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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SYLVANIA TOWNSHIP, OHIO

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* Case No.
* 08-MED-10-1236

-and-

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 2243

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FACT-FINDING REPORT AND RECOMMENDATION

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FACT-FINDING CRITERIA

In the determination of the facts contained herein, the Fact-Finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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.

This matter came on for hearing on September 10 and 11, 2009 after several mediation sessions were conducted in February, 2009. The undersigned was mutually selected and signed-off on as Fact-Finder for this process of Fact Finding.

The Employer, Sylvania Township, is in Lucas County, Ohio where it has its base of operations. This public employer shall hereafter be referred to as the "Employer", the "Township" or "Management".

The Employee Organization, hereafter referred to as the "IAFF"; "Firefighters", "Local 2243" or the "Union", became certified as the exclusive collective bargaining representative for this unit of fifty (50) professional firefighters.

As a backdrop, while the economic pressures today facing most municipal entities are no less present in Sylvania Township, the Employer has offered a wage increase and a signing bonus. It is not claiming an inability to pay in the area of wages. In exchange, the Township seeks a two year contract duration. The Employer opposes all other economic demands or working language changes asserted by the Union.

The Union feels its demands are appropriate given the nature of the services performed for and responsibilities undertaken on behalf of the Employer's citizens. Toward that end, the IAFF has brought to record an extensive amount of documentation detailing the occupational hazards of professional firefighters in support of its demand that a minimum manning standard be incorporated into the parties' CBA.

Each side presented the Fact-Finder with exhibits and testimonial evidence covering their respective positions on the unresolved issues.

As required by law, they also furnished "contract ready" language for incorporation into their CBA.

It must also be noted that either party's demands or positions taken either during contract negotiations or before the undersigned in mediation or at the Fact-Finding hearing which are not expressly listed in the following recommendations are either rejected, deemed withdrawn or were agreed to prior to this hearing.

As a preliminary note, I wish to emphasize that the current severe economic downturn cannot be overlooked in making the following recommendations. As with most municipal entities whose financial lifeblood is primarily derived from either real estate taxes, sales taxes and/or income taxation, Sylvania Township depends upon its permissible tax basis to fund its services to the residents. While the current general revenue fund may provide reserve monies, the

first full year of this severe economy, to wit: 2009, will undoubtedly deplete reserve levels and hence, public employer entities must be extra cautious with the collective bargaining commitments they agree to on a multi-year basis heading into 2010 and beyond.

This CBA falls into this extra-judicious category and to the extent that the Employer is willing to offer wage increases, it also is willing to be bound beyond one year in a two (2) year agreement.

This aforementioned economic atmosphere prompts the undersigned to concentrate on recommending general wage increases on a multi-year basis without granting other significant economic demands which would necessarily cause lesser wage increases, if not freezes. The thrust of this approach is to weather the difficult financial times ahead without the need to engage in a reduction in force and at the same time allow this bargaining unit's members to keep pace with the cost of living.

It is also my intention to keep this bargaining unit in relatively the same position on wages which it held amongst comparable area fire departments. There is no indication that this Employer has an inability to pay a general wage raise. Indeed, Sylvania Township's offer of a wage raise over two (2) years is highly notable given the current economic malaise.

My "yardstick" in making the following recommendations is based upon both external comparable municipal entities as well as internal CBA arrangements for Sylvania Township.

It is hoped that in this manner the parties can carry on without resort to lay-offs and maintain the high level of service traditionally performed by the members of Local 2243 which, it should be noted, also provides fire protection services for the City of Sylvania as well as the Township.

Finally, I have not chosen to follow either party's order of open issues for recommended resolution preferring to structure this report in a manner first reflecting the major economic issues then moving to contract language proposals which may be either non-economic or of a lesser economic impact.

WHEREFORE, the following recommendations are submitted for ratification by both parties:

1. Article 27 **DURATION OF AGREEMENT:**

(I am dealing with DURATION first since rendering a recommendation on WAGES first would beg the question as to which proposed length of the CBA I recommend).

The Union wants a three (3) year agreement; the Employer two (2) years.

I recommend a two (2) year contract because the Employer is shouldering more than its share of the risk posed by the uncertain revenue stream it faces in entering into a multi-year CBA. There is added utility for the Employer in obtaining a two (2) year CBA term because the other two Township collective bargaining units' contracts would then be coterminous in duration with this CBA. This lessens the need for "me-too" clauses in the future and allows for fire, police and streets departments to approach collective bargaining in a better informed and orderly manner.

Thus, two (2) years duration is a more compelling position than the three (3) year labor agreement desired by the Union. What also resonates with me is that in addressing a third year wage settlement, arrived at now, would be difficult for the Employer to project its revenue picture and hence what would most likely be offered as a wage increment in year three is looms to be less than what it might be if bargained for after next year when the financial where-with-all of the Employer is better known.

I recommend the Employer's proposal for a two(2) year contract duration. This agreement and all tentative agreements shall be effective from January 1, 2009 to December 31, 2010.

2. Article 27.1 **WAGES:**

Given my above preference for a two (2) year agreement, I recommend a three per cent (3%) wage increase uniformly applied

to all the ranks, retroactively from January 1, 2009 for 2009 followed by another three per cent (3%) general wage increase effective January 1, 2010 for the calendar year 2010 to the employees on the Employer's payroll at the time of execution of this CBA.

In addition, I recommend a bonus payment to each member of the Local 2243 unit in the amount of fifteen hundred (\$1500.00) dollars effective with execution of this CBA to all those employees who are on the Employer's payroll on January 1, 2009 and at the time of payment of this bonus.

I am not recommending either party's last table position on WAGES except to increase the length of time from six (6) months to one (1) year, which shall apply to any of those employees hired after January 1, 2009. Instead, as alluded to above, by placing the emphasis on WAGES I believe will address the most critical needs of both parties during the current economic crisis and beyond until 2011 arrives and the economic climate can be better assessed going forward regarding not only compensation rates, but fringe benefit improvements and minor economic areas.

Whereas the Union wants 5% raises per annum and the Township has offered 2% I conclude that the Employer, if made to pay at the 3% rate for both years, will insure that the bargaining unit remains in the same position among Management's list of comparable fire departments. Sylvania's comparable list is reasonable and drawn from similarly sized communities in its geographic area. The rate, 3%, is closer to reality on an internal basis within the Township's other employee groups. The rate recommended shall be applied to Appendix A of the CBA with the lengthened time periods for step advancement.

Looking at the respective wage demands another way, I can state without fear of contradiction that the 5% increases sought by the IAFF Local are not to be found anywhere in Ohio at this time. In fact, the Union's wage demand(s) is so excessive given the times that Management had its hands tied from being able to better its wage offer. This is simply not the time nor place for recommending that these parties "split the difference" and accept a 3.5% wage raise for either two (2) or three (3) years. Perhaps in other years or with other parties this approach would be compelling. It is not in 2009. For one reason, public

employers need to practice the utmost of economic restraint lest they outstrip their usable budgets and need resort to lay-offs with the concomitant diminution in service to their electorates.

As a further means to keep Sylvania Township in its relative place amongst the comparable municipalities noted, *supra*, I recommend a \$1500.00 “signing bonus” be added to this CBA, across the board to all employees on the Employer’s active payroll on January 1, 2009 and at the time of payment of this bonus.

My plan is to emphasize cash and forestall costly fringe improvements and “right the ship” until more costly demands can be realistically considered.

Wages are the linchpin for this CBA. While so many other entities are laying off or furloughing employees, three (3%) per cent increments for two (2) years plus a \$1500.00 bonus represents the upper echelon of wage settlements in 2009 Ohio.

3. 47 (New Proposed Article) STAFFING:

In a series of three (3) subsections, the Union proposes that the Township expand its fire department personnel to maintain twelve (12) Lieutenants and three (3) Captains on its platoons or in administration.

In addition, proposed section 47.2 seeks three (3) platoon personnel be kept on each fire engine and two (2) personnel on each EMT unit. These proposals are minimum levels and cannot be reduced.

Last, the Union wants staffing levels to be increased over the next three (3) years from 14 to 16 to 18 personnel, minimal..

The Employer rejects this proposal and has not countered with a minimum increase in personnel in any amount.

Minimum manning demands are occurring in Ohio and in a few instances, have been recommended in fact-finding or agreed to in settlements.

However, even though evidence of a handful of such agreements have been added to this record, the overwhelming number of CBAs without such agreements is far and away the norm in Ohio.

Employer resistance to such minimum staffing proposals is predicated upon the steep costs of doing so. In this proposal alone I calculate that Sylvania Township is being asked to spend close to one million (\$1,000,000.00) dollars annually! It is an enormous expenditure and given the foregoing economic scenario, the suggestion of 3% raises with a bonus added, cannot by any stretch of the imagination be recommended in 2009. No doubt the Union has adduced to record a library of supportive documentation detailing the need and scope of its demand in this area; but I fail to be convinced that this is affordable and note that even in a "fat" year a public employer would be greatly resistant to commit to such a massive expenditure and willingly engage in a proposal that derogates from the most basic of *management rights*, the right to determine the size of its work force.

Accordingly, I do not recommend the Union proposal for an Article 47.

4. 28.2 & 28.3 RANK DIFFERENTIAL

This is an economic demand closely allied with the main piece on Wages. It has cost aspects the Employer feels unnecessary to pay in that the IAFF wants to double the 7.5% rank differential between lieutenant and captain and add \$500.00 per year for EMS instructors and fire inspectors.

Whereas, there is now a 15% rank differential between firefighter and lieutenant and paramedics are afforded a 2% differential over the fire fighter hourly rate, the Employer's position is that the lieutenant-captain spread is equitable as it is and needs no further enhancement. To do so would put the captain rank's total pay raise in the area of 12.5%, an amount totally uncalled for and inequitable for other ranking officers in the Township.

I agree with the Employer's position and do not recommend adding a separate article apart from the wage

appendix (A) to effectuate the expensive “tweak” between the upper officer levels as per Union proposals for 28.2 and 28.3.

5. 21.1 UNIFORM ALLOWANCE

The Union seeks to raise the biannually paid uniform stipend to \$800.00 (\$400 x 2 per annum).

Management’s position is \$650.00 and I feel a raise herein is not required given the need to curtail costs in order to allow a wage raise and bonus as earlier discussed.

I do not recommend the Union’s demand to raise the dollar amount of the Uniform Allowance. It is not warranted at this juncture and there is no proof that other fire departments have substantially eclipsed this Department’s uniform allowance benefit calling for an upward adjustment. The other terms in Art. 21 are not to be changed from existing language.

6. 26.7 INSURANCE

The IAFF wants an incentive of \$2000.00 per bargaining unit member upon execution. The thought here is to catch up with the other units who have better terms in their health care plans. This, of course, lends itself to the Township’s argument for synching the three (3) bargaining units it negotiates with in terms of CBA duration as much as it represents the need for a cash incentive. While the Local 2243 members may have had different health care premiums moving into this contract’s negotiation, an “incentive” of this type is analogous to a wage raise. As such, it would cost in the area of \$100,000.00; needless to say, an amount not insignificant and contrary to the purpose of the wage package recommended herein.

I do not recommend the Union’s demand for an Insurance Incentive payment in light of my recommended signing bonus.

7. 36. CONTINUING EDUCATION AND TRAINING

The Local 2243 position is to have training for firefighters, inspectors and fire and/or EMS instructors not provided on duty paid at a premium rate of one and one-half times regular pay. In addition, training or certification class attendance off the premises incurring "additional applicable costs" shall have said costs reimbursed by the Employer.

In 36.6 the IAFF demands that all additional training approved by the Fire Chief shall be assigned by means of seniority.

Management points out that current contract provisions allow only lieutenants certified as paramedics who train off duty to receive overtime. Said lieutenants must maintain their State credentials on their own.

The Employer opposes this proposal due to its added overtime potential and unnecessary training in some instances. It also opposes the use of seniority as sought by the Union to make certain training assignments

I foresee the added overtime potential and perhaps some disputes over who should receive training not able to be performed "in-house".

I'm not sure about the disruptive scheduling or costs generated by assigning training by seniority since the Chief retains discretion as to who will be trained. However, the need to make the assigned training by running the seniority list is counterproductive since the desire for undertaking a program or certification will in almost every instance not run identically in league with the tenure of employees in the bargaining unit.

I do not recommend this measure be expanded as per the Union's proposals. Added costs are one reason but resorting to seniority is cumbersome and not progressive. This presents an inroad on the Fire Chief's discretion to manage his charges. There is no evidence that the current system abused the career objectives of any employee and thus, no demonstrated need to invoke this measure.

I do not recommend the Union's proposals in Article 36.

8. 22. HOURS OF WORK

Both sides want to make changes in Article 22. The IAFF wants to have 22.7 read that all vacancies in the minimum manning level will be filled on a rank for rank basis. This is language which assumes that a minimum staffing level will have been added to the CBA. Since it is not recommended herein, so too I do not recommend the Union's proposed 22.7.

Management wants to delete 22.5 and 22.6 of the current contract. It claims it's a management right to determine the number of captains and lieutenants on duty.

I favor not deleting the current language in 22.5 since I am not agreeing to add a minimum staffing provision, what the parties have previously bargained for is not a step in that direction. Pragmatically, I am certain the demand for a minimum staffing clause will reappear; so too will Management's desire to delete this part of Article 22. The parties will need to "buy or sell" their positions in subsequent proceedings; I do not favor doing it this time around given the need to address the more serious cost issues.

Hence, I recommend that 22.6 be deleted and Union proposal adding 22.7 is denied.

9. 15 SICK LEAVE

Currently the CBA allows employees to accumulate up to one hundred seventy five (175) hours of sick leave annually. Management proposes to cut this back to 150 hours per annum because of a desire to make this measure internally comparable. Whereas the other bargaining units in the Township can accumulate up to 120 hours per annum, the Firefighters work 25% more hours per week. Thus, to keep the various bargaining units equal Local 2243 members should be set at 150 hours maximum annually.

The Union opposes this change maintaining that they bargained for this particular benefit and do not want to lose it.

This is a cost item only when employees use the hours as a

time-off benefit or cash in their "bank" but the need for internal comparability is important to Management. What impresses me the most is that the Union says they bargained for this level of accumulated sick leave without showing what they gave up to get it while the Township representatives maintain that it was generously granted by a prior administration. Whatever its origin, it is in play now and I cannot recommend its being continued due to the impact it will undoubtedly have upon the other CBAs when they're re-negotiated. Sick leave benefits are for maintaining income when short term illnesses preclude reporting in to work. There is nothing meager about accumulating 150 hours annually. Nor is it a benefit level way behind area comparables.

Since this unit is recommended to get a relatively substantial wage raise and a bonus, restructuring this benefit to be in line with the other Township bargaining unit's is equitable and thus, I recommend the Employer's position on this issue.

10. 7.8 ADDITIONAL INVESTIGATIONS

The Employer seeks deletion of this language because it feels it inhibits Management's ability to conduct a thorough inquiry into possible misconduct. Without the ability to inform an employee that s/he is being given a Garrity Interrogation with the possibility of transfer or discipline, Management personnel has a lessened ability to discern the existence of wrongdoing.

The IAFF opposes deletion of this limitation on investigations.

This would not stop Management from placing employees under investigation. Rather it curtails making threats of transfer or discipline during an investigation.

As I see this proposal, it is not so much a means of ending intimidation as it is a way to allow the public employer to perform its responsibility to oversee ways to prevent misuse of public funds or facilities. I agree with the Employer in that the employee being advised of a potential disciplinary action or transfer is not without recourse should those outcomes materialize. There is the grievance system and once in it the Employer needs to show by clear and convincing evidence that it had *just cause* to impose that discipline or transfer. Management cannot play fast and loose with

employee rights in its investigations without incurring the costs of not prevailing on a grieved matter. The bottom line herein is what constitutes a “threat” and is it merely a means to intimidate employees or a useful tool in ferreting out truthful statements? The potential of discipline should be fairly obvious to a public employee. So much so that I conclude that the public has “rights” in seeing that its officers effectively probe allegations/indications of misuse of public resources or misconduct.

The more egregious an investigator’s conduct is, the greater the likelihood that a grievance will be sustained. What hangs in the balance is the outcome where useful information is divulged by the interviewee upon weighing the risk posed by not being as forthcoming as possible. I believe deleting Art. 7.8 is a worthwhile way to husband public assets.

I recommend the Employer’s proposal to delete Art. 7.8.

11. 10.2 (e); 10.8; GRIEVANCE PROCEDURE

The Employer proposes that the parties establish a private panel of arbitrators as used in many cities and the State of Ohio.

The undersigned serves on a number of private panels in Ohio and takes judicial notice that there are several hundred such panels in Ohio’s public sector.

This is not a novel approach to providing access to neutral dispute resolvers. It also represents a cost benefit in that there are no panel fees charged for private panels. Private panels can be structured to include expedited arbitration or limitations *per diem* rates charged.

In addition, each party has input into who will added or removed from such a panel as well as the number of names to be used and the rules for making an appointment.

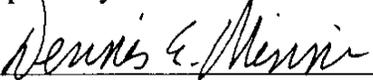
I recommend the Employer’s position herein and that the parties establish a private arbitration panel.

12. Letters Of Agreement

Finally, with regard to the three (3) Letters Of Agreement between the parties relating to *Inclement Weather, Probationary*

Employees' Hours Of Work and Staffing Levels, I recommend that they not be continued in the parties' CBA.

Respectfully submitted November 3, 2009 at Strongsville, OH



Dennis E. Minni, Fact-Finder