

STATE EMPLOYMENT
RELATIONS BOARD

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HAND DELIVERED



STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding :	SERB Case Number: 05-MED-10-1195
Between :	
WEST CHESTER TOWNSHIP,	
BUTLER COUNTY, OHIO,	
Employer :	Date of Hearing: March 22, 2006
and the :	
WEST CHESTER PROFESSIONAL	
FIRE FIGHTERS,	
INTERNATIONAL ASSOCIATION	
OF FIRE FIGHTERS	Howard D. Silver
LOCAL 3518,	Fact Finder
Union :	

REPORT AND RECOMMENDATION OF FACT FINDER

APPEARANCES

For: West Chester Township, Butler County, Ohio

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For: West Chester Professional Fire Fighters,
International Association of Fire Fighters,
Local 3518

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This matter came on for fact-finding hearing on March 22, 2006, at 9:50 a.m., in the West Chester Township Trustees' board room at 9131 Cincinnati-Dayton Road, West Chester, Ohio 45069. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded at 4:50 p.m., March 22, 2006.

This fact-finding process proceeds under authority of Ohio Revised Code section 4117.14(C) and regulations promulgated pursuant thereto by the State Employment Relations Board expressed in Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations within the bargaining process as required by law leading to this fact-finding procedure. This matter is properly before the fact finder for review, fact-finding, and recommendations.

BACKGROUND

The parties to this fact-finding procedure, West Chester Township, Butler County, Ohio, the Employer, and the West Chester Professional Fire Fighters, International Association of Fire Fighters, Local 3518, the Union, are parties to a collective bargaining agreement in effect from January 1, 2003 through December 31, 2005. This fact-finding procedure results from the bargaining conducted by these parties for a successor agreement.

The parties have a history of bargaining reaching back twenty-one years. The first collective bargaining agreement between the

parties was negotiated at the end of 1985, around the time the bargaining unit was originally certified by the State Employment Relations Board, in December, 1985. In 1986 the West Chester Fire Department was comprised of three fire houses operating twenty-four hours per day, seven days per week, manned by six full-time employees working 8.5-hour shifts, five days per week. By 1999 West Chester Township had built a fourth and fifth fire house, the department had converted to a platoon system calling for twenty-four hours on and forty-eight hours off, employing thirty full-time fire fighters/paramedics.

Lieutenants within the West Chester Fire Department were originally not included within the bargaining unit. Within the last three years a petition was filed with the State Employment Relations Board by the Union to include lieutenants in the bargaining unit and this petition was granted. At the time of the fact-finding hearing the bargaining unit was comprised of all full-time fire fighters and lieutenants/EMTs and paramedics, totaling forty-three bargaining unit members.

The full-time fire fighters and lieutenants within the bargaining unit are supplemented in the operation of the West Chester Fire Department by 100 regular part-time employees who work a maximum of 1500 hours per year. Part-time employees are not within the bargaining unit.

West Chester Township, Butler County, Ohio is located eighteen miles north of Cincinnati and thirty miles south of Dayton, Ohio, situated along the I-75 corridor. West Chester Township, Butler

County, Ohio was originally organized in 1823 under the name Union Township. West Chester Township is comprised of thirty-five square miles containing residential neighborhoods, parks, and commercial and industrial developments. West Chester Township is the fastest growing community in the Cincinnati metropolitan region. Over the ten years of the 1990s, the population of West Chester Township grew from 23,553 in 1990, to 54,895 in 2000, a population increase of 133%.

West Chester Township is the third largest township in Ohio with one of the highest growth rates of any township in Ohio. West Chester Township in Butler County contains twenty percent of the population of Butler County, and also has within its boundaries four of the five largest industrial parks operating in the greater Cincinnati area.

West Chester Township relies on property taxes to fund its operations and services and has no earnings (income) tax. The West Chester Fire Department is funded exclusively through a tax levy that generates revenues for the West Chester Fire Department on the basis of tax millage. Prior to 1999 the fire department tax levy in West Chester Township was 3.5 mills; in 1999, the last time the fire levy was approved by the voters of West Chester Township, the fire department tax levy rose to 4.5 mills and was expected to last for five years. The 1999 fire department tax levy of 4.5 mills has continued in effect beyond the five-year time span projected in 1999, and continues to be the millage rate supporting the West Chester Township Fire Department.

In 2003, the West Chester Township Fire Department began billing for emergency medical services (EMS) runs. In 2006, the EMS billings are expected to generate \$780,000. The actual carry over for 2006, as a result of the fire department levy at 4.5 mills and the EMS billings prior to January 1, 2006, amounted to \$2,155,524.

Evidence was presented at the fact-finding hearing showing a substantial anti-tax sentiment among voters within West Chester Township. A new West Chester Fire Department tax levy amounting to 6.0 mills is to be placed before the voters of West Chester Township on May 2, 2006. A separate police department tax levy is expected to go before the voters in 2007 or 2008.

If the voters within West Chester Township approve the fire department tax levy of 6.0 mills on May 2, 2006, the West Chester Fire Department can expect revenues (approximately six months in the future) to increase due to the increased millage of the most recent fire department tax levy. If, however, the majority of those voting within the West Chester Township election of May 2, 2006 refuse to approve the new levy of 6.0 mills, the West Chester Fire Department would continue to be required to operate at the 4.5 mills level. The difference between 4.5 mills and 6.0 mills is 1.5 mills, a thirty-three percent differential. A substantially different fiscal projection arises when the higher tax rate is assumed compared to the projection that arises when the lower tax rate is assumed.

The fact finder has no way of determining how the West Chester Township Fire Department tax levy of 6.0 mills will fare on May 2,

2006, and therefore has no way of projecting with any confidence whether the parties' successor collective bargaining agreement will be funded by 4.5 mills or 6.0 mills. The fact finder is nonetheless required by Ohio Administrative Code section 4117-9-05(K)(3) to consider the ability of the public employer to fund the wages and benefits recommended included in the successor agreement. The fact finder finds himself constrained to assume the 4.5 mills figure at this point in time. As it is impossible to know the outcome of the fire department tax levy as this report is prepared (prior to May 2, 2006), the fact finder feels constrained to make his recommendations upon the more conservative figure, the figure which will remain if the levy is refused by the voters. This decision by the fact finder is not intended as a forecast of the outcome of the levy; it is an acknowledgment that the extra millage sought through the May 2, 2006 election is, at this time, nothing more than an inchoate revenue stream, not a real source of income that can be relied upon prior to its approval by the voters.

The fact finder's recommendations in this case are directly affected by the decision to include only the 4.5 mills of revenue certain to be available to the fire department rather than the possible 6.0 mills. The effect of this determination is greater constraint upon the fact finder in making judgments as to what can be afforded by the public employer in wages and benefits under the parties' successor agreement. The fact finder also keeps in mind, however, that EMS billings in 2006 supplement the revenue from the tax levy, and the revenues in 2005 compared to the revenues in 2004

show an increase of ten percent. The fact finder also considers the substantial carryover of 2.155 million dollars within an annual budget of about 8.6 million dollars.

DISCUSSION AND RECOMMENDED LANGUAGE

Article 19 - Wages and Promotions

The parties reached agreement on an increase in the longevity payment rate from \$65.00 to \$75.00 in Article 19, section 4, effective January 1, 2006.

Recently, non-union employees of the township received two percent wage increases; the police received three percent wage increases; dispatchers received wage increases of 2.75%; and fire fighters last year received three percent wage increases. The Employer points to the phase out of the tangible personal property tax which is to result in a major reduction in revenues to townships. The Employer points out that this source of revenue will be totally eliminated by 2011.

The Employer points out that local revenues have remained flat for the past two years and notes that the inventory tax is being reduced by the Ohio General Assembly to make the state of Ohio more attractive to businesses. The Employer points out that this also will have a negative impact upon township revenues.

The Employer also points out that, for some reason, fire fighters' pension contributions by the Employer are five percent more than analogous payments made for other safety forces.

The Union points out that there is no law prohibiting money from the township's general fund being used to support firefighting and emergency medical services. The Union notes that while the township's general fund is not used by the township in support of the township's fire department, there is no legal prohibition limiting access to the township's general fund for that purpose. The Union points out that in 2004 the fire department's revenues were 5.9 million dollars and in 2005 the revenues of the fire department were 6.5 million dollars, a ten percent increase. It was generally agreed by the parties that West Chester Township fire fighters, in terms of wages, are a little behind West Chester Township police officers (FOP).

The Union proposes a four percent across the board wage increase for each year of the successor collective bargaining agreement, retroactive to January 1, 2006. The Union notes that the consumer price index (CPI) for the region containing West Chester Township during the past year was 3.6%. The Union notes that to catch up completely with West Chester police officers, in terms of wages, West Chester fire fighters would have to receive twelve percent annual wage increases in each of the next three years. The Union states that the township police are to receive wage increases amounting to 10.25% over the next three years and noted that for

each one percent increase in wages and benefits, it costs the township \$123,791.

The Employer proposes a two percent wage increase effective the first day of the first full pay period in January, 2006; a two percent wage increase in the first half of the second year of the contract, contingent upon passing the fire department levy in 2006; a two percent wage increase in the second half of the second year of the contract, contingent upon passing the fire department levy in 2006; and a three percent wage increase in the third year of the contract, contingent upon passing a 6.0-mill fire department levy. The Employer proposes that if the township's fire department levy fails, scheduled increases to the wage schedule will be suspended until passage of the levy. If the township's fire department levy fails a second time, all step increases are to be suspended until passage of the levy.

As to the wages paid to West Chester Township fire fighters and lieutenants compared to other cities and townships of comparable population in the area, West Chester Township fire fighters are in the upper half of the seven political subdivisions considered in terms of entry level pay and top pay. West Chester Township lieutenants in the West Chester Fire Department rank even higher in this comparison, second only to Fairfield City.

Having already determined to base his recommendations upon the 4.5 mills figure, the fact finder does not propose recommendations that are contingent upon the preferences of West Chester Township voters in the future. Using 4.5 mills as the rate of revenue for

the West Chester Fire Department, the fact finder recommends a three percent wage increase for each year of the successor collective bargaining agreement, retroactive to the first day of the first full pay period in January , 2006. The four percent wage increase proposed by the Union is viewed by the fact finder as too generous under the fiscal restraints demanded by the system of funding dedicated to the operation of the West Chester Fire Department and the provision of emergency medical services. The two percent wage increase proposed by the Employer would not keep pace with the 3.6% inflation rate in the area. With the police officers of the township enjoying a three percent annual wage increase and dispatchers having received a 2.75% wage increase, the fact finder finds the three percent wage increase for each year of the successor collective bargaining agreement, effective the first day of the first full pay period in January , 2006, to be a figure between the parties' proposals that can be afforded by the public employer under the present millage rate, supplemented by EMS billings.

The Union has also proposed that the successor agreement obligate the Employer to fill four vacant station lieutenant positions, and has proposed the establishment of "acting pay" for employees assigned on an acting basis to a higher rank. The Union has also proposed that paramedic pay be established amounting to \$1.50 for every hour worked on a front line EMS unit.

The fact finder does not recommend the other changes proposed by the Union for the wages Article in the parties' successor

collective bargaining agreement. The fact finder believes that a determination of what positions are to be filled and when they are to be filled are decisions reserved to management, and the fact finder does not recommend that contractual language be included requiring the Employer to fill certain positions. Such language would tend to conflict with language concerning management rights in Article 4 of the parties' predecessor collective bargaining agreement as expressed in sections 1(a), organizational structure; 1(b), hire employees; 1(d), determine personnel; and 1(f), determine the adequacy of the workforce.

The other proposals under the wages Article from the Union are viewed by the fact finder as too fiscally burdensome at this time considering the revenues available or expected to be available in the near future.

The fact finder recommends a three percent wage increase for each year of the parties' successor collective bargaining agreement, retroactive to the first day of the first full pay period in January, 2006. The fact finder finds this proposed wage increase to be affordable by this public employer. The other increases suggested by the Union for the wages Article are not recommended on the basis of fiscal constraint.

Article 19 - Wages and Promotions - Recommended Language

(a) Career Firefighter:

Beginning on the effective date of this Agreement, hiring dates and rates of pay for Employees shall be in accordance with the following schedule, subject to the conditions set forth in paragraph 2, below:

2006 (Career Firefighter Pay scale)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Annual Base	43,547.30	45,942.40	48,469.25	51,135.04	53,947.48	56,914.58
Bi-weekly	1,647.89	1,767.02	1,864.20	1,966.73	2,074.90	2,189.02
Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	16.11	17.00	17.92	18.91	19.95	21.05
OT Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	24.17	25.50	26.88	28.37	29.93	31.58

2007 (Career Firefighter Pay scale)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Annual Base	44,853.79	47,320.67	49,923.32	52,669.09	55,565.90	58,622.02
Bi-weekly	1,725.14	1,820.03	1,920.13	2,025.73	2,137.15	2,254.69
Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	16.59	17.51	18.46	19.48	20.55	21.68
OT Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	24.89	26.27	27.69	29.22	30.83	32.52

2008 (Career Firefighter Pay scale)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Annual Base	46,199.40	48,740.29	51,421.02	54,249.16	57,232.88	60,380.68
Bi-weekly	1,776.89	1,874.63	1,977.73	2,086.50	2,201.26	2,222.33
Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	17.09	18.04	19.01	20.06	21.17	22.33
OT Hourly Wage Based on 52 hr/week						
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	25.64	27.06	28.52	30.09	31.76	33.50

Conversion for the wage of the forty-two and one-half (42-1/2) workweek will be calculated by taking the bi-weekly wage and dividing by (85) hours.

(b) Career Lieutenant:

Any full-time Firefighter who, at any time during his service with the West Chester Fire Department, achieves the rank of Lieutenant, shall receive compensation according to the pay scale at Step 1, effective the date of the promotion.

Any step increase shall then occur on the anniversary date of the promotion, not the anniversary date of employment, during the first full pay period of which the anniversary date occurs, provided such employee receives a satisfactory evaluation.

All Lieutenants opting into this existing collective bargaining agreement for the 2004 year shall automatically retain his/her step pay. Those Lieutenants at top pay shall remain at top pay (Step 3).

Effective the first day of the first full pay period in January, 2006, and for the following years Lieutenants shall be compensated as follows:

2006 (Career Lieutenant Pay scale)	Step 1	Step 2	Step 3
Annual Base	60,329.47	63,175.19	66,024.29
Bi-weekly	2,320.36	2,429.81	2,539.39

Hourly Wage Based on 52 hr/week	Step 1	Step 2	Step 3
	22.31	23.36	24.42
OT Hourly Wage Based on 52 hr/week	Step 1	Step 2	Step 3
	33.47	35.04	36.63

2007 (Career Lieutenant Pay scale)	Step 1	Step 2	Step 3
Annual Base	62,139.35	65,070.45	68,005.02
Bi-weekly	2,389.97	2,502.70	2,615.57

Hourly Wage Based on 52 hr/week	Step 1	Step 2	Step 3
	22.98	24.06	25.15
OT Hourly Wage Based on 52 hr/week	Step 1	Step 2	Step 3
	34.47	36.09	37.73

2008 (Career Lieutenant Pay scale)	Step 1	Step 2	Step 3
Annual Base	64,003.53	67,022.56	70,045.17
Bi-weekly	2,461.67	2,577.78	2,694.04

Hourly Wage Based on 52 hr/week	Step 1	Step 2	Step 3
	23.67	24.78	25.90

<u>OT Hourly Wage Based on 52 hr/week</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>
	35.51	37.17	38.85

2. Failure to attain a satisfactory performance evaluation will result in no incremental step increase for the following one (1) year period, or until such time as recommended by the Fire Chief.
3. An interim written performance evaluation will also be conducted by the Fire Chief, or his designee, no later than six (6) months prior to the Employee's yearly anniversary date of employment, for the purpose of identifying problem areas which may adversely affect the Employee's eligibility for a step increases on his or her anniversary date of employment. Anniversary date raises will become effective during the first full pay period during which the anniversary date occurs.
4. After completion of five (5) years of service with West Chester Township, Employees will receive pay during the first full pay period of each December longevity pay equal to seventy-five (75) dollars per year of service with West Chester Township.
5. The Union shall be involved in the development of policies and procedures for promotion and any major changes thereafter.
6. As soon as practicable, the Employer will endeavor to implement a process of deducting the Employee's retirement contribution from the Employee's paycheck before State and Federal Income Taxes are figured. This will have the effect of lowering the Employee's taxable income, thereby raising the Employee's take home pay. any such plan will require the approval of the Retirement System and shall be in accordance with the applicable provisions of Federal and State Law.

Article 20 - Welfare

Under the parties' predecessor collective bargaining agreement major medical health insurance coverage is provided to each bargaining unit member through single or family coverage paid for by the Employer up to an agreed cap. According to the language of Article 20 in the parties' predecessor agreement, once that cap is exceeded, any excess costs for this coverage are to be paid by the employee through an automatic payroll deduction.

At the beginning of the predecessor collective bargaining agreement, the agreed cap for single coverage was \$250; the agreed cap for family coverage was \$625; it was agreed by the parties that these caps would increase by ten percent for each subsequent year of the collective bargaining agreement. While the employees' obligation to pay costs above the agreed caps was an express feature of the parties' predecessor collective bargaining agreement, and although in some cases caps were exceeded, to date the Employer has never required a bargaining unit member to pay for premium costs that exceeded the cap.

What separates the parties concerning major medical health coverage is not that under certain circumstances a bargaining unit member may be required to contribute to the costs that exceed an agreed monthly premium cap, but rather what the monthly premium caps are to be.

The Union proposes a monthly premium cap of \$300 for single coverage and \$790 for family coverage, effective January 1, 2006. Depending on the insurance package in place, a monthly premium cap for an employee and child is to be \$500 under the Union's proposal, and for an employee and spouse is to be \$550.

The Employer proposes a single coverage monthly premium cap of \$325 (single coverage at present is \$237.50); a monthly premium cap of \$525 for an employee and child coverage if offered by the insurance provider (present cost is \$459.07); a monthly premium cap of \$575 for an employee and spouse coverage if offered by the

insurance provider (present cost is \$509.50); and a monthly premium family coverage cap of \$850 (present cost is \$737.45).

The Employer proposes that the township pay for major medical insurance coverage up to the cap figure, and if the cap is exceeded, the bargaining unit member is to pay the excess up to ten percent of the monthly premium. For example, if single coverage is selected, the cap under the Employer's proposal would be \$325. If the cap is exceeded, the bargaining unit member would be responsible for up to ten percent of the cap figure, in this case \$32.50. When the ten percent figure provided by the bargaining unit member is added to the cap, the amount equals \$357.50. When the cap combined with the employee contribution is exceeded, the Employer proposes paying ninety percent of the excess, with the employee contributing the remaining ten percent of the excess.

Because the caps proposed by the Employer are higher than those proposed by the Union, bargaining unit members under the Employer's proposal would begin paying contributions at a higher (later) cost level. This appears to the fact finder to present a savings to the bargaining unit, and the 90/10 contribution to be made by the Employer and the bargaining unit member, respectively, once the cap has been reached, also provides a savings to bargaining unit members compared to the language contained within the parties' predecessor agreement.

The fact finder recommends that the monthly premium caps for major medical insurance coverage proposed by the Employer be included in the parties' successor collective bargaining agreement,

and that the 90/10 contributions, when caps are exceeded, as proposed by the Employer, also be included in the successor agreement.

The Union has proposed additional language to be included in Article 20, Welfare, that would require the Employer to provide and make available materials required in the day-to-day maintenance and upkeep of all fire stations and to provide, repair, and/or replace as needed a variety of enumerated equipment found in fire stations, including ovens, ranges, microwaves, garbage disposals, coffee makers, etc.

The language proposed by the Union for inclusion in Article 20 was tentatively agreed by the parties at a meeting on March 9, 2006. Based on this agreement, the fact finder recommends the inclusion of the language proposed by the Union added to Article 20.

The Employer has recommended that language be added to Article 20 that would require that annual physical reports for all employees be forwarded to the township's medical officer. The Union strongly opposes this proposal and offers to address this issue through a labor/management committee when developing a memorandum of understanding on fitness for duty.

The Employer emphasizes that this is an administrative function of the township that affects the exposure of the township to liability. The Employer urges that this language be included in the successor agreement and denies that this language will work any prejudice upon any bargaining unit member.

The fact finder acknowledges the strong opposition expressed by Union members at the fact-finding hearing focused on concerns about having to disclose privileged medical information that could be interpreted or used in ways not contemplated by either party in agreeing to this language. The Union suggests that only "fit for duty" or "not fit for duty" be forwarded to the township medical officer by the physician attending to the bargaining unit member.

The fact finder defers to the strong opinions expressed by the bargaining unit members at the fact-finding hearing concerning the addition of this obligation to the bargaining unit which would require that otherwise privileged medical information be forwarded to an official of the township. The fact finder believes that a solution can be found so as to satisfy the concerns of both parties, but it appears the parties have yet to find that middle course. The fact finder therefore declines to recommend the language proposed by the Employer as to medical records being forwarded to the township's medical officer. The parties are free to explore how a compromise on this issue can be reached; the fact finder remains convinced that exercising discretion in this area is better done by the parties rather than the fact finder in the context of this fact-finding process.

Article 20 - Welfare - Recommended Language

1. The Employer will provide major medical health insurance coverage at current levels throughout the term of the Agreement from a carrier of its choice on the following basis:
 - (a) At no cost to the Employee for single coverage under the Employer Plan during the term of this Agreement so long

as the Employee is actively at work, on vacation or on approved sick leave and so long as the Employer's monthly per Employee costs for such Base Plan do not exceed the following:

- (i) Family \$850.00
 - (ii) Single \$325.00
 - (iii) Employee and child(ren) \$525.00 (if offered)
 - (iv) Employee and spouse \$575.00 (if offered)
- (b) Provided, further, that if the Employer's monthly cost for such Base Plan exceeds the above caps, the Employee will pay, via payroll deduction, up to a maximum of 10% of the Employer's total monthly health care premium for such Base Plan.
- (c) Any Employee may decline major medical health care coverage and receive One Thousand dollars (\$1,000) in additional compensation payable on or before the last regular payroll in December of that year for a full year of such waived coverage or pro-rated on a monthly basis if less than one (1) year.
- (d) In the event that escalations in major medical insurance premium costs exceed the ability of the Employees to continue to make the required premium or co-payments, the Employer and covered Employees will discuss and, upon mutual agreement, consider adjustments to deductibles, co-pays, and coverage levels in an effort to contain costs for both the Employees and the Employer. Any such agreements will be reduced to writing, signed by both parties and maintained as a record of the current coverage level for purposes of this Agreement.
- (e) Insurance coverage disputes are to be resolved exclusively by the insurance carrier or plan administrator.
2. During the term of the Agreement the Employer will continue to provide forty thousand dollars (\$40,000) in term life insurance for each Employee and Accident & Sickness Coverage at the levels provided on the effective date of this Agreement, so long as said coverage remains available to the Employer at a reasonable cost.
3. From time to time, and at its discretion, the Employer may provide to bargaining unit members, additional supplemental health and welfare benefits generally afforded to other Employees of the organization that are not specifically delineated in this contract document. It is recognized that such allowances are provided apart from this Agreement, and when provided will be done so at the sole discretion of the

Employer and for whatever period of time the Employer deems appropriate.

4. Prior to any change in insurance carriers, the Employer will meet and confer with the Union regarding any proposed changes.
5. The Employer, at its option, will self-insure or provide general liability insurance coverage for Employees acting in good faith, within the scope of their official duties as assigned by the Employer.
6. Employees who serve on a Hazardous Materials Team on behalf of the Township shall be given biannual medical examinations at no cost to the Employee.
7. There shall be a joint Township inter-departmental Safety and Health Committee (Risk Management Committee) established under the sponsorship of the Township Administration. The Fire Department will have one representative on this committee appointed by the Fire Chief. In addition, one representative will be appointed by the union to sit on this committee. The committee member assigned by the union to this position shall sit on this committee without compensation.
8. The Employer shall provide and make available materials required in the day to day maintenance and upkeep of all fire stations; i.e. cleaning supplies, toilet tissue, paper towels and the like.
9. The Employer shall provide, repair, and/or replace as needed for the following equipment for all fire stations: oven/range, microwave, garbage disposal, coffee maker, refrigerator/freezer, free standing ice maker, dishwasher, vacuum cleaner, washer, dryer, lawn mower and snow blower.

Article 3-Bargaining Unit Activity, Visitation and Bulletin Boards

The Union proposes that new language be included within Article 3 which expressly recognizes the right of the Employer, under Ohio Revised Code section 4117.08, to create policy but provides that any policy that changes wages, hours of work or any term or condition of employment shall be subject to bargaining and mutual agreement, and any policy shall not conflict with the

parties' collective bargaining agreement. In the event of a conflict the agreement is to prevail.

The Employer strongly opposes the language proposed for inclusion within Article 3 by the Union.

The fact finder understands the Union to believe that the language of the parties' predecessor collective bargaining agreement, specifically language within the Management Rights Article, Article 4, impinges upon the bargaining rights of the Union as provided by law. This infringement of rights arises from "meet and confer" language within Article 4 of the parties' predecessor collective bargaining agreement, and the language proposed added to Article 3 by the Union is intended to remedy this limitation upon the Union's right to fully represent the bargaining unit.

The fact finder does not recommend that the language proposed by the Union for inclusion in Article 3 be included in the parties' successor agreement. The language proposed by the Union would require the Union's assent to a change in policy affecting wages, hours of work, or any term or condition of employment attempted to be made by the Employer. Such a requirement blurs the line separating management from labor and is viewed by the fact finder as an intrusion upon management rights reserved to the Employer. This is not to say that policies may be adopted by the Employer unilaterally that are in conflict with the collective bargaining agreement; this is to say that the formulation of policy in the operation of the West Chester Township Fire Department is reserved

to the Employer, and while changes in departmental policies are subject to the parties' collective bargaining agreement and the grievance procedure therein, to require the Union's assent in the formulation of policy by the Employer would be anomalous and a direct and ill-advised departure from the norm found in the working relationship between management and labor. Such a departure would conflict with the common law and Ohio's Collective Bargaining Act.

The fact finder recommends that no change occur to the language of Article 3 in the parties' successor agreement.

Article 3 -Bargaining Unit Activity, Visitation and Bulletin Boards
-Recommended Language

1. Upon reasonable notification to a management representative on the premises, a representative of the Union shall have access to the Employer's premises for the purpose of conferring with Management, delegates of the Union and/or Employees for the purpose of administering this Agreement and providing that the Employer's operation shall not be impaired.
2. The Employer shall provide and maintain at each station a Bulletin Board, which shall be used for the purpose of posting proper Union notices and for Local business. Such Bulletin Board shall be placed in a prominent place in each station. The Bulletin Boards shall not be used to post items, which are obviously derogatory to Management. Department Members not included in the Local shall not be permitted to post materials on the Board, nor shall they be permitted to deface any items posted by the Local. Members of the Local shall likewise respect and refrain from posting items on and/or defacing any other bulletin boards at any of the stations.
3. No Union business may be conducted during work time without the prior approval of the Employer.
4. Employees may use Vacation and Compensatory Time (if available) to participate in conventions, pension business, educational conferences, and to attend normal operating functions of the Union. Such absences shall be subject to the

current Departmental or Contractual regulations governing the use of Vacation and/or Compensatory Time as may apply.

Article 4 - Management Rights

The Union emphasizes that it wishes to secure collective bargaining rights to which it is entitled as a matter of law by deleting "meet and confer" language that has been used in the past to negate Union bargaining rights to which the Union would otherwise be entitled. The Union therefore proposes that "meet and confer" language be deleted from Article 4, and that these words be replaced with "notified and bargained."

Both parties agree to the deletion of language which refers to a "majority of employees", a phrase that was germane to prior circumstances of the bargaining unit that do not continue today.

The Employer agrees to the deletion of the language relating to a "majority of employees" as language which has outlived its usefulness. The Employer opposes the deletion of "meet and confer" and the substitution of the language proposed by the Union, pointing out that the "meet and confer" language has been in the parties' collective bargaining agreements for many years.

The fact finder recommends the deletion of "or majority of employees" and "or employees" in section 2 of Article 4, and recommends the deletion of "or majority of employees" and "or employees are" and "or employees" in section 3 of Article 4.

As to the "meet and confer" language proposed deleted by the Union and whose deletion the Employer opposes, the fact finder recommends that the "meet and confer" language be deleted from sections 2 and 3 of Article 4, but the fact finder does not recommend that other language as proposed by the Union be inserted in the stead of "meet and confer."

The Union contends that its rights to bargain on behalf of the bargaining unit otherwise guaranteed under Ohio statutory law have been limited by the "meet and confer" language contained within sections 2 and 3 of Article 4 of the parties' predecessor collective bargaining agreement. The Union asks for nothing more than the rights to which it is entitled under Ohio law, and believes it is entitled to nothing less. The fact finder recommends the deletion of the "meet and confer" language so as to allow the Union to exercise its rights of representation on behalf of the bargaining unit to the full extent allowed by Ohio law without the constraints imposed by the "meet and confer" language. This is not intended to diminish the rights of management reserved to the Employer; this recommendation is intended to allow the Union to represent the bargaining unit to the full extent permitted by Ohio law.

Article 4 - Management Rights - Recommended Language

1. Except as otherwise specifically provided in this Agreement, it shall be the Employer's sole and exclusive right and responsibility to:

- (a) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the Employer, standards of services, its overall budget, utilization of technology, and organizational structure;
 - (b) Direct, supervise, evaluate, and hire Employees;
 - (c) Maintain and improve the efficiency and effectiveness of the Employer's operations;
 - (d) Determine the overall methods, process, means, or personnel by which the Employer's operations are to be conducted;
 - (e) Suspend, discipline, demote, discharge for just cause, or lay off, transfer, assign, reassign, schedule, promote or retain Employees;
 - (f) Determine the adequacy of the work force, as well as to make, amend, and enforce work rules and regulations, standard operating procedures and general and special orders;
 - (g) Determine the overall mission of the Employer as a unit of government;
 - (h) Effectively manage the work force;
 - (i) Take actions to carry out the mission of the Employer as a governmental unit;
 - (j) It is agreed that the above listing of management rights shall not be deemed to exclude other proper functions not specifically listed herein.
2. The Employer shall not hereafter subcontract any of its fire or life squad service without first notifying the Union of such intention to subcontract and bargaining with the Union about its intent to subcontract. If, after notifying and bargaining with the Union about such subcontracting, an agreement is not reached, the Employer shall discuss with the Union the effects of such subcontracting on its Employees and carry out any agreements which may be reached during the course of such discussions. If any subcontracting results in a layoff, the Employer shall maintain a preferential recall list of laid off Employees for one year (12 months), without loss of seniority.
3. The Employer shall not make substantive changes in its rules and regulations or prevailing rights until it has notified the Union concerning such changes except as such changes may be

required by law or by rules and regulations of local, state or federal administrative agencies; provided that if the Employer issues a substantive rule change which becomes effective because of an emergency or through inadvertence before the Union is notified about such change, the Union shall immediately be given notice.

Article 5 - Seniority

The Union proposes that language be added to Article 5 of the parties' successor agreement that specifies how layoffs are to occur. This new language requires the Employer to notify the Union of a need for layoff in writing, to disclose the reasons and the type and number of positions affected, and meet with the Union to discuss the reduction in force. This new language requires the Employer to respond to proposals which the Union makes in response to the reduction or redistribution of employees.

The language proposed by the Union also calls for first reducing the number of non-full-time department members. This would include paid-on-call, seasonal, temporary, intermittent, or part-time department members. This language would require that after all non-full-time department members have been laid off, employees shall be laid off next in order of reverse seniority.

The Union proposes that existing language within Article 5 which provides that probationary employees are to be laid off first without regard to their individual periods of employment and that non-probationary employees shall be laid off next in order of their seniority be deleted from Article 5. The Union proposes language that provides that any employee who is laid off shall not suffer

any loss in benefit or entitlement accrued prior to the date of the action, and any employee who is laid off and subsequently separated from service shall be paid for all accrued but unused vacation time, sick time, compensatory time and longevity, based on the employee's total annual salary at the date of separation.

The fact finder does not recommend the language proposed by the Union for Article 5, section 5. The fact finder finds that the proposed language calls for notice to the Union about the need, reasons, and the type and number of positions affected, and to meet with the Union and discuss the reduction in the event of a layoff. As layoff is the last step in a reduction in force, involving the separation of an employee from employment, the notice described in the language proposed by the Union would occur only after the last step in the process producing the reduction in force. The fact finder also does not wish to impose upon the Employer an obligation to respond to any proposal which the Union makes in response to the reduction or redistribution of employees.

As to the priority of bargaining unit members over non-bargaining unit members in the event of a layoff, the fact finder is reluctant to recommend language that affects people outside the bargaining unit. The fact finder prefers in a proceeding that involves as many issues as this one does to avoid recommending changes which are particularly complicated and present consequences which are only partly understood. The effect on the operation of the department under the language proposed by the Union, which would raise probationary employees above long-term part-time

employees in the sequence of layoff within the department, is unknown to the fact finder and the fact finder prefers not to recommend language which the fact finder fears could have long-range effects without more definitive evidence.

As to an employee who is laid off suffering any loss in benefit or entitlement accrued prior to the date of the action, the fact finder finds other express language within the parties' collective bargaining agreement that will, in the aggregate, express the same guarantee. This holds true for the final paragraph proposed by the Union addressing payment of accrued vacation time, sick time, compensatory time, etc. Additional language in this regard is viewed by the fact finder as unnecessary because this obligation can be construed from other express language in the parties' successor collective bargaining agreement.

The fact finder recommends no change to the language of Article 5, Seniority, in the parties' successor collective bargaining agreement.

Article 5 - Seniority - Recommended Language

1. Definition:

Seniority shall be defined as the length of continuous service measured in years, months and days that an Employee has accumulated as a Full-time Employee in the service of West Chester Township Fire Department.

2. Accrual:

- (a) An Employee's seniority shall commence after the completion of the probationary period and shall be

retroactive to the first day the Employee reported for work.

- (b) Seniority shall accrue during a continuous authorized leave of absence without pay up to six (6) months or for the period of an approved maternity leave, provided that the Employee Loss returns to work immediately following the expiration of such leave of absence or maternity leave; and during a period of continuous layoff not to exceed six (6) months, if the Employee is recalled into employment: nd during a sick leave of up to twelve (12) months.

3. Loss of Seniority:

An Employee's seniority shall be lost and employment terminated when he or she

- (a) terminates voluntarily;
- (b) is discharged for cause;
- (c) exceeds an official leave of absence;
- (d) is laid off for a period of more than one (1) year if the Employee has less than five (5) calendar years' seniority; or is laid off for a period of more than two (2) years if the Employee has more than five (5) calendar years seniority;
- (e) fails to notify the Employer of his intent to return to work on a recall from layoff, within five (5) days after the Employer has sent notice to him to return by letter or telegram with a copy to the Union to the last address furnished to the Employer by the Employee. It shall be the responsibility of the Employee to advise the Employer of his current address.

4. Application

Seniority shall apply in layoffs and recalls and for scheduling of vacations as provided in the general orders, rules, regulations and procedures of the Employer.

5. Layoff:

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 seniority.

6. Recall:

Whenever a vacancy occurs in a position for which a laid off Employee is qualified, such Employees shall be recalled in accordance with their seniority in the reverse order in which they were laid off.

Article 10 - Arbitration

The change proposed by the Union for Article 10, Arbitration, seeks to remove language which bars the Union from challenging a management rule so long as the Employer fulfilled its duty to meet and confer with the Union. The language of Article 10, section 4(a) that relates to the Employer's right to promulgate rules and regulations, general orders and standard operating procedures provides that the Union or grievant shall not have recourse through the grievance or arbitration procedure to challenge the reasonableness or appropriateness of the Employer's existing or future rules and regulations, general orders or standard operating procedures provided that the Employer has given the Union the required notice and permits the Union, upon request, to meet and confer with respect to the proposed rule.

The fact finder has recommended the deletion of the "meet and confer" language contained within Article 4, Management Rights, for the same reason put forward in support of the change to the language in Article 10, section 4(a) that relates to the powers of the arbitrator. The Union proposes leaving the language which prohibits the arbitrator from adding to, subtracting from, or modifying any of the terms of the parties' collective bargaining agreement but proposes the deletion of the remaining language in

Article 10, section 4(a) as a way for the Union to secure for itself those bargaining rights guaranteed by Ohio law without the limiting effect of the language proposed deleted by the Union from this Article. The Employer strongly opposes the deletion of the language proposed by the Union, pointing out that this language has been in the parties' collective bargaining agreements for many years and serves to protect legitimate management rights reserved to the Employer.

The fact finder recommends the deletion of the language as proposed by the Union in Article 10, section 4(a). As recommended for Article 4, the deletion of the "meet and confer" language, this recommendation is intended only to allow the Union to secure for itself and the bargaining unit the full rights of representation guaranteed by Ohio law. The deletion of the language as proposed by the Union would in no way diminish the management rights which are expressed in Article 4 and otherwise reserved to the Employer as a matter of law. The deletion of the language as proposed by the Union would permit the Union to exercise to the fullest extent those rights of representation to which Ohio law extends to an exclusive representative of a public employee bargaining unit. While the Union is entitled to no more than these rights, the Union is entitled to no less.

Article 10-Arbitration-Recommended Language

1. Procedure for requesting:

- (a) A grievance as defined in Article 9 which has not been resolved thereunder may, within ten (10) Calendar days, excluding the weekends and Holidays, after the completion of Step 4 of the Grievance Procedure, be referred for arbitration by either party to this Agreement by directing a written demand therefore to the American Arbitration Association ("AAA") and by sending a copy of the notice to the other party.
- (b) The arbitrator shall be a mutually agreed upon neutral third party selected from a list of nine (9) potential arbitrators furnished by AAA. The arbitration shall be conducted in accordance with AAA rules.

2. Fees:

The fees and expenses of the arbitrator shall be borne equally by the parties.

3. Binding effect:

The award of the arbitrator hereunder shall be final and binding upon the Employer, the Employee and the Union.

4. Powers of the Arbitrator:

- (a) The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Agreement.
- (b) This provision does not prevent an Employee disciplined by any such existing or future rule to grieve the application of that rule to his/her particular circumstances.

Article 14 - Sick Leave

Both parties propose a variety of changes to the language of Article 14, Sick Leave, found in the parties' predecessor agreement. The Employer proposes not a reduction in the sick leave

accrual rate, but a reduction to the maximum accrual payouts, to bring them in line with FOP and non-Union township employees.

Under the parties' predecessor collective bargaining agreement no maximum cap was agreed as to the accumulation of sick leave. The Employer proposes that in the parties' successor collective bargaining agreement sick leave be capped at 1,920 hours.

Under the predecessor collective bargaining agreement, a 52-hour per week employee who accumulates 1,870 hours of sick leave may request that the Employer purchase from the employee up to 312 hours of sick time at a conversion rate of one-half hour's pay for each one hour of sick leave purchased. Under the predecessor collective bargaining agreement, when a 52-hour per week employee's sick leave accumulation exceeds 2,180 hours, the employee may request that the township purchase accumulated sick leave in excess of 2,180 hours on a one-for-one basis at the employee's current rate of pay.

The Employer proposes that the 1,870-hour threshold for the conversion of 312 hours of sick leave at one-half hour for each one hour of sick leave purchased be reduced to a threshold of 1,440 hours but allow an employee to request the purchase of up to 240 hours of sick time (rather than 312 hours), and reduce the 2,180-hour threshold for one-to-one conversion to 1,680 hours. Both threshold reductions amount to a twenty-three percent drop from the previous conversion threshold. The lowering of these thresholds would allow conversion under the one-half payout after 9.2 years rather than the twelve years required by the prior agreement.

As to the one-for-one threshold which in the prior contract was 2180 hours and is proposed to be 1680 hours by the Employer, this too represents a twenty-three percent drop, moving the one-for-one threshold from fourteen years under the previous contract to about ten years and eight months. The reduction in these thresholds permits employees to determine whether a conversion is to be taken at an earlier date, requires fewer sick leave hours to be accumulated to elect to convert sick leave accrual to pay, puts a maximum cap on the sick leave hours that may be accumulated, and offers a twenty-three percent reduction in the number of hours that may be claimed for one-half hour pay per sick leave hour converted, a reduction from 312 hours to 240 hours in any given year.

The Employer also proposes that employees who successfully complete their probationary period be awarded 240 hours of accrued sick leave rather than 255 hours as provided in the predecessor contract, and also proposes that those employees who resign with the required two weeks notice be allowed to convert up to 720 hours of accrued sick leave at one-half hour per hour converted, a reduction from 936 hours of accrued sick leave paid at one half hour per hour converted, a proposed reduction of twenty-three percent.

The Union proposes the addition of language to Article 14 that provides that sick time shall be used for regularly scheduled hours worked and as a substitute thereof. The Union proposes that the discretion of the fire chief to grant sick leave be eliminated, and that language be included requiring that sick leave be granted when

an immediate family member who normally resides in the employee's home suffers a serious illness or injury, or when the employee wishes to be present during a childbirth.

Both parties have agreed to the deletion of Article 14, sections 10(a) and (b).

The fact finder recommends the Employer's proposals as to the change of language in Article 14, Sick Leave. The lowered thresholds accelerate the time in which employees may choose to convert accrued sick leave to payment, and while the reduction in annual conversion is from 312 hours to 240 hours, the hours not converted as a result of this limitation in one year could be claimed the following year. Under the Employer's proposals there is a maximum limit to the sick leave accrual, but also under the Employer's proposals, with judicious decisions as to conversion each year, employees may still avail themselves of the conversion of their sick leave, whether at fifty percent or, if in excess of the higher threshold, one-for-one, without loss of sick leave accrual.

The fact finder notes that under the Employer's proposals the threshold to convert sick leave on a one-to-one basis is 1,680 hours. The fact finder also notes that the new maximum accrual cap under the Employer's proposal is 1920 hours. The difference between these two numbers is 240 hours, the number of sick leave hours accrued at thirteen hours per month over eighteen months. As employees under the Employer's proposal may convert sick leave accrual once per year, even if an employee chooses to forgo

conversion at the fifty percent level, the employee would be able to convert sick leave hours above 1680 hours annually, in a manner that would not entail the loss of accrued sick leave hours.

The fact finder also recommends the Employer's proposals on changes to Article 14 in recognition of the Employer's legitimate interest in bringing some certainty to annual costs involving conversion of sick leave, either because thresholds have been reached or because an employee has resigned with two weeks notice, or because of a retirement or death. The Employer's interests in controlling these costs and determining these costs within a reasonable range of certainty are directly related to the ability of the Employer to plan and budget effectively.

The Union's proposal that removes from the fire chief the discretion to grant or refuse sick leave because of the illness or injury of someone other than the employee, or to be present during a childbirth is not recommended by the fact finder. Even under the language of the prior contract, the chief is not empowered to abuse his discretion in this regard and there has been no claim or evidence indicating that such an abuse of discretion has occurred such that the removal of this discretion is warranted.

The fact finder is also reluctant to recommend the Union's proposal as to sick time being used for regularly scheduled hours worked, thereby deciding an unresolved issue that presently exists between the Union and the Employer as to whether sick leave must be used when an overtime shift is not completed. The fact finder does not find himself sufficiently equipped in terms of evidence, past

practice, and precedent to make a judgment on this issue. The fact finder remains persuaded that this particular issue is better decided through negotiations between the parties or through the formal channels provided in the parties' contractual grievance procedure through a proceeding focused on this specific issue. The fact finder finds both parties' arguments on this issue to have been unrebutted and therefore elects to recommend a maintenance of the status quo rather than enter an area for which the fact finder is ill-equipped to be of any real assistance to the parties.

Article 14 - Sick Leave - Recommended Language

1. Accrual:

- (a) Employees assigned on a forty-two and one-half (42-1/2) hour workweek will earn sick leave at the rate of one and one-quarter (1-1/4) days or (10.6) hours per month for time actually worked with the Employer.

Employees assigned on a 24 - 48 hour rotation will earn sick leave at the fixed rate of thirteen (13) hours per month for time actually work with the Employer.

Employees may accumulate said sick leave up to a maximum of 1920 hours

- (b) When an Employee accumulates 1440 hours of accumulated sick time and when requested by the Employee, the Employer will purchase from the Employee up to two hundred and forty (240) hours of sick time at the conversion rate of one-half (1/2) of one (1) hour's pay at the Employee's current rate of pay for each one (1) hour of sick leave purchased.
- (c) If the Employee does not exercise the conversion option set forth in the above paragraph the Employee may continue to accumulate sick leave credit.

When an Employee's sick leave accumulation exceeds 1680 hours, an Employee in good standing may thereafter

request, in writing, that the Township purchase sick leave accumulation in excess of 1680 hours on a one for one basis at the Employee's current rate of pay.

Said option may not be exercised by any Employee more than once per calendar year.

Cashing in Sick Leave accumulated in excess of 1680 hours for Employees at a one for one rate does not preclude the Employee from also, and at the same time, cashing in up to 240 hours of sick leave in excess of 1440 hours at a one-half (1/2) for one (1) rate, provided however, only one "cash in" will be permitted within any one calendar year.

- (d) Upon retirement or death, the Employee or the Employee's Beneficiary as recorded in the Employee's Retirement Records, will be eligible to receive payment for earned sick leave credit accumulated in excess of 1680 hours on a one-for-one basis at the Employee's current rate of pay and, additionally, will be eligible to receive payment for up to 1680 hours of earned sick leave, to be paid at one-half of the Employee's current rate of pay.

At the sole discretion of the Employer, upon the successful completion of his probationary period, an Employee may be credited with up to 240 hours of accumulated sick time earned in a comparable full-time fire fighting position with another state or local employer. Sick leave earned while in full-time employment with another Ohio Township is fully transferable.

2. Use of Sick Leave:

- (a) Sick Leave is provided to the Employee to be taken only in the event of personal illness or as otherwise provided for within this Article. Falsification with respect to any matters related to sick leave claim may result in disciplinary action up to and including discharge. At the expense of the Employer, an Employee may be required to submit to a physical examination to determine the proper use of sick leave or other leave under this contract.
- (b) Upon request of the Employer, an Employee must furnish satisfactory proof of his/her sickness, illness or disability before a day of sick leave is paid if this illness is in excess of two (2) days or the Employee is absent due to illness more than three (3) separate days in any six month period.

3. At the discretion of the Chief, Sick Leave may be granted when an immediate family member including spouse, children, brothers, sisters, parents or legal guardian and grandparents who normally reside in the Employee's home suffers a serious illness or injury or to be present during childbirth.
4. At the sole discretion of the Employer, sick leave without pay or benefits up to a period of six(6) months may be granted when an Employee is sick or injured and is without any accumulated sick time. The provisions of the Family Medical Leave Act (as may be currently amended), and the policies of the West Chester Township Board of Trustees pertaining thereto shall apply to unpaid leave taken under this section.
5. An Employee may, at his option, donate to another Employee who is sick and in need of sick leave and without any accumulated sick hours. Such donated sick leave must be in writing and have the approval of the Employer and shall in no event exceed a total of six (6) months time for the donee.
6. An Employee who resigns with the required two (2) week notice will receive up to 720 hours of earned sick leave to be paid at one-half (1/2) of the Employee's regular rate of pay unless the resigning Employee is eligible to transfer any sick leave to a subsequent Employer.
7. An Employee who is either hospitalized or is able to produce written evidence that he or she was ill and under a Physician's care while on vacation may request that his leave status be changed from vacation leave to sick leave for the period of hospitalization or illness, provided satisfactory proof thereof is presented to the Employer.

ARTICLE 15 - VACATION

The parties reached agreement as to a change in language within Article 15 and the fact finder recommends the tentatively agreed language.

Article 15 - Vacation - Recommended Language

Notwithstanding the provisions of Section 9.44 of the Ohio Revised Code, Employees shall be entitled to vacation time with pay each year as follows. Employees shall take vacation in no less than

twelve (12) hour increments for an Employee regularly assigned to a 24-48 hour rotation and no less than eight and one-half (8-1/2) hour increments for a forty-two and one-half (42-1/2) hour Employee.

1. 1 year:

At the completion of one year of full-time service with the Employer, an Employee assigned on a forty-two and one-half (42-1/2) hour workweek shall be award two (2) weeks [85 hours] on the Employee's anniversary date of employment.

At the completion of one year of full-time service with the Employer, an Employee assigned on twenty-four (24) hour shifts shall be awarded five (5) twenty-four hour shifts [one hundred-twenty (120) hours] on the Employee's anniversary date of employment.

2. 1-7 years:

(a) In the first full pay period after the first of the year, a pro-rated amount for the time between the Employee's first anniversary date of employment and the end of the year.

(b) Thereafter, in the first full pay period of each calendar year:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek - two (2) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to five (5) twenty-four hour shifts [one hundred-twenty (120) hours].

3. 8 - 14 years:

(a) During the first full pay period of the calendar year in which their 8th year of employment begins:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to three (3) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to seven (7) twenty-four hour shifts [one hundred sixty-eight (168) hours].

(b) Thereafter, in the first full pay period of each calendar year:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to three (3) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to seven (7) twenty-four hour shifts [one hundred sixty-eight (168) hours].

4. 15-21 years:

- (a) During the first full pay period of the calendar year in which their 15th year of employment begins:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to four (4) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to nine (9) twenty-four hour shifts [two hundred - sixteen (216) hours].

- (b) Thereafter, in the first full pay period of each calendar year:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to four (4) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to nine (9) twenty-four hour shifts [two hundred-sixteen (216) hours].

5. 22-26 years:

- (a) During the first full pay period of the calendar year in which their 22nd year of employment begins:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to five (5) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to eleven (11) twenty-four hour shifts [two hundred sixty-four (264) hours].

- (b) Thereafter, in the first full pay period of each calendar year;

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to five (5) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to eleven (11) twenty-four hour shifts [two hundred sixty-four (264) hours].

6. 27 + years:

- (a) During the first full pay period of the calendar year in which their 27th year of employment begins:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to six (6) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to twelve (12) twenty-four hour shifts [two hundred eighty-eight (288) hours].

- (b) Thereafter, in the first full pay period of each calendar year:

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek is entitled to six (6) weeks.

An Employee assigned on twenty-four (24) hour shifts is entitled to twelve (12) twenty-four hour shifts [two hundred eighty-eight (288) hours].

7. Vacation Carryover/Payout:

- (a) Employees in their second year of employment may carry a two (2) week balance plus the partial year increment.

An Employee assigned on a forty-two and one-half (42-1/2) hour workweek may carryover a maximum of one (1) week of unused vacation into the next calendar year.

An Employee assigned on twenty-four (24) hour shifts may carryover a maximum of two (2) twenty-four hour shifts [forty (48) hours] of unused vacation into the next calendar year.

- (c) Any unused vacation will be automatically paid to the Employee on the first full pay period of each January.

8. Vacation is provided in addition to any recognized Holidays as set forth above, which may fall within an Employee's vacation period. If a Holiday falls within an Employee's vacation period, he shall receive an additional eight (8) hours of Holiday pay at straight time, or will receive compensatory time, if approved.

9. Vacation schedules shall be based on seniority and availability. Employees can submit their vacation request no earlier than the first business day in December of the prior year. After the last business day in February, any vacation request received will be determined by the date the request was received.

Employees may substitute EDO's for approved vacation days, subject to the approval of the Chief.

10. Vacation pay shall be based upon the Employee's regular pay in effect when the Employee starts his vacation.
11. Upon an Employee giving the Employer two weeks notice of resignation or retirement, or upon death, the Employee or his/her beneficiary, will be eligible to receive payment for earned and unused vacation at the next regular pay period, provided all Employer issued equipment is turned in.
12. An Employee who is otherwise separated from employment with the Township and who has not received his vacation pay to which he is entitled, shall receive his vacation pay at the regular pay period provided he has turned in all Employer issued equipment.
13. **Conversion:**
 - (a) When an Employee changes from a forty-two and one-half (42-1/2) hour workweek to a fifty-two (52) hour workweek, then he/she will take their current amount of vacation hours and multiply this by (1.223) to obtain their new amount of vacation hours for the fifty-two (52) hour workweek.
 - (b) When an Employee changes from a fifty-two (52) hour workweek to a forty-two and one-half (42-1/2) hour work week, then he/she will take their current amount of vacation hours and divide by (1.223) to obtain their new amount of vacation hours for the forty-two and one-half (42-1/2) hour workweek.

Article 17 - Hours of Work and Overtime

Both parties agree that the work week expressed in Article 17 shall remain 52.0 hours. Both parties also agree that language be included within this Article that provides that overtime lists and distribution shall be done pursuant to a memorandum of understanding and that the final terms of the memorandum of understanding on overtime shall be reached through labor/management

meetings, signed by both parties, and not changed except by mutual consent.

The Union proposes the elimination of language appearing within the parties' predecessor agreement empowering the fire chief to grant or refuse compensatory time in lieu of overtime payment when requested by an employee. In lieu of this past language, the Union proposes language that would empower employees, at their option, to be credited with compensatory time at one and one-half hours for each hour of overtime worked in lieu of accepting cash compensation for these hours. The Union's proposal includes an option by employees to elect to be paid for any amount of unused compensatory time provided that a request is made to the fire chief or the chief's designee by December 1 of each calendar year. The Union's proposal would require that requests for use of accumulated compensatory time off be submitted to the fire chief or the chief's designee no more than twelve days nor less than twenty-four hours prior to the start of the affected shift. The Union's proposed language would provide that all requests are to be determined on availability and other applicable Articles contained in the parties' collective bargaining agreement.

The new language proposed by the Union for inclusion within Article 17 of the parties' successor agreement relating to compensatory time also provides that no employee shall request use of compensatory time in increments of less than twelve hours for a given shift. The proposed language from the Union provides that the

use of compensatory time will be considered regularly scheduled hours worked, and as a substitute thereof.

The Union's proposed language for inclusion within Article 17 in the parties' successor agreement would also raise the accrual limit for compensatory time from 240 hours, as expressed in the parties' predecessor collective bargaining agreement, to 480 hours.

The Employer opposes the new language concerning compensatory time proposed by the Union for inclusion within Article 17.

The fact finder views the language proposed by the Union for inclusion within Article 17 relating to compensatory time to be a major change to how compensatory time has traditionally been handled by the parties in their working relationship. The practice up to this point in time has been to grant to the fire chief the authority to approve compensatory time in lieu of overtime payment upon request of the employee.

Under the prior language, the fire chief could choose, at his discretion, whether to grant compensatory time in lieu of overtime upon request from an employee. In the event the fire chief refuses the application for compensatory time in lieu of overtime pay, the employee whose application had been refused is compensated through additional pay resulting from the overtime worked.

Under the prior language if the fire chief grants the compensatory time requested, no division between the parties would arise, no cause for complaint from either party.

What remains therefore is the cash payout for the overtime worked in the event the fire chief refuses compensatory time in

lieu of overtime pay. It is difficult, even in the event of a refusal of an application for compensatory time, to find a loss to the employee since the overtime is fully compensated in a different form. Rather than the opportunity to take other time off without loss of pay through the use of accrued compensatory time, the employee whose application has been refused remains compensated through additional wages.

In lieu of the above-referenced language agreed in the prior collective bargaining agreement between the parties, the Union proposes a system where the fire chief would have no discretion as to whether overtime work is to be converted to compensatory time, but would move the discretion formerly wielded solely by the fire chief to the employee. This comprises a major shift and a substantial change to the operation of the fire department under agreed language between the parties in the past. As noted above, the Employer opposes such a change and does so in the strongest terms.

The fact finder understands the Union's proposals on compensatory time to be a refinement and an expansion of how compensatory time is to be handled under the parties' collective bargaining agreement. The Union's proposal has the advantage of detail and clarity as to how compensatory time is to be accrued, used, and cashed out. The Union's proposal would also increase the maximum amount of accruable compensatory time hours by 100%, from 240 hours to 480 hours.

The fact finder understands the Union's proposal to create substantial new administrative burdens related to compensatory time accrual totals, scheduled shifts that are affected by requests for compensatory time, in some cases, twenty-four hours before the affected shift, and the resulting overtime need occasioned by scheduled shifts being vacated through the use of compensatory time. Any increased administrative burden occasioned by the conversion of overtime to compensatory time and the additional complexities of changing shifts based on use of compensatory hours, and the concomitant increase in overtime costs (what had been a regularly scheduled shift requires an employee to be called in) can be shouldered by the Employer under prior language if the Employer chooses to grant the conversion requested from overtime pay to compensatory time. An agreement by the Employer to such a conversion reflects a willingness to meet any increased burden occasioned by the complexity and costs arising under a system wherein the use of compensatory time and the accrual of compensatory time are more prevalent.

Under the Union's proposed language, however, whether the Employer is to be required to meet the increased managerial needs and costs of increased compensatory time accrual and use would be taken from the Employer and determined by each employee. The employee, not the Employer, would decide whether compensatory time would be accrued and administered by the Employer, either through use or through cash-out, at the sole discretion of the employee.

There was mention at the fact-finding hearing that the fire chief does not approve the conversion of overtime pay to compensatory time, and although the fire chief has the discretion to do so, has regularly declined to approve requests for the accrual of compensatory time.

The fact finder is reluctant to recommend the significant changes proposed by the Union concerning compensatory time because the exercise of discretion in the accrual of compensatory time is taken from the party responsible for monitoring, recording, keeping track of, and managing the more complicated system required when compensatory time is accrued and used, and vests this discretion in a party not responsible for carrying out these increased administrative burdens.

The fact finder does not recommend the Union's proposal on compensatory time either as to how compensatory time is to be accrued and used, or in the increase of the maximum amount of compensatory time allowed to be accrued. What the Union proposes is a new benefit, without which bargaining unit members suffer no loss. While the fact finder understands that increased accrual and use of compensatory time is of real value to employees in allowing greater flexibility in their work and personal lives, the fact finder is not persuaded to recommend this additional benefit and recommends the retention of prior language.

The Union also proposes for inclusion within Article 17 new language addressing shift trade requests. The language of the predecessor collective bargaining agreement between the parties

allows employees to substitute, during scheduled hours, for another employee, if prior approval is received from the fire chief or his designee. The language proposed by the Union would allow shift trade requests in minimum increments of three hours, would eliminate any limit on trades, and in the event a shift trade request were to be denied, the denial would be required to be accompanied by a written explanation of the reason for the denial. The language proposed by the Union would allow paying back shift trades within twelve calendar months of the initial trade date, and provides that trades of less than twenty-four hours could be combined to make a twenty-four hour shift.

The fact finder finds the language in the parties' prior collective bargaining agreement to be sufficient on shift trades. The greater detail provided by the Union in how trades are to be handled increases administrative burdens by lowering the increments of hours to be traded, by eliminating any limit to the number of trades which may be requested, and by allowing trades to be paid back over a twelve-month period. As stated above in declining to recommend the Union's proposal in regard to compensatory time accrual and use, and in a similar vein, the fact finder declines to recommend the Union's proposals in regard to shift trades. As noted above in reference to the proposals concerning compensatory time the fact finder is reluctant to increase the administrative burdens of management without a substantial reason to do so. Shift trades are expressly allowed under the language to be brought forward to the parties' successor agreement and these shift trades remain, as

they must, under the oversight of the fire chief or his designee. Such discretion in scheduling is necessary to the operation of the department and is an inherent managerial obligation and responsibility. The fact finder does not recommend the new language proposed by the Union relating to shift trades.

Article 17 - Hours of Work and Overtime - Recommended Language

1. **Hours of Work:**

- (a) So long as the overtime provisions of the Fair Labor Standards Act (FLSA), as amended, are applicable to state and local government fire department Employees, the Employee shall pay overtime in accordance with existing rules and regulations applicable to the FLSA. At the time of this agreement, the biweekly standard applicable to local government fire departments is one hundred six (106) hours. The Employer reserves the right to adjust its pay periods and overtime periods up to twenty-eight (28) days and two hundred twelve (212) hours or the maximum allowable by the United States Department of Labor.
- (b) For purposes of this agreement, a standard workday or tour-of-duty for a fifty-two (52) hour Employee shall be defined as a twenty-four (24) continuous hour period beginning with the starting time of the Employee. A work period of twenty-eight (28) days is herewith adopted pursuant to section 207(k) of the Fair Labor Standards Act.

The normal work schedule for a fifty-two (52) hour Employee shall be twenty-four (24) hours continuous standard workday or tour-of-duty followed by forty-eight (48) hours of continuous off time, except for the Compensatory Time Off policy adopted herein.

- (c) The standard workday for a forty-two and one-half (42-1/2) hour Employee will consist of eight and one-half (8-1/2) continuous hours, which includes one-half (1/2) hour for lunch.

- (d) Employee are subject to make emergency responses during meal periods.
- (e) Scheduled shifts and hours of work shall remain flexible depending upon the needs of the Employer. The Employer will post changes in advance, and will make every effort to notify Employees of the changes in the posted schedule. Any changes to be made in the posted schedule within thirty (30) days must be made from the rotating overtime list of Union Members. The schedule shall be fixed, and will not be changed without the agreement of the scheduled Employee thirty (30) days prior to the change
- (f) When there is a change from eastern standard time to eastern daylight time, or vice-versa, the starting and stopping times of the shifts shall not change, and the resultant change in hours worked by the regular duty shift shall not result in a reduction of paid hours nor the addition of overtime hours.

2. Overtime

- (a) The parties shall enter into a memorandum of understanding attained through labor/management committee meetings as to distribution of overtime.

When firefighters are hired after the first of each year and become eligible for overtime, they will initially be given the highest number of hours currently held by a firefighter and will state at the end of the overtime list. Likewise, a newly promoted lieutenant will initially be given the highest number of hours currently held by a lieutenant and will start at the end of the overtime list.

- (b) Overtime compensation shall accrue to any Employee who works in excess of their standard workday.
- (c) With respect to the Employees assigned to an eight and one-half (8-1/2) hour workday, hours worked in excess of eighty-five (85) hours per two (2) week pay period shall be paid at a rate of one and one-half (1-1/2) times their regular hourly rate of pay or accumulated as Compensatory Time of one and one-half (1-1/2) hours for every hour worked over the eighty-five (85).
- (d) With respect to each Employee's work schedule of twenty-four (24) hours on and forty-eight hours off, the Compensatory Time off policy for the "FLSA Overtime"

shall accrue to any Employee who works in excess of two hundred-twelve (212) hours in any twenty-eight (28) day work period. Any such overtime accrued must have the approval of the Fire Chief or the Employee to whom the Fire Chief has delegated scheduling.

- (e) Any Employee recalled to duty after time disconnected from their normal and prescheduled hours of work shall be compensated at one and one-half (1-1/2) times the Employee's normal hourly rate as set out in Article 19.

3. **Compensatory (Comp) Time:**

- (a) Approval: The Fire Chief may grant compensatory time in lieu of overtime when requested by the Employee.
- (b) Limit on Accrual: No Employee shall be permitted to accrue more than two hundred forty (240) hours of unused compensatory time. Any Employee who has accrued unused compensatory time to the two hundred forty (240) hour limit shall be paid in cash for any additional overtime worked. If an Employee is paid in cash for accrued compensatory time, he or she shall be paid at the Employee's regular rate at the time of payment.
- (c) Pursuant to 29 CFR 553.23, the parties agree that a Compensatory Time Off policy for "FLSA Overtime" is adopted in lieu of overtime payments in cash for normally scheduled tours. This policy is established to address the maximum of two hundred twelve (212) hours to be worked in a twenty-eight (28) day work period. It is the objective of the parties that each Employee will work an average of fifty-two (52) hours per week, which equates to two hundred eight (208) hours in a twenty-eight (28) day work period. Because the number of tours-of-duty in each twenty-eight (28) day work period will vary, Employees will often actually work in excess of two hundred eight (208) hours in a work period. To address this situation, each Employee on a twenty-four (24) hour workday shall be entitled to compensatory time off on a regularly scheduled workday. This compensatory time off shall be in the form of a twenty-four (24) hour work reduction day, and for purposes of convenience only shall be called an Earned Day Off (EDO).
- (d) Use of the EDO shall be restricted to certain hours of work only. Each Employee on a twenty-four (24) hour workday, shall be entitled to six and one-half (6.5) EDO's per year. An EDO shall consist of twenty-four contiguous hours of time off, except that any EDO balance that is less than 24 hours may be used contiguously. If

an Employee does not work all of his/her scheduled shifts, his earned days off will be reduced accordingly.

- (e) The Fire Chief reserves the right to designate the EDO for each Employee, and can adjust and revise the EDO schedule as staffing needs dictate, provided that if there is a revision in the EDO schedule, any Employee affected by the revision will have their EDO time adjusted so as not to lose the overall benefit of one day off every one and one-half (1.5) months. There shall be no compensation or hours credited toward the standard of two hundred twelve (212) hours in a twenty-eight (28) day work cycle earned by the Employee on the EDO.
- (f) EDO's may not be carried over from one year to the next.
- (g) The Fire Chief reserves the right to hire additional full-time Employees whose shift of twenty-four (24) hours on and forty-eight (48) off with an EDO every one and one-half (1.5) twenty-eight (28) day work periods will not be the same as other Employees. This individual may be rotated in their schedule in order to address the scheduling needs dictated by the EDO Policy.

4. **Miscellaneous:**

- (a) An Employee assigned on twenty-four (24) hour shifts is to be paid on an annual salary basis, with an equal amount of base pay each pay period based on the annual salary set out in Article 19 of this agreement. The parties recognize that hours of work under the normal tours-of-duty shall fluctuate from week to week, and the fixed amount of salary paid each two weeks represents straight pay for whatever hours the Employee is called upon to work in a two week period. The fixed salary is compensation for the normally scheduled hours worked each two weeks, whatever their number. Since straight time is already compensated in the salary, the half-time (1/2) method of calculating overtime compensation, for each twenty-eight (28) day work period, in accordance with 29 CFR 778.114, shall be used and paid to each Employee through the compensatory time off policy described above.
- (b) The Employer shall have the right to adopt a tour system or work schedule, which provides improved service to the community provided that the Union is given prior notice and an opportunity to meet and confer regarding the proposed changes.
- (c) Assignment, approval, documentation, compensation and other matters regarding overtime, or hours worked beyond the regular work week, except as specifically provided in

this Agreement, will be subject to rules and regulations, general orders, procedures and regulations as determined by the Employer, concerning the contents of said overtime rules, regulations, general orders, procedures and regulations, except as such changes may be required by federal wage and hour law, rules and regulations.

- (d) Call-Out Pay: Notwithstanding the provisions of any other paragraph in this Article, an Employee who works call-out time shall be paid for actual hours worked at the applicable rate from the time of reporting, but in no event shall receive less than two (2) hours pay at the according rate of pay as set forth in this Article.
- (e) Employees may substitute during scheduled hours, for another Employee if prior approval is received by the fire Chief or his designee. The substituting Employee shall be excluded from any overtime calculation under the Fair Labor Standards Act for hours of work.
- (f) Employees shall not be permitted to trade between classifications, as firefighters may only trade with another firefighter and a Lieutenant may only trade with a Lieutenant, unless prior approval is received by the Fire Chief or his designee.

Article 18 - Temporary Disability

The Union proposes new language to be added to Article 18 of the parties' successor agreement that would bestow a priority upon full-time bargaining unit members for light duty positions over any part-time or paid-on-call staff assigned such light duty work. Part-time and paid-on-call staff are not bargaining unit members and will not be parties to the successor collective bargaining agreement being formed by the parties herein.

The fact finder has little before him to indicate that light duty requests from bargaining unit employees have been frustrated by light duty assigned to part-time or paid-on-call employees. The fact finder is unaware of how often a light duty request arises from a bargaining unit member; is unaware of how much light duty is

available; is unaware of how often a full-time bargaining unit member requests a light duty assignment and is refused because a part-time or paid-on-call employee is performing light duty, and is unaware of how often a request for light duty is made and the request is refused because there is no light duty assignment available to any employee, full-time or otherwise.

Without some greater indication of a problem in this regard, the fact finder is reluctant to intrude upon a relationship that exists with a party outside the relationship of the bargaining unit and the Employer. To determine rights between the bargaining unit and a party other than the Employer is to introduce a third party into what is intended to be a bi-party agreement. The fact finder would prefer to recommend language for inclusion in the successor agreement that addresses solely the relationship of the bargaining unit (or Union) with the Employer, and to refrain from recommending new language that refers to a separate relationship with a third party that is not a party to the successor agreement.

The fact finder is also reluctant to recommend the language proposed for inclusion in Article 18 on light duty because the fact finder does not know what effect such language would have upon the relationship between full-time bargaining unit members and those other firefighters working outside the bargaining unit who nonetheless work with full-time bargaining unit members, employees who must, as a matter literally of life and death, to rely on each other, to trust each other, to care about each other. In an effort

to simply stay away from an area in which the fact finder has no place, the fact finder declines to recommend the language proposed by the Union for inclusion within Article 18 dealing with temporary disabilities.

Article 18 - Temporary Disability - Recommended Language

1. The Employer will endeavor when practical to reassign any Employee to a less strenuous position within the organization when due to health or disability reasons he or she is temporarily unable to fully perform their normal duties because of a job related injury or illness. An Employee so reassigned shall continue to receive all compensation and fringe benefits, including accumulation of seniority attached to normally assigned position, and shall continue at current rate of pay.
2. The length of any temporary reassignment will be determined at the discretion and judgment of the Employer taking into consideration such factors as the nature of the disability, the availability of meaningful work to be performed, and the expectation of the Employee's return to full duty status within a reasonable length of time. If it becomes necessary to permanently accommodate the Employee by job reassignment or such accommodation will incur a lengthy reassignment, the Employer reserves the rights to adjust the Employee's pay commensurate with the duties performed.

New Article-Staffing

The Union proposes a new Article for inclusion in the parties' successor collective bargaining agreement, an Article that would allow a set number of employees to be off for the use of vacations, earned days off, or compensatory time. The language proposed by the Union would require that employee staffing levels not fall below twenty-five percent of regularly scheduled employees.

Outside of regulations imposed by the federal or state governments concerning minimum staffing, and outside of staffing

minimums agreed by both parties, the fact finder views staffing, that is, assigning bargaining unit employees to scheduled shifts within the limitations imposed by express language within the parties' collective bargaining agreement bearing on scheduling of staff, to be a management right. Beyond the regulatory authority imposed from above, and beyond those agreements entered into by both parties regarding staffing, it has traditionally been the case that management determines how staff is to be assigned. The proposal from the Union appears to the fact finder to be perfectly reasonable but the fact finder's expertise in this area is severely limited. The Employer is free to agree to those staffing requirements proposed by the Union, but the fact finder is also convinced that the Employer is free to refuse staffing proposals from the Union as a matter of managerial right and discretion. The fact finder defers to the Employer's refusal of the minimum staffing requirements proposed by the Union for inclusion within the new Article on staffing, and declines to recommend that the Employer change its mind and exercise its discretion in a different way in determining staffing levels within the operation of the department.

New Article - Labor/Management Committee

The Union proposes the creation of a new labor-management committee to facilitate relations between the parties by providing a forum in which to discuss areas of mutual concern. The new

labor/management committee would meet every ninety days, with agendas to be provided by both parties at least one week in advance of each meeting. Meeting minutes are to be kept, typed, and distributed to all committee members for each meeting and the committee is to have the authority to recommend changes to the Union and the Employer, with the recommendations to be reduced to writing.

The Employer sees no need for a new labor-management committee, pointing out that the president of the Union and the fire chief meet monthly for an open discussion of mutual concerns.

The fact finder endorses greater communication between the parties at all levels but is not persuaded to impose a labor-management committee on both parties to which only one party agrees. Labor-management committees may be formed without express language in the parties' collective bargaining agreement. The fact finder declines to recommend that such a new committee be required as a matter of express contractual language in the absence of an agreement by both parties that such a committee exist and operate.

Article 30 - Duration/Authentication

The Employer proposes a successor collective bargaining agreement spanning three years; the Union proposes a successor collective bargaining unit lasting eighteen months. In the event this fact finding or events subsequent to this fact finding produce a successor collective bargaining agreement between the parties,

the approval and ratification of such a successor agreement would not occur until mid-April, 2006 at the earliest. An eighteen-month collective bargaining agreement retroactive to January 1, 2006 would extend to June 30, 2007, with this successor collective bargaining agreement operating between the parties' for about fifteen months from its ratification. Considering that bargaining would occur prior to the conclusion of the successor collective bargaining agreement, the parties could find themselves bargaining a successor collective bargaining agreement, under the Union's duration proposal, twelve months after ratifying the parties' most recent agreement.

The fact finder believes that there is merit in allowing a collective bargaining agreement that is formed after months of hard work on both sides to operate for three years rather than eighteen months. The amounts of effort, time, and money expended in bargaining a contract between the parties to govern their working relationship are substantial and are well worth it when the contract produced is allowed to operate for three years so as to allow the parties a "breather" between bargaining sessions for a successor collective bargaining agreement. Those exigencies that arise during the course of the term of a collective bargaining agreement that were unforeseen can still be discussed and negotiated between the parties, with outcomes that could include a memorandum of understanding, letters of understanding, and other forms of assent between the parties, subject to a final resort to the contract's agreed grievance procedure.

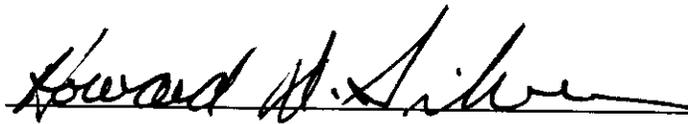
The fact finder recommends that the parties' successor collective bargaining agreement remain in effect for three years, from January 1, 2006 through December 31, 2008.

Article 30 - Duration/Authentication - Recommended Language

This Agreement shall become effective as of 1 January 2006 and shall continue until 31 December 2008. Thereafter, it shall continue in force from year to year unless either party hereto notified the other in writing at least sixty (60) days prior to the expiration of the term or extended term of the Agreement, of any intention to make changes in or terminate the Agreement.

In addition to the recommended language proposed by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles tentatively agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117, and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.



Howard D. Silver
Fact Finder

April 5, 2006
Columbus, Ohio

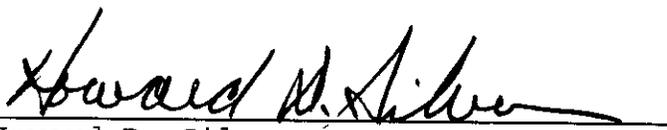
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Report and Recommendation of Fact Finder in the Matter of Fact-Finding Between West Chester Township, Butler County, Ohio and the West Chester Professional Fire Fighters, International Association of Fire Fighters, Local 3518, was filed with the State Employment Relations Board, via hand-delivery, and mailed via overnight delivery this 5th day of April, 2006, to:

Donald L. Crain, Esquire
Frost Brown Todd, LLC
300 North Main Street, Suite 200
Middletown, Ohio 45042

and hand-delivered on April 6, 2006 to the office of:

Henry A. Arnett, Esquire
Livorno and Arnett Co., LPA
280 North High Street, Suite 1410
Columbus, Ohio 43215.



Howard D. Silver
Fact Finder

April 5, 2006
Columbus, Ohio