

**FACTFINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

2007 NOV 21 A 11:47

IN THE MATTER OF :
FACTFINDING BETWEEN :
 :
BUTLER TOWNSHIP TRUSTEES :
 :
-AND- : **REPORT OF THE FACTFINDER**
 :
 :
INTERNATIONAL ASSOCIATION :
OF FIREFIGHTERS, BUTLER :
TOWNSHIP PROFESSIONAL :
FIREFIGHTERS, LOCAL 4491 :

SERB CASE NO.: 06-MED-09-1049

BARGAINING UNIT: The Bargaining Unit consists of all Full-time Firefighter/ Paramedics and Shift Lieutenants. Their duties are fire suppression, emergency medical and medical assistant in accordance with the Paramedic certification, rescue and other services as needed by the Community.

**FACTFINDING/
MEDIATION
PROCEEDING(S):** July 10; August 7; and, September 24, 2007; Dayton, Ohio

FACTFINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE EMPLOYER:

Brian M. Wakefield, Attorney
Joseph E. Flanagan, Jr., Administrator
J. Robert Weiffenbach, III, Fire Chief
Steve Stein, Assistant Fire Chief

FOR THE UNION:

William E. Guinn, OAPFF VP
Angela Rice, President
Richard J. Nihizer, Vice President

ADMINISTRATION

By correspondence dated May 23, 2007, from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Factfinder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); in an effort to facilitate resolution of those issues that remained at impasse between these Parties. The impasse resulted after numerous attempts to negotiate an initial Collective Bargaining Agreement between these Parties proved unsuccessful. Through the course of the administrative aspects of scheduling this matter, the Factfinder discussed with the Parties the overall "atmosphere" relative to the prior negotiation efforts by and between them and learned that overall, the Parties have essentially enjoyed, albeit brief, an amicable Collective Bargaining relationship. On July 10, 2007, the Factfinding Proceeding was initiated; however, the Parties, pursuant to the request of the undersigned, engaged in Mediation efforts and during the course of that proceeding, the Parties were able to reach tentative agreement on the following Articles:

Article 24, Employee Assistance Plan and Substance Testing

Article 32, Wages

Article 34, Education and Training

Article 37, Employer Equipment and Information Systems

Article 39, Health

Article 40, Duration

There were other various sections of other unresolved Articles that the Parties were not able to reach agreement on during the course of the subsequent days of the Factfinding

Proceeding that was conducted in a very informal manner and allowed the Parties to engage in “across-the-table” discussions at any time during the course thereof when it became apparent that the language at issue or the proposal in question the Parties were seemingly in agreement with. As such, those items will be set forth in the Recommendation and Rationale portion of this Factfinding Report and such will be recommended for inclusion in the Initial Collective Bargaining Agreement.

As previously indicated, these informal efforts, through both Mediation and discussions by and between the advocates, resulted in various tentative agreements that were reached. Following those efforts the Parties indicated their willingness to commence forthright with the Factfinding Proceeding concerning the remaining issues that were at impasse between them. The request by the Parties to commence forthright with presentation of evidence relative to those unresolved issues was recognized and complied with by the undersigned. During the course of the Factfinding Proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advance. The evidentiary record of this proceeding was subsequently closed at the conclusion of the Factfinding Proceeding and those issues that remain an impasse are the subject matter for the issuance of this Report hereunder.

STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by the Parties and were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the statutorily recognized Factfinding process as follows:

1. Past collectively-bargained agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the Employees in the Bargaining Unit with those issues related to other Public and Private Employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved;
3. The interests and welfare of the Public and the ability of the Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the Public Employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the Public Service or in private employment.

**THE BARGAINING UNIT DEFINED; ITS DUTIES AND
RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND
CONSIDERATIONS**

As previously indicated, this represents the initial Collective Bargaining Agreement by and between these Parties and throughout the consideration of the evidence presented, many references were made to various "Policies," "Regulations," and/or items contained in an "Employee Handbook," with respect to the various issues that the Parties were faced with when it began negotiations concerning the initial Collective Bargaining Agreement between these Parties.

On May 4, 2006, the State Employment Relations Board certified under Case No. 06-REP-01-0100, the International Association of Firefighters or the Butler Township Professional Firefighters an Affiliated Local of the IAFF, Local 4491 as the deemed and certified Collective Bargaining Representative of "all full-time firefighters/paramedics and Lieutenants employed by

the Township.” Consequently, the Parties began negotiations in August 2006 and completed those efforts in May 2007; and, engaged in Mediation with the assistance of John Gray from the State Employment Relations Board wherein numerous Articles were tentatively agreed to. Those Articles that were subject to the Tentative Agreements reached by and between the Parties are set forth as follows, and are recommended for inclusion in the initial Collective Bargaining Agreement as tentatively agreed to by and between the Parties as written, as follows:

Article 1 – Preamble/Purpose

Article 2 – Recognition and Coverage

Article 3 – Management’s Rights

Article 4 – Rules, Regulations, SOP’s, and Guidelines

Article 5 – Non-Discrimination

Article 6 – Union Representation

Article 7 – Union Business

Article 8 – Union Property and Activity

Article 9 – Waiver in Case of an Emergency

Article 10 – No Strike/No Lockout

Article 11 – Employee Files & Medical Records

Article 12 – Labor/Management Meetings

* * * * *

Article 14 – Probationary Period

Article 15 – Late Policy

Article 16 – Discipline

* * * * *

Article 18 – Grievance Procedure

Article 19 – Investigation of Misconduct

Article 20 – Merger of Past Agreements and Past Practices

Article 21 – Meal Equipment

* * * * *

Article 23 – Safety

* * * * *

Article 26 – Holidays

Article 27 – Vacation

Article 28 – Insurance

Article 29 – Promotions and Testing

* * * * *

Article 31 – Uniforms and Equipment

* * * * *

Article 33 – Leap Year Shift Rotation

* * * * *

Article 35 – Court Time

Article 36 – Leaves of Absence

* * * * *

Article 38 – Severability

* * * * *

As the evidentiary record demonstrates, Butler Township is located in north central Montgomery County, Ohio area sitting near the interchanges of Interstate 75 and 70 which provide transportation links to residents within this community. It is in close proximity to the Dayton International Airport and the Downtown Dayton, Ohio area. It has a population of approximately 8,360 residents and has recently recognized the significant influx of restaurants, hotels and other commercial enterprises. The Butler Township Fire Department began operations in 1895, and, under today's current physical setup, operates from two (2) staffed and one (1) on-call fire stations. Members of this Bargaining Unit provide fire suppression, emergency medical, rescue, fire prevention and other services of a similar nature for the community. The Emergency Medical Services (EMS) portion of the Fire Department consists of three (3) advanced life support (ALS)-equipped ambulances and two (2) ALS-equipped fire

engines. The dispatching services are contracted through the City of Englewood, Ohio. The technology and techniques are continually evaluated and, when appropriate, are instituted with respect to updated equipment, etc. The members of the Fire Department are expected to complete training as required on an ongoing basis and the Department is staffed by 5-11 full-time and approximately 56 part-time professionals. The numbers provided by the Parties are different with respect to the numbers of current full-time Employees, whether it be 5, 6 or 11, but relatively similar with respect to the number of part-time professional firefighters that serve in the Fire Department.

As previously indicated the Parties again met with the undersigned and went through informal measures to bring resolution to the remaining issues at impasse between them. For those Articles that have been previously identified as being “tentatively agreed to,” it is hereby recommended that the Parties maintain the content of those Articles as signed off to and set forth in the attachments presented into the evidentiary record and, as such, are incorporated by reference into the recommendation concerning those issues that continue to remain at impasse for the initial Collective Bargaining Agreement.

It is clear to the Factfinder that these Parties have engaged in painstaking efforts to reach this level of the statutory process with now relatively few, but important to both sides, issues on which they simply could not reach agreement for whatever reason(s). The Employer has not raised any “inability to pay” considerations, but does emphasize its accountability to the community concerning fiscal prudence and its ability to finance those economic enhancements that may be recommended herein under this initial Collective Bargaining Agreement without jeopardizing the level of services it currently provides. It also asserts that it indeed needs the ability to manage the workforce and conduct day-to-day measures it deems appropriate as they

arise without fear of allegations by the Union of contractual violations that would ultimately stymie its ability to so exercise its ability to operate the Fire Department. The Union seeks what it characterizes as “necessary” contractual language based on the comparables, both internal and external, it has relied upon to provide a fair and equitable initial collective Bargaining Agreement for members of this Bargaining Unit. It emphasizes that the large majority of Firefighters are part-time and are not members of the Collective Bargaining Unit. As such, it is very concerned about the greater number of part-time individuals as compared to full-time Employees and seeks protections for those Members of the Bargaining Unit as they relate to the duties and responsibilities they provide as Firefighters.

During the initial stages of this process, there were instances where both Parties raised procedural non-compliance issues concerning Pre-hearing Statements, etc. The Employer insists that the Union failed to provide its somewhat scant Pre-hearing Statement to it prior to the Factfinding Proceeding despite the Union’s assertion that it did, in fact, try to e-mail that to the designated Representative for the Employer. The Union on the other hand contends that such was simply not timely filed by the Employer and in violation of the statutory mandates. It was discussed at great length by the undersigned that inasmuch as both Parties have raised procedural contentions concerning the initial Pre-hearing Statements and/or the sufficiency thereof, the course of action that would best serve the Parties relative thereto would be to engage in Mediation and resolve all unresolved issues. The Parties did, in fact, engage in Mediation, however, certain issues remained unresolved and ultimately the Parties agreed to essentially waive any contentions relative to procedural non-compliance as recognized under 4117 of the Ohio Revised Code concerning the Dispute Resolution Statutory Process. As such, the Parties commenced forthright with the presentation of evidence during the subsequent days of the

Factfinding Proceeding(s) which occurred on August 7 and September 24, 2007. During the course of that proceeding, it was clear that there were many instances where each Party believed that tentative agreements had been reached relative to certain provisions. Inasmuch as such was not memorialized in a signed document, as was evidenced by those contained in the Union's Hearing evidence, the Factfinder can only conclude that if, in fact, the Parties had reached tentative agreement there was no memorialization of their efforts in this record. As such, the Factfinder must proceed based on the fact that these Articles, while many are similar in nature and have slight variations with respect to the differences articulated by the Advocates, nonetheless have not been subject to the formalized, signed agreements as seemingly was the practice during the course of negotiations between these Parties. Accordingly, those issues will be the subject matter for this Report hereunder.

Based on this aspect of the statutory process, the Factfinder is required to consider comparable Employee Units with regard to their overall makeup and the services provided to the members of their respective community. As is typical and required by statute, both Parties have relied upon comparable jurisdictions in their respective Pre-hearing Statements filed in accordance with the procedural guidelines of the statutory process and as alleged by both sides recognizing the alleged procedural non-compliance with the sufficiency of the Pre-hearing Statement and the timeliness of its presentation to the opposing counsel. The supporting documentation provided at the Factfinding Proceeding indicates that the Parties have, in fact, relied upon comparable jurisdiction and/or municipalities concerning what they deem to be "comparable work" provided by this Bargaining Unit, and, as typically apparent, there is no "on point comparison" relative to this Bargaining Unit concerning the statutory criteria, as will be discussed further by the Factfinder based thereon.

It is now, and has been, the position of this Factfinder, that the Parties opposing any deletion or modification of either current contract language, a policy manual or employee handbook and/or practice or an otherwise *status quo* practice where an initial Collective Bargaining Unit may exist, that Party bears the burden of proof and persuasion to compel the addition, deletion or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo*, whether that is the previous Collective Bargaining language, or in this case a practice previously engaged in by the Parties based on a Policy, Manual, Employee Handbook or some regulation recognized by these Employees. Based thereon, the Union was seeking contractual language to protect this relatively small Bargaining Unit and seeks language that would provide the “necessary” protections. It shall have the burden of proof to compel the Factfinder to make such recommendations that would recognize the rights and obligations of the Parties under this Agreement as such relate to those so-called “necessary” protections. The Factfinder is indeed mindful of the need of this, or any other City, Municipality or Township, to engage in, and/or, maintain prudent financial endeavors that include the funding for this or any Collective Bargaining Agreement in today’s economic conditions.

Accordingly, the following issues, as discussed and set forth herein that remain at impasse between these Parties are the subject matter for the issuance of this Report as follows:

1) Article 13 – Layoff and Recall

Union Position

The Union is proposing that, in the event of a layoff, its Members be laid off following part-time Employees and that the Recall period last for at least 24 months. It seeks parity with the FOP Contract and the Teamster Contract wherein full-time Employees are not subject to layoff before all probationary and/or part time Employees are laid off. It insists that its

Employees, the full-time Firefighters, have been tested to become full-time Employees in this Department and as such to be laid off prior to part-time, auxillary and/or probationary employees, would not be beneficial to the Township or the residents of the community. These Employees are directly involved with all Employees on a daily basis who are certified by the State of Ohio as Level II Firefighters and EMS Paramedics. Only a few part-time Employees hold both certifications. Also, full-time members, hold certification in the Technician Level in various areas of 5 disciplines for the Miami Valley Fire/EMS Alliance North Rescue Zone. It contends that to lay off full-time staff prior to part-time Employees would inevitably decrease the level of service recognized by the Township.

In Section 1 of its proposed language, it proposes that the full-time personnel be the last to be laid off in the event of a long-term layoff or job abolishment action by the Employer and that within Section B thereof, the least senior Employees within the classification affected be laid off first. It also is requesting language that would effectuate a Recall list lasting for a period of not less than 24 months. It contends such would be consistent with Promotional list that lasts for a period of 12 months that may be extended to 24 months, so the likely and logical timeframe would be 24 months, as recognized with Promotions. It contends that both the FOP and the Teamster Contracts recognize this very concept and as such seeks to have this included in its initial Collective Bargaining Agreement.

Employer Position

The Employer proposes to keep laid off Employees on a Recall list for 18 months and that the Employee will lose seniority following 18 months on layoff status. Such it contends is consistent with its proposal as it relates to both Article 13, titled "Layoff/Recall", and Article 17, title "Seniority." Such, it contends, would marry these two (2) Articles of the Parties' initial

Collective Bargaining Agreement and render their application less problematic if those dates did not coincide. It maintains that the Townships' proposals, relative to these Articles, indeed mirror the language proposed by the Union as it relates to the FOP Contract. The 18 month recall and seniority language has existed in the FOP Contract for years without difficulty. Both Joe Flanagan and Fire Chief Robert Weiffenbach indicated that they could not recall the Township ever laying off a Firefighter or a Police Officer. Without justification, the Union seeks to extend this time limit for Recall, as well as, that timeframe when an Employee will lose his or her seniority on layoff status. With respect to the Union's initial statement contained in Section 1 concerning compliance with ORC 124, the Employer emphasizes that this is not a Civil Service Township and as such it has no obligation to follow the Ohio Revised Code with respect to Layoff and Recall. While it recognizes that Parties, under 4117, can "contract around" Section 124, it emphasizes the differences in the two (2) Departments wherein the Police Department has 15 full-time Employees, 0 part-time Employees, and 1 auxiliary or volunteer Employee to augment the Police Force. The Service Department, or the Teamsters Local, has 7 full-time and 1 part-time and 2 auxiliary Employees that are seasonal. That compared to the Fire Department with 6 full-time and 55+ part-time, 0 auxiliary Employees is, indeed, different, and as such recognizing that the Township will likely continue to grow, it wants to have the flexibility to make necessary personnel adjustments where the need arises.

RECOMMENDATIONS AND RATIONALE

Throughout the course of these proceedings, the central theme, as emphasized by the Employer is "flexibility" with respect to staffing issues and how such may affect, for example, if it chooses to close a Fire Station. It contends that it would indeed be easier to have the flexibility to effectuate the closure of a Fire House and be able to move about those Employees affected by

this job action. Recognizing that this Bargaining Unit only contains less than 10 full-time positions that, under the “new” Recognition Clause, are Members of the Bargaining Unit as deemed certified, the need for protection of those full-time, obviously more invested, Employees is indeed reasonable. The Factfinder is indeed mindful of the Employer’s needs to maintain flexibility and its authority to so act is afforded to it under the Management Rights Article so long as such does not contravene or is in direct contradiction with any express provision of the negotiated Agreement. With respect to the Article at issue herein, the Parties’ language is similar in context and its overall theme. There seems very little reason to deviate from that contained in the Union’s language relative to this Article. It still allows for the layoff of full-time Employees last in connection with those types of job actions in inverse order of Seniority within the Classification. The testimony of the Employer’s witnesses, both Mr. Flanagan and Chief Weiffenbach, indicate there has never been, to their recollection, a layoff, so the likelihood of this language being problematic during the duration of this Agreement is seemingly nonexistent. Nonetheless, there should be certain protections for those Employees that are more vested with the Fire Department, i.e., those full-time Employees that are in fact career Firefighters that seek to have the protection of job security in the volatile economic status facing not only the state of Ohio, but this nation.

The Factfinder recommends that the Parties adopt the Union’s version of Article 13, titled, “Layoff and Recall” as it pertains to paragraph A and B and with respect to Recall, the recall period be for a time of 24 months, otherwise its entire Section 2 pertaining to Recall be included. Such is indeed consistent with Article 29, titled “Promotions and Testing,” relative to the one (1) year timeframe concerning Promotion eligibility list and the extension of the additional year.

If indeed applicability with ORC 124 is problematic, then a court with competent jurisdiction will address it; otherwise, it would be improper for the Factfinder recommend that any Party “contract around” that mandated by Statute.

(2) Article 17 - Seniority

Union Position

The Union proposes language be established to define what Seniority is for Members of the Bargaining Unit. This definition would be the length of uninterrupted, full-time service with the Butler Township Fire Department. Moreover, in the event that there is a job interruption from one (1) position, that Employee who returns to his position not be returned to his original seniority if he was absent longer than 31 calendar days. It also includes language that in the event an Employee is laid off, that Employee would not lose his seniority date if he is laid off for a period of 24 months or his length of service, whichever is less, from the date of layoff.

Additionally, in the event that two (2) or more Employees’ seniority dates are identical, then the seniority of those two (2) individuals would be determined by their cumulative test score on the entrance exam.

Employer Position

The Employer initially asserts that it believed that this Article had, in fact, been tentatively agreed to by the Parties and that the only issue that was at impasse was the timeframe of the period of layoff being 18 or 24 months. It indicates that indeed the FOP Contract contains language that is consistent with what is being proposed by the IAFF herein, and based on pattern bargaining and internal parity, that language is indeed worthy of recommendation in the initial Collective Bargaining Agreement. It insists it based its good faith belief that the only issue that

could have possibly been unresolved was the timeframe for the period of layoff when an Employee would not lose his or her seniority.

RECOMMENDATION AND RATIONALE

Exhibit B of the Employer's initial Pre-Hearing Statement and Article 17 language provided in the Union's Hearing binder are again seemingly similar with respect to the purpose and intent of defining Seniority. The recommendation for inclusion in the initial Collective Bargaining Agreement will include the language of Section A, as contained in the Union's proposed language including Section B, identifying the 24 months of service wherein Seniority will be retained in the event of layoff and Section C, which is also recognized in the first paragraph of Exhibit B of the Employer relative to "tiebreakers." Additionally, "new" paragraph D shall include the second paragraph of the Employer's Exhibit B which states:

D. Absent a specific grant in this Agreement, the retention of seniority during layoff or a leave of absence does not automatically entitle an Employee to receive benefits provided to those on the active payroll.

Moreover, Section E shall read, "Seniority and the employment relationship ends when an Employee retires, resigns or is discharged for just cause." Additionally, the last paragraph of Exhibit B of the Employer's Article 17 proposed language shall be identified in the initial Collective Bargaining Agreement as paragraph F except that the 18 months be changed to 24 months to be consistent with that previously recommended herein; and, as identified in Article 29 to be consistent with the extended probationary period to include one (1) year and an additional 12 months if so recognized.

3) Article 22 – Shift Trades

Union Position

The Union seeks to have included in the initial Collective Bargaining Agreement, Article 22, recognizing that shift trades be allowed among Members of the Bargaining Unit and that language would define and explain the procedure for trading of shifts and repaying those trades. It emphasizes that prior to organizing the practice has always allowed for full-time Members to have unlimited shift trades per year and permission was not necessary from the Fire Chief prior to effectuating a trade. In February 2006, when the Bargaining Unit was recognized, the Chief developed a new policy requiring all shift trades be approved through the Fire Chief no less than 72 hours prior to the trade and that such be repaid within the same 28 days pay cycle. The Union filed an Unfair Labor Practice charge that was not upheld by the State Employment Relations Board since, as it held, shift trades were never memorialized in writing and it fell under Management Rights considerations. It has decided to pursue this matter through the course of negotiations culminating in this Factfinding Proceeding.

Employer Position

The Employer emphasizes that Federal Regulations are at the option of a Township and are not mandatory and are expressly excluded from the calculation of overtime. Bargaining Unit Members must give the Fire Chief notice of the trade before it occurs and the Chief has the authority to approve or disapprove that trade and such must be repaid during the 28-day cycle. Moreover, the Township simply cannot permit Employees to use shift trades to “work around” the Township’s method of calculating pay in order to receive overtime when the Employee would not otherwise be entitled to it. Payment of overtime has been a matter for close scrutiny following 2005 in which a large amount of overtime was paid. Special Orders prepared by the Fire Chief developed Policies and Procedures regarding shift trades and overtime, which memorialized the current practice for trading hours between Employees. It emphasizes that it is

indeed reasonable for the Chief to have knowledge about shift trades in advance and that requests for such be made in writing to him. Moreover, it contends that shift trades should not in any circumstance result in the payment of overtime to an Employee when that payment obligation would not otherwise arise. It emphasizes that requiring Employees to provide the Fire Chief notices of trade before it occurs and affording him the discretion to allow or disallow it and repaying such with the 28 days pay cycle has been the policy and the practice prior to Union certification and the language it proposes is indeed consistent with the Fair Labor Standards Act in relation thereto.

RECOMMENDATION AND RATIONALE

It is indeed a reasonable proposition that the Fire Chief have written requests for shift trades presented to him in a reasonably timely fashion so that he can determine if indeed the personnel, subject to the trade, is indeed adequate for the manpower and manning issues that may arise for that particular shift subject to the trade. Moreover, it is indeed reasonable that the Chief have the authority to allow or disallow the proposed trade as presented and that a repayment timeframe be established that does not result in the payment of overtime where an overtime obligation would not otherwise exist. This being said, it is hereby recommended that the Parties adopt the Employer's language relative to shift trades as set forth in Article 22, which takes into consideration the request within 72 hours prior to the trade and with the written approval of the Fire Chief or his designated representative. Indeed, these should be in writing and a record be established, which is set forth in paragraph B of Section 1. The manner in which the Employer's proposed Article exists is much more simplified than that of the Union's, and it mandates a repayment timeframe within the same 28 days pay cycle and prohibits the consideration of overtime compensation where the obligation would not otherwise arise. The

language contained therein, with respect to the Employer's proposed Article 22, does not eliminate the ability for Employees to make a trade, simply that certain restrictions are in place with respect to how they are requested, when they are requested, that they be repaid within the same 28 day pay cycle in which they arose, and, most importantly, that they do not result in overtime compensation where overtime would not otherwise exist.

The only exception to the proposed language of Article 22, identified as Exhibit C of the Employer's Position Statement, is that the 72 hour request time be reduced to 48 hours, which would be consistent with the FOP Contract, again placing emphasis on internal parity where such is deemed workable. Moreover, this language does not prohibit that which these Employees enjoyed prior to certification, but recognizes the Employer's need, as it relates to staffing, to police this practice. And, the external comparables relied upon recognize such trades while also affording the Employer certain policing considerations.

Given the Employer's emphasis placed on needing to address overtime, such will also afford it to address it from disallowing such trades that could result in overtime payment. Such, in the opinion of the Factfinder, based on the positions articulated and internal and external comparable data provided, warrants deviation from the *status quo* if such were as the Union characterized it. The Employer's proposed language is indeed consistent with the FLSA and apparently with recent findings by SERB and except for the reduction of the 72 hour "request window" to 48 hours, the only other deviation from Employer Exhibit C, would include a 24 hour response window from the Chief or his/her designee to afford the Bargaining Unit Member sufficient time to address whatever other alternatives that may be available.

4) Article 25 – Employee Benefits

Union Position

The Union proposes that Members of the Bargaining Unit receive two (2) personal days per year and that each personal day be for 24 hours duration away from the Employer. Such recognizes two (2) days or 48 hours of Personal Days. The Police Department receives four (4) Personal Days each year. It contends that in January 2007, following organization efforts, the Township had taken away the 24 hours of personal time that Bargaining Unit Members received for year 2007. It contends that this benefit has always existed since 1999 as referenced in payroll records dating back that far indicate that based on a 56 hour work week, Fire Department personnel receive 22 hours per year of personal time. It contends that the Township's policy for its full-time Employees is two (2) Personal Days per year, each being for 12 hours each or 24 hours total for the year.

In Section 1 of it language it proposes that it maintain the 24 hours personal time that it insists that it has enjoyed for years prior to its certification and that an additional day for a total of 48 hours be added.

It also proposes in Section 2 thereof with respect to Longevity Pay that the Township payout relative thereto be maintained and that in Section 3 that the Township continues to pick up 100% of the Employee's Retirement contribution as is the current practice for all Union and non-Union Township Employees.

Employer Position

The Employer concedes that it did not update its position statement as did the Union during the course of this proceeding since it believed the only issue relative to this Article was 24 hours versus the additional 24 hours being sought by the Union. The Retirement language being addressed allows the Employer to make necessary changes in the event that indeed Retirement benefits change and it needs the ability to marry those changes to what exists at this Township.

It notes that the healthcare language has “substantially the same language” and it requests that similar language be implemented hereto to allow the flexibility to address changes as they may arise.

The Employer insists that it tried to harmonize the Police Department Collective Bargaining Agreement with that which was being sought by the Union herein and it simply, based on the differences in services provided, shift requirements/duration thereof, etc., would not work. The Employer emphasizes that the 144 hour comparison made by the Union is skewed with that the Police Department receives based on the 8 hour vs. the 24 hour shift differences. Those additional days, as referenced by the Union, are in fact “earned days.”

With respect to the Retirement language relative to its ability to maintain the retirement benefits in a “substantially similar” manner, such language provides that the flexibility it requires to address increased costs as they continue to go up as do Health Insurance benefits. As such, it maintains that it needs the flexibility to address the increases in costs as they do arise.

RECOMMENDATION AND RATIONALE

Whenever a comparison between a Police Department and the Employee services it provides based on a typical 8 hour day, 40 hour week is compared to the Fire Department or Firefighters on 24 off 48 schedule, there simply is very little room for comparison. The types of services provided are, and have been, historically different with respect to the time requirements each respective service provider needs in order to fulfill its obligations to the community. Indeed, a Police Officer in having a personal day “is away from the Employer” for a period of 8 hours on a general schedule, the Firefighter, on the other hand, is off for a 24 hour shift, which equates to three 3-hour shifts recognized by a Patrol Officer. This comparison is indeed problematic as it relates to trying to equate and recognize internal parity, it simply does not exist.

Based on this evidentiary record, it seems as though the Parties have reached tentative agreement with the Employer's Exhibit D, Section 1, titled, "Longevity Pay," and the Union's Section 2, titled, "Longevity Pay," as it equates to the numbers set forth therein and as such the Employer's Section 1, titled, "Longevity Pay," shall be recognized as a tentative agreement and recommended as such by and between the Parties based on the Employer's proposed language of Exhibit D including the "payout" language in the first paragraph.

As previously indicated, the Employer is seeking to maintain fiscal prudence and emphasizes the need for the levy to pass in 2008 and if such does not it could realize some "very serious issues" with respect to the funding that would become necessary to address certain economic enhancements under this Collective Bargaining Agreement. It is recommended that the Parties adopt the language of the Employer's Section 2 relative to providing it the flexibility it may need or encounter in the event that certain benefit levels increase relative to the amount of the cost associated with providing "substantially the same" Retirement benefits.

With respect to "Employee OP & F Pension Contribution," such shall be picked up at 100% as Section 3(A) of the Union's proposed language indicates.

It is recommended that the Parties adopt the Union's Section 1, titled, "Personal Absence Days" in its entirety for inclusion in the initial Collective Bargaining Agreement. The FOP Contract recognized by the City recognizes two (2) personal absence days and additional days for perfect attendance for the previous year and one (1) additional day for an Employee's Birthday, so such equates to four (4) Personal Absence Days, four (4) days away from his/her duties at the Police Department. The Fire Department is seeking to maintain the one (1) Personal Day it has previously enjoyed; and, increase it to two (2) 24-hour days. Indeed, such represents two (2) days/shifts away from Fire Department duties, which are "days" or "shifts" away from

the Fire House – the same number of “Personal Days” as recognized in the FOP Contract for “one year of full-time employment,” as set forth in Paragraph C thereof. Recognizing there is no “apples to apples” comparison, it at least provides the Fire personnel an opportunity to have at least two (2) “Personal” days away from the work place in the calendar year, subject to the fact that they have completed at least one (1) full time year of service.

5) Article 30 – Hours of Work and Overtime

Union Position

The Union seeks to have hours of work defined as such relates to the Management Rights Article and that it be distributed equally among the Members of the Collective Bargaining Unit, while also implementing a procedure for distribution of overtime.

With respect to Section 1, the Union proposes language to define current hours of work at 56 for a normal work week recognizing that emergency situations may arise that may require a temporary change of the hours of work under these special circumstances. Moreover, it wishes to reserve its right under ORC 4117.08 and refuses to bargain away the statutory right as it pertains to hours of work and overtime.

The Union concedes that apparently the Parties are in agreement with respect to a “no pyramiding” section and would agree to language reflecting such.

With respect to Sections 3 and 4, the Union seeks language that would mandate that overtime be distributed equally using a “card-file system” as part of an overtime procedure that would be implemented. The current practice of “first-come first-serve” does not adequately distribute overtime opportunities. It also seeks to limit the amount of overtime an eligible Employee could take to 12-24 hours at any given time. It is also asking that approved Compensatory Time, Vacation Time, Personal Time and Sick Time be included as part of the

standard 56 hour work week, which, it emphasizes, the Township has already agreed to with respect to the Police Department Collective Bargaining Agreement.

Employer Position

The Employer emphasizes that it must be provided the ability and flexibility to act in the best interest of the public with respect to the implementation of language such as this which affects the hours of work and overtime and how it can fill those needs as they arise. It insists that it is not its intent to arbitrarily change hours of work but needs such discretion if changes are required. Moreover, it simply cannot agree to have all other recognized leaves of absence be included in the calculation of the regular work week as such impacts the calculation and payment of overtime.

It also emphasizes the current overtime procedure affords the Chief the discretion to address overtime needs as they arise. It indicated that it does not object to the Union maintaining a so-called card file to track the overtime as it is filled, but it insists that the Chief needs discretion to fill the overtime in the event that it is not taken by available Employees. Such it insists is consistent with the *status quo*.

It also emphasizes that overtime is indeed calculated based on the Fair Labor Standard Act and it does not permit for any pyramiding. Its overall objective during these negotiations for this initial Collective Bargaining Agreement is to place the best interest of the Township at the forefront with respect to balancing internal and external comparables.

RECOMMENDATION AND RATIONALE

With respect to the proposed language contained in Exhibit E of the Employer's Pre-hearing Statement and that attached to the Hours of Work and Overtime Article as contained in the Union's Hearing Binder, the language with respect to pyramiding and the calculation of

overtime in accordance with the Fair Labor Standard Act, is indeed consistent between the Parties and, as such, those provisions are recommended for inclusion in the initial Collective Bargaining Agreement. In fact, Section 2 of the Employer's Article and Section 3 of the Union's are identical, and during the course of the Factfinding Proceeding, the Parties indicated their intention to reach tentative agreement with respect to that Section. As such, Section 2 and 3 of both proposed Articles are recommended for inclusion as such.

It is indeed consistent with jurisdictions throughout the state of Ohio that "approved time off" generally be counted in the calculation of overtime. Inasmuch as such is a consistent practice, it is indeed recommended that all approved, contractually recognized, leave hours, Vacation, Sick Leave, etc. as recognized under a Collective Bargaining Article, be included in the calculation of overtime. It is recommended that, with respect to Section 1, the Parties adopt the Union's version titled "Hours of Work" with paragraphs A and B as set forth therein, which recognizes the definition of the work week, as well as, the consideration of approved time off be calculated in consideration of the 56 hour work week.

With respect to an overtime procedure, it is recommended that Section 4 of the Union's proposed language be implemented with the addition of Section 4, titled "Mandatory Overtime," as recognized in Exhibit E of the Employer's proposed language.

Overall, the recommendation contained herein affords the Union some protections with respect to what constitutes the work week and what time, while compensated, may be away from the work place but nonetheless be considered within recognition of the 56 hours work week. It also prohibits pyramiding and that calculation of overtime be in accordance with the Fair Labor Standards Act, which both Parties have agreed to. With respect to the overtime procedure, the Employer emphasized during the course of the Factfinding Proceeding, that it did not object to

the Union maintaining the card file system, but that it do so recognizing that the Chief may have the ability to fill those vacancies when all other options have been exhausted. This also recognizes that the Chief may fill those vacancies as he desires in Paragraph E of the Union's proposed language, as well as, the designation of mandatory overtime as an additional paragraph or section as Section 5 of that Article, which also affords to the Chief the flexibility and authority to fill vacancies as they arise.

While the Factfinder recognizes the Union opposes mandatory overtime, indeed its inclusion affords the Chief the ability and authority to gain flexibility in staffing issues that may arise that may not be filled with the personnel that may be available.

While the undersigned recognizes that there are indeed distinctions between the Police Department and that of a Fire Department relative to the duties they provide for any Township or Community, it is indeed the intention of this recommendation to address both interests of these Parties while recognizing the Union's need for defined parameters and procedures with respect to determination of, calculation and distribution of overtime, while also affording the Chief the authority to address staffing needs as they arise. Both seemingly indicate that in the event of an extreme "emergency," one that is not a typical set of circumstances but one that may require a deemed "state of emergency," the Chief would indeed have the authority under this language to mandate Employees to address those critical circumstances that unfortunately may arise. An emergency situation, as generally recognized, would usually involve the "total recall of all Employees" wherein a catastrophic event has occurred. The Parties may deem it beneficial to craft a definition of what indeed constitutes an emergency and incorporate that into this particular Article. In the event that the Employer is unable to obtain the necessary volunteers,

the inclusion of the Mandatory Overtime Section affords the Chief the ability to mandate overtime when a manpower shortage arises.

6) Article 41 – Compensatory Time

Union Position

The Union proposes that the Members of the Bargaining Unit be permitted to use Compensatory Time in lieu of receiving overtime benefits. It notes that it submitted a proposal relative to the Compensatory Time Article that the Township refused to counter. As such, it requests that its Members be allowed to use “comp time” in lieu of receiving Overtime to a max of 112 hours, which equals two (2) weeks pay. It emphasizes that the Township has previously agreed to such language for comp time with the Police Department and the Road Department and such is referenced in the Township Handbook/Personnel Policy. It also notes that the Parties have already agreed to Compensatory Time relative to Union business.

Employer Position

The Employer argues that it is indeed inaccurate to maintain the *status quo* since the Firefighters have never received Compensatory Time. It emphasizes that its reference to this matter is indeed set forth in the “Hours of Work and Overtime language as it relates to how those types of matters have been addressed by the Township. It insists that the Fire Chief needs the flexibility to deal with changes in personnel or facilities, and, as such, it must reject the Union’s proposal for Compensatory Time as set forth on page 12 of its Pre-hearing Statement. It has not been the practice of the Township in the past, and it does not see a reason to make it a practice for the future under this Collective Bargaining Agreement.

RECOMMENDATION AND RATIONALE

Compensatory Time is a benefit recognized in many public sector contracts throughout the state of Ohio, such is even recognized with this Township and the FOP/OLC as referenced as Exhibit A in the Union's Pre-hearing or Hearing Evidence binder. Based on internal comparables, it would seem consistent that the Unionized Employees, as do both the FOP and the Teamster Local, recognize some level of Compensatory Time, as do the non-Union Employees of the Township, that should be recognized with respect to these Employees. With respect to the Union's assertion that the Employer's rejection of the proposal and the fact that no counter proposal language exists, and as such, its proposal as written should be incorporated, the fact that a Party rejects a proposal does not bar it from being heard on the issue. The Employer addressed this issue in its Article 30, "hours of Work and Overtime" material. Both the FOP and Teamster Contracts provide for it as does the Personnel Policy of the Township. Accordingly, the language proposed by the Union is seemingly consistent with those provisions. The recommendation shall contain a modification with respect to paragraph D, which must be distinguished given the "apples to oranges" comparison between a Police Officer's schedule and that of a Firefighter. Paragraph D contained in the FOP Contract talks of five (5) consecutive Compensatory Days, which would equate to one (1) week, the Firefighter's "week" normally consists of three (3) days as they recognize four (4) days off given the "24 on 48 off" schedule. That being said, paragraph D shall be modified to include rather than having five (5) consecutive Compensatory Days off, "there shall be no more than three (3) consecutive Compensatory Days off at any one time," which is consistent with the distinctions between the two (2) Departments and consequently the two (2) very different types of schedules.

Moreover, the FOP Contract prohibits the "buy-back" option referenced in the Union's Article. As such, that language shall be modified to include "not" after the "may" and before the

“buy-back” language in Paragraph B of the Union’s proposed Article to maintain a certain degree of internal parity both Parties have referenced.

Otherwise, the language contained in the Union’s proposal is consistent with that of the FOP Contract. The Employee Handbook and Personnel Policy for all other Township Employees also recognizes certain levels of Compensatory Time.

ARTICLES NOT SPECIFICALLY ADDRESSED
BY THE PARTIES OR SET FORTH HEREIN

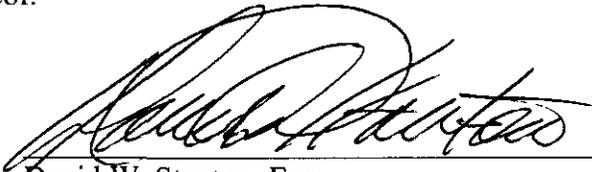
Moreover, it is recommended that those issues, if any, not subject to the presentation of evidence in this Factfinding Hearing, or those not referenced by either Party herein, shall be subject to the recommendation that the *status quo*, whatever that might be, be maintained for consideration in this initial Collective Bargaining Agreement.

CONCLUSION

The recommendations contained herein hopefully can be deemed as reasonable in light of the data presented; the representations made by the Parties; and, based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in many tentative agreements being reached. The Collective Bargaining process is an incremental process and with respect to an initial Collective Bargaining Agreement, incremental advancements to core contractual entitlements recognize the future improvements that can be negotiated.

The recommendations contained herein are offered based on the comparable data provided; manifested intent of each Party as reflected during the course of Mediation efforts that ensued as an extension of this Factfinding “arm” of the Statutory Dispute Resolution Process; tentative agreements reached by and between the Parties and as are set forth herein for inclusion

in the initial Collective Bargaining Agreement; any stipulations of the Parties; the positions articulated to the Factfinder during the course of both informal and formal Mediation efforts; and, ultimately during the course of the Factfinding Proceeding; and, are based on the mutual interests and concerns of each Party to this initial Collective Bargaining Agreement as recognized under the State Statutory Dispute Resolution Process in consideration of the statutory criteria to be considered in this aspect thereof.

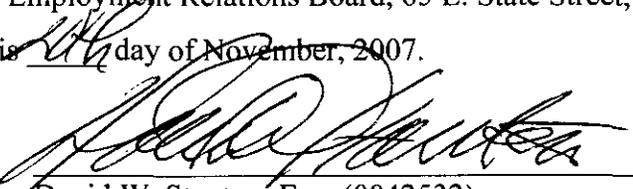


David W. Stanton, Esq.
Factfinder

Dated: November  2007
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Factfinding Report and Recommendations has been forwarded by Overnight U.S. mail service to Brian M. Wakefield, Esq., Taft, Stettinius & Hollister, LLP, 110 North Main Street, Suite 900, Dayton, Ohio 45402; William E. Quinn, Jr., Vice President, Ohio Association of Professional Firefighters, 650 Alpine Place, Trenton, Ohio 45067-9660; and, Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 E. State Street, 12th Floor, Columbus, Ohio 43215-4213, on this  day of November, 2007.



David W. Stanton, Esq. (0042532)
Factfinder