

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

APRIL 10, 2008

2008 APR 28 A 10:54

IN THE MATTER OF THE FACT FINDING BETWEEN

LIBERTY TOWNSHIP TRUSTEES  
(BUTLER COUNTY) (EMPLOYER)

and

LIBERTY TOWNSHIP  
PROFESSIONAL FIRE FIGHTERS  
IAFF LOCAL, 4394

Case No. 07-MED-03-0210

For the Township

Donald L. Crain, Esq.

Dina C. Minneci

Melanie K. Brokaw, Esq.

Paul F. Stumpf

Daniel Bailey

Chief Spokesperson

Frost Brown Todd, Attorneys

Township Administrator

Human Resource Director /Assistant  
Administrator

Fire Chief

Assistant Fire Chief

For the Union

William E. Quinn

Lt. James M. Watkins

Chad Canupp

Matthew Owen

4<sup>th</sup> District Vice President

President, Local 4394 IAFF

Local 4394 IAFF

Secretary/Treasurer, Local 4394 IAFF

Fact Finder

John P. Downs

# CERTIFICATE OF SERVICE

STATE EMPLOYMENT  
RELATIONS BOARD

2008 APR 28 A 10: 54

This will affirm that the Fact finding Report in the Matter of Fact finding between

LIBERTY TOWNSHIP TRUSTEES

V

CASE NO: SERB 07-MED-03-0210

LIBERTY TOWNSHIP PROFESSIONAL  
FIREFIGHTERS

was served to the below named parties at the stated addresses

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Donald L. Crain, Esq.  
Counsel for Liberty Township  
300 North Main Street, Suite 200  
Middletown, OH 45042-1919

William E. Quinn, Jr.  
Service Representative  
International Association of Fire Fighters  
650 Alpine Place  
Trenton, OH 45067-9660

Dina C. Minneci  
Liberty Township Administrator  
6400 Princeton Road  
Liberty Township, OH 45011

Lt. James Watkins  
President, Local 4394 IAFF  
6682 Princeton-Glendale Road  
Liberty Township, OH 45011

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by U.S. Postal Service mailed, overnight express on April 25, 2008.

Copy of this Award was submitted U.S. Postal Service by First Class Mail to  
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on

April 25, 2008

I affirm, to the best of my knowledge that the foregoing is true and accurate and in  
keeping with ORC 4117 and related SERB Rules and Regulations.

  
\_\_\_\_\_  
John P. Downs, Fact Finder: April 25, 2008

## INTRODUCTION

This case involves the fact finding process between the Township of Liberty Trustees, Butler County, and Local Township Professional Fire Fighters, IAFF Local 4394. The unit under Case No. 07-MED-03-0210 is made up of Fire Fighters/Paramedics and Lieutenants. There are twenty-eight (28) positions in the bargaining unit.

Liberty Township is located in Butler County approximately 20 miles north of downtown Cincinnati and 27 miles south of Dayton. Liberty Township is a community where recent growth and development has been significant. The township is 28 square miles of residential, parks and commercial developments. It has increased in population and business significantly in the past 15 years. The population doubled from 13,477 in 1994 to 33,000 at present. The township recently adopted home rule status under Ohio law which gives it more power on local governance.

The tax base is property taxes. Its revenue for the township fire department is fire tax levies. The most recent fire levy was passed in November 2006 for 3.5 mills. This levy will fund the fire department's grown operation for five years, or 2011. I am told by the township expansion over the last eight years shows an increase from two (2) fire fighters (FT) in 2000 to twenty-eight (28) in 2008.

There is no current collective bargaining agreement between the parties since this is the first attempt at bargaining. The fact finder was appointed by SERB on February 29, 2008, per Ohio Revised Code 4117.14 (C) (3). The parties then entered into an extension of the fact finding process on March 6, 2008, extending fact finding up to April 30, 2008, in order to try and mediate outstanding issues. However, mediation was not successful and fact finding was requested and set for April 4, 2008. This was cancelled due to a large fire in an adjoining district where two fire fighters from the Colerain Fire Department lost their lives. It was agreed to by all parties that fact finding would be held April 10, 2008, and if another fact finding extension was requested by the fact finder one would be agreed to.

The fact finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board as amended. In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Agreed to Articles

The parties have reached tentative agreement on the following twenty-one (21) articles through traditional contract negotiations as well as two mediation days held by John Gray from SERB:

Article 1	Agreement
Article 2	Statement of Purpose
Article 3	Management Rights
Article 4	Recognition and Dues Deduction
Article 5	Union Business
Article 6	No Strike – No Lockout
Article 7	Probationary Employees
Article 8	Grievance & Arbitration Procedure
Article 9	Policies, Procedures & Personnel Files
Article 11	Holiday Pay
Article 14	Sick Leave and Injury Leave
Article 17	Uniforms & Equipment
Article 18	Military Leave
Article 19	Bereavement Leave
Article 20	Training
Article 21	Seniority
Article 24	Waiver in Case of Emergency
Article 25	Modification, Separability & Conflict of Law
Article 26	Printing
Article 27	Labor – Management Committee
Article 28	Duration

The effective date by agreement is to be June 1, 2008. Additionally the parties have entered into a G-11 waiver agreement.

## Unresolved Issues

The following articles remain in dispute between the parties and have been submitted by the parties for fact finding:

Article 10	Hours of Work
Article 12	Drug Testing
Article 13	Vacation
Article 15	Wages & Compensation
Article 16	Insurance
Article 22	Promotions
Article 23	Health & Safety

Prior to fact finding beginning I asked the township counsel if the township trustees were making a claim of financial hardship or inability to fund items in this process. Mr. Crain replied they were not making a hardship claim, just financial responsibility of tax payer funds.

### Comparables

Liberty Township stated in addition to traditional comparables such as area townships and cities of similar size they included a select five consisting of Madeira Indian Hill Fire Districts and the City of Montgomery since they are first time contracts. Also included were West Chester Township and the City of Monroe and Liberty Township.

The Union objected to the City of Monroe and asked that I consider a law enforcement contract between the Sheriff of Butler County and Liberty Township Trustees for law enforcement services (February 17, 2007 to February 12, 2010) since the township pays 90% of benefits for the deputies including retirement. The Union's comparables were SERB benchmark report dated March 17, 2008, for fire fighters/paramedics. Also used by the Township were itself and township (home rule) forms of government, West Chester, Butler County, Springfield Township, Hamilton County, Fairfield (only two employees, no longer a bargaining unit), Deerfield, Warren County, Sycamore Township, Hamilton County, Batavia, Clermont County, and Union County.

### ARTICLE 10 HOURS OF WORK

#### Union's Position

They want to reduce the work week from fifty-three (53) to fifty-two (52) hours. Also keep two (2) personal days time which is forty-eight (48) hours off and increase EDO's from six (6) to eight (8).

Comparable: SERB	Butler or contiguous counties:	
	Anderson Township	48
	Colerain Township	52
	Green Township	53
	Miami	53
	Springfield Township	48
	Sycamore Township	42
	Washington Township	52.5
	West Chester Township	<u>52</u>
		50.0625

The Union calls attention to a personnel memo dated May 1, 2001, where there are 53 hours to a work week, four (4) EDO's and two (2) personal days. Memo dated January 1, 2005, revised December 19, 2006, 24/48 personnel work fifty-three (53) hours a week, four (4) EDO's, and two (2) personal days. This was revised on January 7, 2008 to fifty-three (53) hours a work week, six (6) EDO's or Kelly hours with no personal days, others receive them however. Lt. Watkins questioned the timing of the January 7, 2008, memo which was during negotiations.

The Union raises the FLSA regulations on time off. Firefighters who work 212 hours or over get four (4) EDO's. They argue they need two (2) additional EDO's in order to satisfy FLSA regulations. The Union argues that EDO's and personal days are different.

Township's Position

The Township maintains that in 2006 personnel was given ample time off under FLSA and you have to be present to get overtime and vacation, and personal leave counts against overtime. They presently were getting four (4) EDO's and two (2) floating days (either called EDO's or personal), not both.

Mr. Crain stated personal days are the exception not the rule in safety forces. The costs per exhibit #20 are 1 EDO = \$25,381.17. They also indicated that Monroe is at fifty-one (51) hours work per a fact finder.

**RECOMMENDATION**

It is recommended that the Township's current fifty-three (53) hours work week is granted with six (6) EDO's. The Union's request to maintain two (2) personal days is also granted.

Rationale

After reviewing all available information submitted by the parties it appears that personal days and EDO's were used inter changeably. Kelly or EDO is referenced as personal time in the memo dated January 7, 2008. Prior to this change, the memo referred to two

(2) personal days being granted. Personal days are different from EDO's in how they may be used.

## ARTICLE 12 DRUG TESTING

### Township's Position

Employees shall comply with the Township's drug free work place policy including random drug and alcohol testing procedures. Copies of the policy will be distributed to the Union and employees and any major changes to such policy in the future will receive Union approval. The employer's consultant is Health Partners. The Township would like to do this by a written policy.

### Union's Position

Lt. Watkins stated the Union did not want random drug and alcohol testing. The Union questions what a major change in the policy is. They feel any changes are major. The Union urges a five (5) member NIDA panel instead of ten (10) proposed by the Township as called for by OBWC. The Union is requesting substance abuse rehabilitation and treatment for members. The Union also wants this article to be part of the new contract.

## RECOMMENDATION

It appears both sides agree on drug testing. After reviewing all information submitted by both parties, the following is granted.

The Township's draft exhibit F on drug testing shall be changed to reflect no random drug or alcohol testing. That the NICA panel shall be five as required OBWC. That this draft policy shall be part of the new contract and provide for a commitment by both parties for prevention, treatment and rehabilitation. Also the damage limits of \$1,000 are far too low for fire trucks, etc. Per DFWP guidelines an amount of \$10,000 is granted.

### Rationale

The Union's arguments that Post Accident and Reasonable Suspicion testing of safety sensitive personnel is persuasive and a tool to be used. The Township's argument of the need for random testing is not supported by any justifiable reasons.

## ARTICLE 13 VACATION

### Township's Position

Mr. Crain stated this increased one day of vacation schedule was conditioned upon acceptance of a fifth-three (53) hour work week. The party was informed this fact finder does not consider the linkage of articles on proposals. The Township proposed the following schedule:

<u>Years of Service</u>	<u>40 Hour Employees</u>	<u>24/48 Employees</u>
0<1	40 hours	72 hours
1-5	80 hours	120 hours
6-10	100 hours	144 hours
11-15	120 hours	168 hours
16+	160 hours	216 hours

Union's Position

They want to increase the vacation schedule accordingly:

<u>Years of Service</u>	<u>40 Hour Employees</u>	<u>24/48 Employees</u>
0-1	40 hours	72 hours
1-5	80 hours	120 hours
5-10	100 hours	144 hours
11-15	120 hours	168 hours
16-20	160 hours	216 hours
21+	200 hours	264 hours

**RECOMMENDATION**

After reviewing all the information presented by both sides, I grant the Township's vacation chart which goes to 160 hours for 40 hour employees and 216 hours for 24/48 employees with 16+ years of service.

**ARTICLE 16 INSURANCE**

Union's Position

The Union wants a 95/5 split for health care. They argue that \$30,000 life insurance is not close to the salaries of \$50,000. The Union wants to continue current benefits for supplemental accident injury illness coverage (AFLAC).

Township's Position

The Township wants a 92.5/7.5 split on employee premiums for health care the same as other township employees pay since January 2008. To maintain the sick and accident insurance which pays \$1,000 after seven days of continuous illness and \$1,000 per month for anyone who is unable to work for 12 months. Also to maintain life insurance at \$30,000.

## RECOMMENDATION

After receiving all the information provided by the parties, I find the Township comparables on health insurance premiums persuasive. Therefore the 7.5% of premium paid by the unit member is granted.

The sickness and accident insurance shall remain at \$1,000 per month with the same coverage. The life insurance shall remain at \$30,000 with the same coverage.

All three insurances are to be put in the contract and any changes are to be bargained with the Union.

## ARTICLE 22 PROMOTIONS

### Township's Position

Mr. Crain stressed a Memorandum of Understanding is to be outside of the contract as this would be easier to change if needed.

The Township seeks a rule of five (5) applicants for consideration. Proposal allows for grievance to be filed and processed through step 2 (Township Administrator) but no binding arbitration. He referenced City of Cincinnati for the high number of arbitrations over promotions.

### Union's Position

Lt. Watkins stated the Union wants the rule of one (1) on promotion. Probationary periods rule out someone not suited for the position. They want language in the contract, no Memorandum of Understanding.

## RECOMMENDATION

After reviewing all materials submitted by the parties I recommend the following:

The Memorandum of Understanding on promotion will be incorporated in the contract.

The new rule will be the rule of three (3), which has worked very well for the State of Ohio. Any disagreements or challenges based upon the promotional process shall be subject to the grievance procedures in Article 8 of the new collective bargaining agreement.

## ARTICLE 23 HEALTH & SAFETY

### Union's Position

The Union believes there should be a minimum manning provision of three (3) people per apparatus and one Lieutenant per shift in the contract. That demonstrates a strong commitment to fire fighters' safety. Also for the Township to provide necessary equipment as a second set. Also the Union would like a voluntary physical fitness program and equipment in the fire houses.

### Township's Position

Both the Chief and Assistant Chief stated they were concerned about risks for their people and the number sent is a judgment call. This is a management decision. The answer is to hire more personnel. They have mutual aid agreements with many departments. The necessary second set of equipment is very costly, it's over \$2,000 per fire fighter's coat.

## **RECOMMENDATION**

After reviewing the materials supplied by both parties I recommend the following:

The manning provisions do not belong in the contract, however, as suggested by the Township, this could be a Memorandum of Understanding outside the contract that could be changed if needed should the matter arise.

With regards to the second set of turn out gear, the Township will set up a location for fire fighters to have access to extra spare sets of protective equipment of common sizes which these employees can use if needed.

The Union's proposal to have a physical fitness room and equipment is granted but it is up to the Township if it wants one location or several. The on duty physical fitness program can be a Memorandum of Understanding outside the contract which should contain the language the employee must first complete his/her job duties and have permission of his/her supervisor before beginning the workout. In regards to equipment required, it should help increase cardiovascular and physical strength training.

## ARTICLE 15 WAGES

### Township's Position

Increase wages by 3% first year, 3% second year, and 5% step the third year for 70% of the unit which equals 11% over three years. Remove longevity sick day occurrence reduction factor and reduce longevity payment payout by 50%.

Union's Position

Increase wages by 3% first year, 3% plus step 5 which equals 8% the second year, and 3% plus 5% step which equals 8% for the third year which equals 19% over three years. Longevity remains status quo beginning \$350 after three years to \$1,400 after 18 years and it is not tied to the sick leave usage.

**RECOMMENDATION**

After a review of all materials submitted by both parties I grant the following:

Wages:           3% first year  
                  3% second year  
                  3% plus 5% step third year  
                  14% over 3 years of the contract

Longevity Pay: The Township proposal is granted by changing the sick leave usage requirement and reducing the payout by 50%.

**TOTALITY OF AGREEMENT**

It is recommended that all agreed to articles prior to fact finding be included in the agreement.

This will affirm the foregoing report, consisting of 10 pages, includes the findings and recommendations set forth in the award by the fact finder.

Any matter presented before the fact finder and specifically addressed in this determination and award were given consideration but are not recommended for inclusion in the agreement.

If there is found conflict in the report between this fact finder's discussion and recommendation, the language in the recommendation shall prevail.

To the best of my knowledge, said report and its included recommendation complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I, therefore, offer my signature at my address in the county of Pickaway in the State of Ohio this date of April 25, 2008.

  
John P. Downs, Fact Finder