

STATE EMPLOYMENT  
RELATIONS BOARD

2008 JAN 30 P 12: 36

STATE EMPLOYMENT RELATIONS BOARD

OLMSTED TOWNSHIP FIREFIGHTERS ASSOC. : CASE NO. 06-MED-11-1328  
IAFF, LOCAL 2845 :  
UNION :  
and :  
OLMSTED TOWNSHIP TRUSTEES :  
EMPLOYER :

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REPORT AND RECOMMENDATIONS OF THE FACT FINDER  
January 28, 2008

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FACT FINDER  
I. BERNARD TROMBETTA  
P.O. Box 391403  
Solon, Ohio 44139  
(440) 349-2110

I. DATES AND PLACE OF HEARING

This hearing was begun on November 14th and continued to December 15, 2007 when it was concluded. It was held in Olmsted Township, Ohio. The parties agreed to the second day of hearing.

II. PARTIES TO THE HEARING

The parties are the Olmsted Township Firefighters Association which is affiliated with the International Association of Firefighters, hereinafter referred to as the "Union" and the Olmsted Falls Trustees, hereinafter sometimes referred to herein as the "Employer" or the "Township".

III. APPEARANCES

The following persons appeared on behalf of the respective party as noted:

For The Union

Ryan J. Lemmerbrock, Esq.	Attorney for the Union
Joseph J. Fudale	President of the Union
Christopher Jansen	Union Representative
Christopher Kovach	Union Representative
John Rice	Union Representative
Charles Rosenbaum	Expert Witness

For the City

Jon Dileno	Attorney for the Trustees
Robert Baker	Expert Witness
Mario Belido	Fire Chief

IV. WITNESSES

For the Union

Charles Rosenbaum, CPA                      Financial Expert  
Joseph J. Fudale  
Christopher Jansen  
Christopher Kovach  
John Rice

For the Employer

Robert Baker                                  Expert

V. INTRODUCTION

This bargaining unit consists of 16 members, 14 full-time Fire Fighters/ Medics and 2 Lieutenants. It is represented by the Olmsted Township Firefighters Association. The Fire Chief and Deputy Chiefs are excluded from the unit pursuant to Section 4717.01 R.C.

This is a contract renewal. The current agreement expired on December 31, 2006.

The Township is located in southwestern Cuyahoga County and has approximately 13,000 residents living in 10 square miles. It is essentially residential. There are 3 commercial strips and a sprinkling of light industries. Eighty-eight businesses are located within the Township. It is not an incorporated and cannot levy an income tax. Its revenues are generated primarily from real property taxes, levies and state tax sharing.

Though the parties bargained several times and reached

agreement on a number of important issues, they were unable to reach a final agreement and 8 issues remain for fact finding. During the summer of 2007, the Township reached an agreement with its maintenance employees.

#### V. ISSUES PRESENTED

The following eight issues were presented for fact finding:

1. Hours: Article 12, Sections 13 and 32;
2. Holiday Premium Pay: Article 15
3. Vacation Schedules: Article 16
4. Wages: Article 19;
5. Health Care: Article 20;
6. Out of Classification Pay: Article 37;
7. Drug & Alcohol Testing: a new Article
8. Contract Duration

#### VI. THE RECOMMENDATIONS

##### a. Evidence and Exhibits

The Fact Finder is charged with considering all relevant and reliable information introduced by the parties in support of their respective positions in making his recommendations. Each party submitted a binder containing reports, charts, analyses, audits and other documents. Each party presented testimony, studies and analyses through an expert witness.

#### b. Form of the Report

In order to condense these recommendations and avoid repetition, the positions of the parties will be presented as each article is discussed and recommendations made thereon. The parties set their own format in presenting evidence and testimony throughout. The positions of the parties set forth herein are not intended to be inclusive. The Fact Finder considered those arguments along with the relevant data in making his recommendations.

#### c. Factors Considered

The Fact Finder, in accordance with Rule 4117-9--5(J), also considered the following:

- a. Past collectively bargained agreements between the parties;
- b. Comparison of unresolved issues with other public employees doing comparable work;
- c. Consideration of factors peculiar to the area and classification;
- d. The interest and the welfare of the public;
- e. Ability of the employer to finance and administer the issues proposed;
- f. Effect of the adjustments on the normal standard of public service;
- g. Lawful authority of the employer;
- h. Stipulations between the parties;

I. Any other factors not listed above which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

d. Issues Submitted

Opening statements were presented at the first hearing. Evidence from the Township's expert was presented. The meeting was adjourned mid-way through the Union's cross-examination to permit it to secure an analysis/report from its own expert.

At the second hearing both sides were permitted to present direct testimony from their respective experts as well as to cross examine the other side's expert. In addition, the Union presented testimony from non-expert witnesses- members of the unit.

Evidence was taken on each issue, but the economic evidence overlapped most issues. The order in which the following recommendations appear are not necessarily the order in which evidence was taken.

In general the Township argued that its finances are limited since it cannot impose an income tax. The bulk of Township revenue is raised from real property taxes and specific levies. It also receives funds directly from the state.

One of the two chief sources of revenue, real property taxes

have shown little growth since the real estate bust of 2007. Construction of new homes has flattened and real property values are beginning to tumble. Once the valuations decline, tax revenues will also decline. The Township has not yet experienced the full impact of this phenomenon. The Township expert opined that the coming tax collections will reflect the reductions in selling prices and valuations (primarily through tax complaints filed with the Board of Revision). Operating costs have continued to rise, and the once robust financial health of the Township has shown signs regressing.

The chief concern expressed by the Township's expert was that this downward spiral would soon be felt and the Township may soon face a deficit. The Union expert saw no reason for concern and claimed that the Township over budgets and under spends on many items and can, at present, and could into the immediate future meet the Union demands and continue to deliver necessary services to its residents.

#### ISSUE NO. 1

#### ARTICLE VII & APPENDIX A- WAGES & LONGEVITY

UNION'S PROPOSAL: The Union sought a wage increase of 12%, 4% and 4%. The Union submitted that its base wage structure was far below that of other neighboring fire departments and sought to catch up with them.

TOWNSHIP POSITION: The Township originally offered a 2% across the board wage increase, but withdrew that offer after receiving the expert's analysis. It then offered a wage freeze for two years and a 3% increase for the third year. The Union did not accept the revised offer.

DISCUSSION: The withdrawal of the original offer and substituting with a two year freeze and a 3% increase in the third year did nothing more than harden the positions, particularly since the Township settled with the non-safety forces during the summer of 2007 for an increase in wages.

While it is true that a township is limited in its means of revenue generation, it is also true that it has not elected to pursue other forms of government available to it which would permit it to impose an income tax. The Township can also place a levy on the ballot seeking to generate additional income to cover operating expenses. It does not appear that either party considered this avenue.

The Fact Finder does not believe that the Township's financial position is so precarious as to warrant the adoption of its wage offer.

On the other hand, the Fact Finder does not accept the Union's projections of continued financial growth nor does he believe that

members of this department are woefully underpaid when compared to the fire fighters in surrounding communities.

The Township stressed that the study of its expert was not an audit for purposes of these negotiations. The Township's expert presented an analysis of existing reports and income streams. A separate audit of township finances was not undertaken for these negotiations. In any event the projections of the expert were cautionary and presented a note of caution in the event the items referred to above turn into fact and revenues begin to drop.

While tax revenues appear to be flattening primarily due to the fall-off in new home construction, valuations may decrease when residents are unable to sell their homes at the assessed values. At the present time, this is only speculation.

Real estate taxes are the life-blood of township income, but other income streams appear to be opening and even increasing. The tax abatement provided the Eliza Jennings Foundation has ended and the Township will receive added revenues from that source. (The Township will get about 15% of the taxes paid by the foundation). Estate taxes, while not uniform from year to year, appear to be on the upswing and those funds can be used to pay departmental expenses (A large retirement community provides the base for much of the estate tax). Whether those new streams will be sufficient to off-set the predicted reduction in real property taxes remains to be proven. It is unlikely that the Township will be faced with a mass tax

reduction due to the inability of residents to sell or in selling at reduced prices.

In response to the Fact Finder's query, the Township's expert, twice, confirmed that the data he used in his study, contained provisions for wage increases of 3% per year for members of the fire department, and that the deficit was only projected and had not been experienced (tax collections are 6 months after the close of the period).

The Township settled with a part of its work force for 3% increases and some municipal employees received increases of between 3% and 5.1% (the Building Commissioner). There was no evidence that the Township's finances had experienced a catastrophic slide between the time of that settlement and this presentation.

There was no evidence to suggest that a moderate wage increase for the fire department would prevent the Township from delivering services owed its residents. Likewise, there was also no evidence that the Township's credit rating had been or would be impaired by a wage increase.

Wage comparables, including monetary benefits, are still one of the best tests to determine the fairness of employee wages. A public employee's economic package contains numerous perks (i.e. longevity, clothing allowances, sick leave, early retirement options, compensatory time cash-outs and time-banks), unmatched in the private sector. These benefits are often increased at the

expense of wages, possibly not to aggravate the electorate, perhaps to save on pension and payroll taxes. Regardless on how a perk is characterized it is a part of the economic remuneration received by the fire fighters.

The longevity benefit, alone, plus the wages places this department in the mid-range of comparables with other fire departments, locally and statewide (townships). Longevity benefits cannot be divorced from earnings. When coupled together, it is evident that members of this department have nothing to "catch-up" on.

While there was some evidence that the department had lost some newer firefighters to higher paying communities, there was no evidence of attrition among veteran members which is the surest sign to suggest an under scale wage package. The members of this department are neither overpaid nor underpaid. They receive some \$10,000 less than Colerain's firefighters, but almost \$19,000 more than those in Mifflin Township. (Twp. Ex. 8).

The Union argued that it was due a large wage hike because of the increasing number of calls. This argument is not meritorious. There was no evidence of abandoned buildings or warehouses containing dangerous, toxic or flammable chemicals or substances. The increase in the number of calls might be due, at least in part, to the heavy traffic flow along the I-480 corridor. In any event, this highly trained professional department must be prepared to

respond to emergency calls whether 1 or 10 per day. Wages should not be based upon the number of call-outs or responses. The suggestion might lead to a return to the days when fire departments were privately operated for the protection only of their subscribers and members of the private fire departments were often accused of deliberately setting fires.

The Township's wage offer is found to be lacking. A wage freeze can only be recommended under the direst of circumstances. The cost of living index is rising and is expected to be in the 4% area, outstripping the original 2% offer and certainly exceeding the substituted offer. Over the past decade, real wages have shown little growth, and, in fact, have not kept pace with the increase in the cost of living. This is true for both public and private sector employees.

There is no policy requiring a public employer to insure that the wages of its employees keep pace with the increasing costs of living. This Township and other public or governmental bodies does not exist for the benefit of the employees, regardless of the importance of the services they perform. A balance must be stricken between the needs of the residents, the ability of the township to deliver services and the good and welfare of the employees who perform those services.

The Fact Finder explored the option of recommending a contract with a wage re-opener, but that would accomplish little since the

parties would be faced with the same issues in another year (this contract expired on January 1, 2007).

The evidence, however, suggests that the Township can continue to function, deliver necessary services to its residents and pay this unit a reasonable wage increase.

The Township sought to reduce the longevity benefits (Appendix A). The longevity schedule is the result of previous bargaining efforts and, as such, the parties have established a history. There was no evidence to justify either a reduction or elimination of this benefit. It is an intrinsic part of the economic package received by members of this department.

RECOMMENDATION: It is recommended that the current wage base rates be increased by 3% in each of the first 2 years of the new contract, retroactive to January 1, 2007 and 3 ½% for the third year beginning January 1, 2009. It is also recommended that the current longevity schedule be retained in the new agreement. (The 2007 increase along with the resultant increase in longevity benefits should be paid in a lump sum, less applicable taxes, in the first payroll check due after the approval of a new collective bargaining agreement).

#### ISSUE NO. 2

##### ARTICLE 20.1- HEALTH CARE

TOWNSHIP PROPOSAL: The Township sought to modify current contract language permitting it to change carriers and

plans provided that benefits remain substantially similar and further provided that any changes be first discussed in the healthcare committee referred to in Section 20.5

UNION POSITION: The Union opposed the aforesaid change.

DISCUSSION: The parties reached an agreement on cost sharing of medical coverage and no evidence was presented on that issue. The parties could not reach agreement on the Township's proposal to give the Township the authority to change carriers and/or plan designs provided that the benefits remain substantially similar. The Union wanted to retain current contract language requiring that the plan design and benefits remain the same.

The major hurdle of cost sharing was resolved. In view of the continued and unabated increase in medical care costs, it is vital that the parties remain as flexible as possible in addressing healthcare issues. Referral of requested changes to the healthcare committee gives the employees the opportunity to be heard, but, admittedly, the Township can make unilateral changes as long as the benefits remain substantially similar at no additional cost to the employee. The Township is likely providing healthcare coverage for all of its employees and is not apt to seek unjustified changes or changes that would only impact members of this department. Good faith must be extended between the parties on this issue.

However, if, for instance, the Township proposes to change coverages, i.e. from traditional to preferred provider or from either to an HMO or any combination thereof, such changes would not be covered under the permissive changes sought herein since those benefits would not be substantially similar.

The recommended changes may well protect the unit from experiencing an increase in costs or suffering a loss of benefits.

RECOMMENDATION: The Fact Finder recommends that 20.1 be amended to include language permitting the Township to change carriers and or plan design, provided that the benefits thereunder remain substantially similar and do not result in an increase in costs to the members.

### ISSUE NO. 3

#### NEW ARTICLE - DRUG/ALCOHOL TESTING

TOWNSHIP PROPOSAL: The Township is proposing to institute a random, post accident and reasonable suspicion drug/alcohol testing procedure. The Township argued for the adoption of a plan that included random testing that could result in a 15% savings on its workers compensation premiums.

UNION POSITION: The Union argued against the inclusion of random testing in the program, but conceded that a drug/alcohol testing program based on reasonable suspicion or post accident would be

acceptable.

DISCUSSION: The Township does not have a drug/alcohol testing program. The Union argued against the inclusion of random testing on the basis that it is invasive and that there has been no reported cases of alcoholism or drug abuse among members of the department.

Due to the danger and importance of the job duties of the members of this department, it is vital that fire fighters be free from the effects of either alcohol or drugs. Fire fighters may be required to make decisions that may effect the safety of the general public, as well as their fellow fire fighters. The Fact Finder believes that the welfare of the public and fellow firefighters outweighs the invasiveness that random testing would impose. The fire fighters, however, have the right to be free from unfettered random testing and would therefore recommend the addition of a proviso limiting random testing to 3 tests per year.

RECOMMENDATION: The Township's proposal regarding random drug and alcohol testing is recommended with the addition of the following proviso: "provided, however, that such random tests not exceed 3 tests in any 12 month period".

ISSUE NO. 4

ARTICLE 12-HOURS

ARTICLE 13- BASIC RATES OF PAY

ARTICLE 32- OVERTIME

UNION'S PROPOSAL:           The Union reducing the work week from 53 to 49.8 hours per week (Art. 12.2). Adoption of this proposal would require a change to Article 13.1- the basic rates of pay to reflect the reduction in annual hours to 2,589.6 hours per year Article 32- the overtime clause to reflect the reduction in annual hours from the current 2,756 hours to 2,589.6 hours.

TOWNSHIP'S POSITION:           The Township opposed the request for a reduction in hours.

DISCUSSION:           Essentially, this proposal concerned the reduction in the work week from 53 to 49.8 hours as reflected in Article 12. The modifications to Articles 13 and 32 would be necessary if the reduction of the work week were to be recommended.

This department works the standard 24 on and 48 off workweek, but ranks among the highest in the number of hours worked per week in the 3-county survey attached to the Union's Position Statement. (Ex. 11), but in the middle of the statewide township survey introduced by the Township (Twp. Ex. 2). A reduction in the number

of hours would result in additional time off for each member and the possibility of additional overtime expenses if substitute personnel were necessary to maintain staffing minimums.

It is noted that a fact finder recently recommended a reduction in the standard work week hours in neighboring Olmsted Falls from 53 to 51. A reduction in the number of hours in the standard work week would not create an unsurmountable financial burden upon the Township, and would bring these members closer to the prevailing average of 50.15 hours per week. A reduction to 51 hours would place the Township on par with Olmsted Falls and Shaker Heights. Though the operating expenses of the department may increase, a reduction in hours is indicated from the evidence introduced herein.

RECOMMENDATION: It is recommended that commencing January 1, 2008, the average work week of the members of this department, be reduced from 53 to 51 hours per week (Article 12, Section 2) and that the necessary changes reflecting this reduction also be reflected in Article 13, Section 1 and in Article 32. The existing contract language can be used with adjustments where appropriate.

#### ISSUE NO. 5

#### ARTICLE 15.3- HOLIDAYS

UNION'S PROPOSAL: The Union sought to increase from 2 to 6 in which a member would receive time and a half if he worked on those days.

TOWNSHIP POSITION:           The Township opposed increasing the number of holidays on which a fire fighter would receive premium pay if worked on the grounds that adding more days would unjustifiably increase operations costs.

DISCUSSION:                The present contract specifies that a fire fighter shall receive 7 full shifts off with pay (15.1) (presumably at straight time), for holidays and then proceeds to specify only Christmas and Thanksgiving as days to which a member would be entitled to premium pay if worked.

The work schedule of the typical fire fighter, 24 on and 48 off, makes it difficult for a layman to understand the exact number of holidays to which a fire fighter is entitled to compensation. Under the present contract, it appears that members of this department receive 7 holiday shifts off with pay plus time and one half, if the member works on Thanksgiving or Christmas.

The Union is seeking to increase the number of days on which the fire fighter is paid time and one half from the present 2 days to 6 days. The exhibits of the Union disclose that the number of holidays on which premium pay is received by this unit is tied with North Royalton and ranks above only University Heights, both of which are municipalities and not townships.

The Avon contract identifies 10 holidays. It then states that

a fire fighter with 1 year of seniority will receive 4 tours of duty as holiday pay in consideration of all of the designated holidays. Since a tour of duty is 24 hours, the payment schedule is akin to 3 holidays if compared to an 8 hour shift. The contract then specifies that if a member works on any of the 10 specified holidays, he shall receive premium pay.

The Bay Village contract identifies 11 holidays, but pays for 6 full tours in lieu thereof. If a member works on any of 5 specified holidays, he receives premium pay.

Beachwood fire fighters receive between 6 and 13 tours depending upon seniority and premium pay for any of 6 specified holidays, if worked.

Bedford and Bedford Heights appear to have the most liberal schedule, paying for 13 tours and providing for premium pay, if any of the 13 specified holidays are worked in the former and 11 ½ tours for 12 ½ specified holidays with premium pay if any of the specified holidays are worked.

This unit receives 7 full shifts, 1 more than Bay Village and 3 more than Avon, but less than Beachwood, Bedford and Bedford Heights. There is, however, nothing unfair in the holiday schedule of the now expired contract. It is doubtful whether the Township has the income sources of either Avon or Bay Village, but the number of paid tours that the members of this department receive is quite comparable to and perhaps better than either of the cited

municipalities.

In view of the recommendations made on other issues herein, the Fact finder does not believe that increasing the number of premium days is appropriate at this time, regardless that the costs of doing so would not create a great financial burden upon the Township.

RECOMMENDATION: The Fact Finder recommends that the language of the current contract be retained.

#### ISSUE NO. 6

#### ARTICLE 16, SECTION 2- VACATIONS

UNION PROPOSAL: The Union proposes to bring the fire department and police department vacation schedules in line with one another.

TOWNSHIP RESPONSE: The Township was opposed to any adjustments in the vacation entitlements between the two departments.

DISCUSSION: The proposal seeks to reduce the number of years in the last three steps so that the safety forces vacations entitlements are the

same. There was no evidence given for the reduction of years in the last 3 steps in the vacation entitlements, other than the fact that the police have it and the fire department wants it.

How the discrepancy between the police force and the fire fighters arose or the period of time that this difference has persisted was not explained.

The present vacation entitlement schedule appears reasonable when compared to other fire departments. Because the police department has a different and slightly better vacation entitlement schedule is not sufficient upon which to recommend the reduction sought by the Union.

The request is not based upon any demonstrated need or unfairness. There is no requirement that the entitlements between the department be the same.

RECOMMENDATION: The Fact Finder recommends retention of current contract language.

#### ISSUE NO. 7

#### ARTICLE 37- WORKING OUT OF CLASSIFICATION

UNION PROPOSAL: The Union is seeking an increase in the hourly rate paid to members working out of classification from \$1 per hour to \$2 per hour.

TOWNSHIP POSITION: The Township is unwilling to increase the amount paid when working out of classification.

DISCUSSION: The premium of \$1.00 per hour for working out of classification is intended to cover those temporary situations such as absences due to illness or vacation days, requiring a fire fighter to step up to acting as the officer in charge for that particular shift. There

was no evidence introduced that working a temporary out of classification job required the fire fighter to perform any additional duties. Obviously, such a temporary assignment could result in additional responsibilities, particularly in the event of a call out, but it appears that these temporary assignments are rather infrequent.

RECOMMENDATION: The Fact Finder recommends that current contract language be retained.

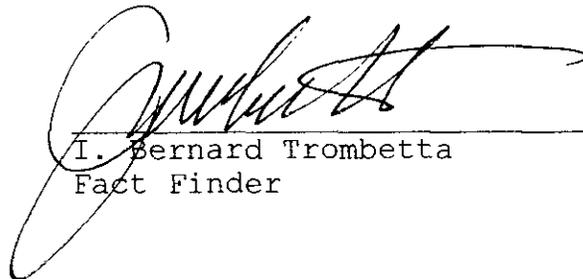
ISSUE NO. 8

ARTICLE 39- DURATION

No evidence was presented for or against maintaining the current 3 year term or whether it should be shortened. The Fact Finder has the authority to recommend a retroactive term which he elects to so do. A retroactive wage increase has been recommended for 2007. Hours reduction are recommended to become effective in 2008.

RECOMMENDATION: The Fact Finder recommends that the new agreement be for a period of 3 years, retroactive to January 1, 2007 and expiring on December 31, 2009.

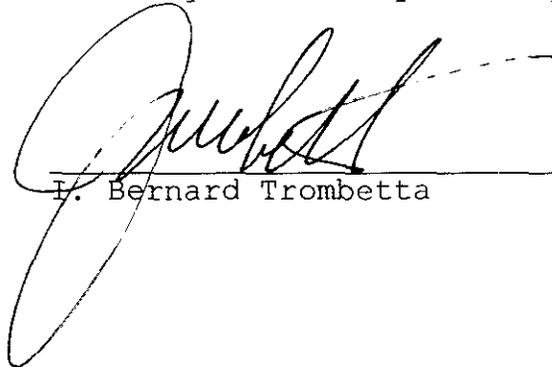
Respectfully submitted,



I. Bernard Trombetta  
Fact Finder

SERVICE

A copy of the foregoing was mailed to Ryan Lemmerbrock, Esq. attorney for of the Union, 820 West Superior Avenue, Cleveland, OH 44113 and Jon Dileno, attorney for the Township, 55 Public Square, Cleveland, Ohio 44113 on this 28th day of January 2008 by ordinary U.S. Mail.



I. Bernard Trombetta