulation is also a significant financial problem for the Township. The liability of such a large number of hours eligible for the retirement pay is a significant factor not to mention having a firefighter out on sick leave for over two years. The 240 hour maximum would allow an employee to accumulate 5,760 hour.

It appears that this large disparity developed because past negotiators mixed and matched hours and days.

I am inclined to recommend relief for the Township but lack sufficient information regarding how such a reduction would affect current employees who may have time accumulated in excess of the new amount recommended.

In the recommended language I have proposed a method for dealing with such individuals if they exist. If this solution proves burdensome to the parties I would urge them to work out a different solution in the spirit of the recommendation. Key to the recommendation is the conversion of and tracking of all accumulated sick leave time to hours rather than days

**I recommend the total accumulation be reduced from 240 days to 3600 hours (150 days) with the caveat that any current employees who have in excess of 3600 hours at the time of the effective date of this Collective Bargaining Agreement, may elect to place those excess hours in a separate sick leave bank. If the hours in that bank have not been used by the time the person retires, then they would be added to the payout for the remaining hours within the 3600 maximum** (example: Joe Smith currently has 5500 hours sick leave accrued.) He elects to have the 1900 hours in excess placed in the separate bank. At retirement he has 2900 hours in his regular sick leave accumulation. He receives his payout, pursuant to Article 22.4 for 2900 hours (regular accumulation) plus 1900 hours (special bank).

The Township also proposes to change "Township Administrator" to "Fire Chief" in 22.2(3). I do not recommend this change. No strong case was made for the need for such a change.

In 22.3 the Township recommends changing "should" to "shall" I recommend this change. It seems to be consistent with the intent of the section and provides some clarity regarding meaning.

22.3. (2) appears to be a typographical cleanup wherein the Township recommends changing "maybe" to "may be." I recommend this change.

I have already discussed the Bereavement section in another part of this report and will not duplicate that discussion here.

I therefore recommend the following changes to Article 22 (Paid Leave.)

**22.1(1) (b) 24 hour shift – 9.23 hours per each two-week pay period.**

**22.1 (2) Accumulation of sick leaves to 3600 hours maximum. Employees having more than 3600 hours accumulated at the effective date of this agreement may elect to place those excess hours (over 3600) in a special bank which can be used when other sick leave has been exhausted or may be paid out pursuant to Article 22.4. Hours may only be placed in this special bank on this one occasion and have no cash value beyond that specified in 22.4.**

**22.2 REMAINS UNCHANGED.**

**22.3 Use and control of sick leave: SWP shall not be authorized unless the employee has properly reported and fully justified his absence to the satisfaction of the Fire Chief.**

**22.3 (2) CHANGE "maybe" TO "may be" ALL ELSE REMAINS THE SAME.**

**NO FURTHER CHANGES ARE RECOMMENDED TO THE ARTICLE.**

**HOLIDAYS: (Article 21)**

***Position of the Township:***

The Employer believes Delhi Township firefighters receive an "overly generous holiday benefit." (Township Pre-Hearing Brief page 17).

As part of their efforts to affect significant cost saving within this Collective Bargaining Agreement, they propose to limit double pay for those working on the holiday to only Christmas and Thanksgiving. Employees scheduled to work on any other holiday would receive a time and one half rate.

***Position of the Union:***

The Union notes that double pay for holidays worked is a long standing practice. They see no reason to change a benefit that has been in effect and that bargaining unit members have come to depend on.

**DISCUSSION AND RECOMMENDATION:**

I agree with the Union regarding the holiday proposal. Double Time for work on Holidays is very common in contracts and it is very unusual to limit such to Christmas and Thanksgiving. Likewise the employer was unable to point to comparables that showed the same disparity that they illustrated regarding sick leave.

**UNIFORMS: (Article 27)**

The changes proposed by the Township in this Article appear to be cosmetic in nature and the Union seems to have no problems with them.

Therefore, I recommend Article 27 as proposed by the Township and recorded in Exhibit 19 of the Employers Pre-Hearing Brief.

**PERSONNEL FILES (Article 15)**

***Position of the Township:***

The Employer proposes a change to the Personnel Files Article that would delete the following current language:

*The Township will not consider any prior disciplinary penalties which occurred more than three (3) years prior to the event under review in determination of the penalty to be assessed.*

They argue that three years is simply not enough.

The desire to have the language either removed or the length of time lengthened.

***Position of the Union:***

The Union feels that the ability to use prior discipline, regardless of how long ago it occurred, is unfair and unnecessary.

They note that the Township was unable to demonstrate any problems that would lead to the necessity of this "take back."

**DISCUSSION AND RECOMMENDATION:**

Three years is a longer period of time for retention of discipline that is common in many Collective Bargaining Agreements. The purpose of employee discipline is to be corrective in nature.

If any employee avoids getting subsequent discipline in a three year period there is a very good chance that employee has learned his or her lesson.

There is no reason to recommend a change without a clear showing of some major problems with the current language.

**I recommend no changes in the Personnel Files Article (A 15).**

**ALCOHOL & CONTROLLED SUBSTANCE ABUSE POLICY & TESTING PROCEDURES: (Article 10)**

***Position of the Township:***

The Employer feels very strongly that in addition to the existing right for *reasonable suspicion testing*, they should have the ability to conduct drug tests as a part of the annual physical examination.

They base this proposal on the fact Township police officers have a similar requirement negotiated into their agreement.

In addition they note the importance of the public safety role firefighters play.

***Position of the Union:***

The Union notes that the Township currently has the right to test for drugs and alcohol under the *reasonable suspicion* standard. They argue that, if the Township is carefully observing its employees, they can test anytime there is reasonable suspicion.

The Union notes that no firefighter has ever tested positive for either drugs or alcohol.

They feel this contract change is unnecessary.

**DISCUSSION AND RECOMMENDATION:**

Certainly the stronger tool in assuring the public safety is *reasonable suspicion*.

An annual exam has very limited use in that the chronic drug user or alcohol abuser often simply cleans up for the physical.

In a time when Township finances are as tight as they are I question the advisability or necessity of adding the expense of drug testing.

On the other hand, I fail to see why the Union objects to allowing the Employer the right to test.

It is in the interest of the employees to be sure that those who work beside them in dangerous situations are free of substances that inhibit their ability to work safely.

With mixed feeling I recommend that Article 10 be amended to read:

**An employee may be required to take a drug (controlled substance) or alcohol test if the employee's superior has reasonable suspicion that the employee is under the influence of drugs or alcohol, except that the Township may implement, after notification of, and consultation with the Union, a drug testing program as part of the employee's annual physical.**

Because there are different types of drug screens, it is important the Union know the nature of the testing and when management plans to implement such testing if they do so.

#### **SUMMARY:**

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in SERB Rule 4117-9-05(J) the Fact Finder recommends the provisions as enumerated herein.

In addition, all agreements previously reached by and between the parties and tentatively agreed to, are hereby incorporated by reference into this Fact Finding Report, and should be included in the resulting Collective Bargaining Agreement.

Respectfully submitted and issued at London, Ohio this 7<sup>th</sup> Day of March,  
2006.<sup>1</sup>

  
N. Eugene Brundige,  
Fact Finder

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<sup>1</sup> At the hearing the parties executed a waiver of the Overnight Delivery requirement and instead will receive the initial copy of the report by electronic mail with a signed copy to follow by regular US mail.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **Fact Finders Report** was served by electronic mail and regular US mail upon W. Joseph Scholler, Esq., Frost, Brown, Todd LLC, representative for the Delhi Township Trustee, (Employer), 300 North Main Street, Suite 200, Middletown, Ohio 45042; and Leslie Elizabeth Ghiz, Esq., Kohnen and Patton LLP representative for the Ohio Association of Professional Fire Fighters, Local 3389 (Union), 201 East Fifth Street, Suite 800, Cincinnati, Ohio 44202-4190; and by regular U.S. Mail upon Craig R. Mayton, Executive Director/ Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, this 7<sup>th</sup> Day of March, 2006.

  
N. Eugene Brundige,  
Fact Finder



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65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

