

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

Miami Township Career Firefighters, IAFF Local 2951

AND

Miami Township (Montgomery County) Trustees

Case Number: 09-MED-09-0843

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Peter J. Rakay
Rakay and Spicer
11 West Monument Building, Suite 307
Dayton, Ohio 45402

AND

Joseph Scholler
Frost Brown Todd, LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

AND

Russell Keith, General Counsel
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215

2010 APR 23 P 4: 37

STATE EMPLOYMENT
RELATIONS BOARD

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on March 3, 2010 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

Hearing was held on April 7, 2010 at Miami Township. Prior to the hearing, the parties engaged in contract negotiations on October 28, 2009, November 11, December 8 and January 6, 2010. The parties engaged in mediation with a federal mediator on February 24, 2010. There was little substantive agreement on pending proposals during the period of negotiations. The parties agreed to retroactivity of all appropriate items to December 1, 2009.

At the beginning of the hearing, the Fact Finder proposed mediation of outstanding proposals prior to moving to the evidentiary hearing. The parties were unable to mutually agree to mediation but preferred to move forward with the hearing.

The parties submitted their pre-hearing submissions in a timely manner. Outstanding issues included the following:

Article 4, Union Membership, Dues Check Off, and Fair Share.

Article 7, Job Content, Subcontracting, Layoff and Merger.

Article 9, Labor Management Committee.

Article 11, Grievances.

Article 13, Hours of Work.

Article 16, Wages.

Article 17, Insurance.

Article 19, Holidays.

Article 20, Vacation.

Article 25, Injury Leave.

Article 26, Sick Leave.

Article 35, Longevity Pay.

Appendix A (A), Pension Pick up.

During the course of the hearing, the parties withdrew proposals on Articles 27, 34 and 37. The withdrawal of these proposals by the parties is herein made a part of this Report and Recommendation.

The Fact Finder will transmit written findings of fact and recommendations on the morning of April 22, 2010. The report will be transmitted by overnight mail on this date, and it will also be sent to the parties by way of electronic format on the same date.

At hearing the Union was represented by Attorney Peter J. Rakay, and Miami Township was represented by Attorney Joseph Scholler. Both advocates represented their clients in a professional and thorough manner.

BACKGROUND

Miami Township is located in Montgomery County, Ohio. The City of Miamisburg is located within the boundaries of Miami Township. The unincorporated portion of the township contains approximately 21 square miles. It is located approximately 11 miles from downtown Dayton. The Township includes 27,000 residents and a daytime population, based on employment in the area, of approximately 60,000. The primary source of income is property taxes, and a fire levy supports the operation of the Fire Department. The most recent fire levy was passed by voters in 2008.

IAFF Local 2951 is the representative of employees in the bargaining unit which is described as follows: "All full time employees holding the position of Firefighter/EMT; Firefighter/EMT Advanced; Firefighter/EMT – P; Fire Inspector; Fire Lieutenant and Fire Captain." Local 2951 has been the exclusive representative of the bargaining unit since approximately 1984.

In analyzing the positions of the parties and making findings, the Fact Finder will be guided by the principles that are outlined in ORC 4117.14 (G) (7) (a) to (f).

At hearing the parties agreed to present each unresolved proposal in chronological order based upon the number of the contract article. Therefore the format of this report will follow the same progression. The position of each party will be reviewed with a brief discussion, and the recommendation of this Fact Finder will then follow. Nevertheless this Report and Recommendation must be considered as a whole, each recommendation being a piece of an overall picture.

ARTICLE 4, UNION MEMBERSHIP, DUES CHECK OFF, AND FAIR SHARE FEE

The Union proposes to modify this section of the Agreement to allow for the collection of “ fees and assessments” by way of payroll deduction. This would be in addition to the payroll deduction of regular union dues which is already contained in this Article.

Position of the Union:

The Union states that there is little or no financial cost to the Township, and such language is permitted by ORC 4117.09 (B) (2). There may be times that the Union needs to collect periodic assessments from its members. The Liberty Township collective bargaining agreement with its Firefighters Union allows for the collection of fees and assessments. The Union argues that adoption of this language creates no hardship on the part of the Township.

Position of the Township:

The Township does not wish to be the accountant for the Union. In the past the Union has not diligently cashed checks representing the aggregate of dues sent to it by the Township. This is problematic for the Township. Furthermore the Township has limited resources and cannot take on this task. At hearing, the Township stated that it has a limited number of slots for employee deductions, and the system is not able to accommodate an additional one at this time.

Recommendation:

The Township stated that it is unable to accommodate another deduction space at this time. There was no evidence to indicate that this was an inaccurate statement. Additionally, the current language relating to Union dues deductions has been in the Agreement for many years, and there does not seem to be compelling reason to make a change at this time. **Article 4 will not be modified during the term of the new Agreement. Status quo will be maintained.**

ARTICLE 7, JOB CONTENT, SUBCONTRACTING, LAYOFF AND MERGER

The Township proposes to remove part time employees from the provisions relating to layoff of employees. Currently this provision of the Agreement requires that part time employees must be laid off before full time employees.

Position of the Township:

Due to the poor economy and recession, a layoff is a possibility. By forcing the Township to layoff part time employees before full time employees, the ability to reduce costs is limited. A full time employee costs three times more than a part time employee, and, within a layoff scenario, a healthy mix of full and part time employees is important to the Township. The incentive for the Union to reach an agreement in negotiations is reduced when it knows that members of the bargaining unit, who are all full time employees, will not be affected by a layoff when all part time employees must first be laid off. The financial future of the Township is in doubt, and foreclosure rates in the community have escalated. The Township has seen a 1% reduction in collections from the fire levy this year. The Township requires this flexibility in order to provide the best and most efficient service to the public. Finally, if the Fact Finder recommends a pay increase, it will be more critical that the Township have more flexibility with future layoffs of employees.

Position of the Union:

The Union rejects the proposal by the Township. Part time employees cannot be placed on the same level as full time employees. The parties negotiated the layoff progression several contracts ago, and there is no reason to eliminate the progression now. The Union states that the current personnel policy of the Township (Union Exb. 1) contains a layoff progression which requires part time employees be laid off before full time employees. This policy affects all Township employees. The fire levy is in good condition, and area businesses are doing well especially in the Dayton Mall facility. No responsible Union would be able to agree to a proposal of this nature.

Recommendation:

The layoff of part time before full time employees is a traditional approach to this process. The Township makes good points regarding flexibility, but a layoff scenario is difficult for all parties, both management and Union. The history of bargaining between the parties shows that the current language and progression were bargained in good faith. Full time employees in the bargaining unit dedicate their lives to their career while part time staff are not required to make the same commitment. Is it in the best interest of the public, (G) (7) (c), to retain part time employees of a fire department while laying off full time staff? The Union makes strong arguments to retain current contract language. **Article 7 will not be modified during the term of the new Agreement. Status quo will be maintained.**

ARTICLE 9, LABOR-MANAGEMENT COMMITTEE

Section 5 of this Article is titled "Substance Testing." It is a short statement that allows for mandatory random testing for all fire department employees. The Union has submitted a proposal to replace this general language with a detailed procedure which includes employee and supervisory training, consent and release information, medical prescriptions and many other detailed provisions. In addition the Union proposes an end to random drug and alcohol testing which is a significant change in the current practice. The proposal essentially institutes "reasonable suspicion" testing. This proposal is nine pages in length and is very comprehensive. The Union suggests that the procedure utilized by Liberty Township for its Fire Department be viewed as the model for Miami Township.

Position of the Union:

The Union states that there is no formal procedure at this time, and the Township Police Department has a detailed process. This will be helpful to both labor and management. The proposal of the Union is a standard firefighter position which promotes training. Reasonable suspicion drug testing is a better standard especially in light of the fact that random drug testing takes employees away from the job which then becomes a safety factor for the public. The Liberty Township policy is a model which should be followed by Miami Township (Union Exb. 3).

Position of the Township:

The Union, by seeking to eliminate random drug testing, infringes on the Township's right to establish and manage a drug testing policy. In addition, the Union's proposal limits what drugs the Township may test for. It also places restrictions on the discipline the Township may employ for staff who test positive. The Township asserts that the current drug testing policy has worked very well in that no employees have tested positive in the past. The public deserves this level of safety as do other Township employees. The Township is in compliance with BWC, and training is provided to employees. The Fire Chief stated that the Township ensures fire protection to the community when employees are selected for random drug testing. The Township rejects the Union's proposal.

Recommendation:

The Township argues that the current system is effective. There have been no positive results among employees, and this is significant. The Union's proposal is comprehensive and is a model for Fire Departments. It also has had success in jurisdictions in which it is utilized. The current contract language is very brief and not descriptive. It is important that employees

understand the process and the consequences of drug use and abuse especially based on the work of the Fire Department. A comprehensive drug policy is something which is developed in an atmosphere of open discussion and common interests. Based on the limited bargaining which has taken place during these negotiations, it would not be fair to either party for the Fact Finder to recommend a change as comprehensive as that proposed by the Union. It is interesting that the drug policy is contained in the contract article entitled "Labor-Management Committee." It appears that, in the past, the parties intended to develop a drug policy for the Department by utilizing the Labor Management Committee. **Article 9 will not be modified as a part of the Fact Finding process. The parties are urged to take this topic up as a part of the Labor Management Committee process as soon as possible during the term of the new Agreement.**

ARTICLE 11, GRIEVANCES

The Township has made a number of proposals regarding this provision of the Agreement. The original proposals regarding binding arbitration were withdrawn by the Township prior to the Fact Finding hearing. In Section 3, the Township proposes to add language which states that an employee who has been indicted on felony charges may be immediately placed on leave without pay.

The Township proposes to eliminate the appeal to the Township Board of Trustees of any disciplinary suspension greater than 48 hours. Section 3 allows for an appeal of this nature. The Township proposes that appeals of discipline follow the progression of the Grievance Procedure which ends in binding arbitration.

The Township proposes to remove the fourteen business day limit to investigate an incident after it comes to its attention. Although the Township may take an additional fourteen business days to investigate after the initial fourteen days, it cannot go beyond 28 business days without the mutual agreement of the Union. This provision is contained in Section 3.

The Township proposes that suspensions greater than three shifts should not be removed from an employee's personnel file and therefore will always be considered as a part of progressive discipline.

Position of the Township:

The Township argues that it is costly for it to place an employee on paid leave while a felony indictment is pending. The Township was required to pay a police officer, who had been

indicted, for a lengthy period of time. An employee under indictment cannot be allowed to work under these circumstances.

The Township states that the Board of Trustees should not be involved in the discipline and appeal process. It is uncommon for the legislative body to be involved in an appeal process based on the grievance and arbitration procedure that is contained in the Agreement.

The fourteen day limitation for investigations is unmanageable. Faced with fewer resources, those who investigate potential discipline cases require more time to conduct fair investigations. The extended investigation period will benefit employees based on fair and thorough investigations. This proposal will not result in a hardship for the Union

Finally, the Township's proposal that suspensions greater than three shifts will not be removed from the personnel file and will always be considered as progressive discipline is not an unreasonable request. Suspensions of this severity are only issued in response to serious infractions. The Township must be able to present an employee's disciplinary record of serious misconduct to an arbitrator and not be forced to retain underperforming employees.

Position of the Union:

The Union argues that all provisions of the Grievance Procedure should remain status quo. Changes proposed by the Township are against public policy and are needless. The Grievance Procedure has worked. Indicted does not mean guilty. Keeping the Board of Trustees as a part of the appeal process saves the parties time and expense as compared to litigating through the arbitration process. The time limitations regarding disciplinary investigations are reasonable and do not impede fair process. The Union rejects the proposal to allow suspension greater than three shifts as unfair. History of bargaining shows that current contract language has been in effect for many years.

Recommendation:

In respect to the Township's proposal to place an indicted employee on unpaid leave, the Fact Finder understands that this may be a costly expense. Nevertheless the practice of the parties has been to place employees, who may be indicted, on paid administrative leave. Although the Township made reference to a case involving a police officer, this has not been an issue with this bargaining unit. Additionally, the Township is not required to wait for the court to decide a felony case prior to proceeding through the disciplinary process. The standard of proof in a disciplinary arbitration is not the same as in a court of law. **Section 3 will not be modified to include the Township's proposal regarding indicted employees.**

The current Agreement allows for an appeal of any discipline greater than a 48 hour suspension to the Board of Trustees. The Township makes a strong argument that this matter does not belong at the level of the legislative body, and that most collective bargaining agreements do not involve the legislative body in the disciplinary appeal process. Generally the intent of the Ohio Collective Bargaining Law is to take the legislative body out of the collective bargaining process. Its involvement generally ends at the approval of the economic portions of a collective bargaining agreement and/or acceptance or rejection of a fact finder's report and recommendation. **Section 3 will be modified to delete the sentence, "Any suspensions greater than 48 hours shall be appealable to the Board of Trustees."** Section 2 of the Article currently provides for the appeal of a discipline to Step 3 of the Grievance Procedure, and this should be the exclusive manner in which discipline cases are appealed by the Union.

The Township's argument that it requires sufficient time to properly investigate a potential discipline has merit. Nevertheless the current Agreement provides for a 14 business day period with an automatic extension of another 14 business day period of time. This 28 business day period is slightly less than six calendar weeks. On its face, this appears to be a reasonable amount of time to conduct a disciplinary investigation from the date of the Township's awareness of the event. During hearing, the Township did not cite a specific incident to justify its proposal. **Section 3 will not be modified to expand the time allowed for disciplinary investigations.**

The current Agreement has contained language for many years that states that written reprimands and suspensions will cease to have effect two years from the date of issuance and will not be considered in determining progressive discipline. Yet the Township is concerned that a serious violation should be brought to the attention of an arbitrator. Arbitrators generally give less weight to disciplinary actions that are two, three or more years old. What they are more interested in is the behavior and performance of the employee since the previous disciplinary case. The Fact Finder rejects the proposal by the Township but recommends the following modified language for Section 6.

Records of Corrective Counseling and Oral Reprimands shall cease to have force and effect one (1) year from the date of issuance and shall not be considered in determining progressive discipline provided there are no intervening disciplinary actions during the one (1) year period. Written Reprimands and suspensions shall cease to have force and effect two (2) years from the date of issuance and shall not be considered in determining progressive discipline provided there are no intervening disciplinary actions during the two (2) year period.

ARTICLE 13, HOURS OF WORK

The parties have a number of proposals concerning this Article of the Agreement. Each proposal is as follows:

The Township proposes to add language in the first paragraph that states that the pay period is pursuant to the Fair Labor Standards Act.

The Township proposes language that allows it to change the work period after providing notice and an opportunity for a meeting with the Union.

The Township proposes to exclude vacation and sick leave from "paid personal leave" that qualifies as regular hours worked.

The Union proposes a return to the 28 day work schedule for pay purposes and the addition of one Earned Day Off (EDO).

Position of the Township:

The Township believes that its proposal to add language that indicates it is in compliance with the FLSA is noncontroversial and should be accepted. It has also proposed the right to change the work period and to provide the Union with notice and an opportunity to meet. The rationale is to allow the Township the ability to operate the Fire Department in the most efficient manner. It is important to reduce unnecessary overtime expenses.

The Township's proposal, that removes vacation and sick leave from regular hours worked or active pay status, would save in overtime expenses. The Township agreed to the inclusions when finances were not an issue as they are today, and the Union should appreciate this. Sick leave and vacation are not required to be included as time worked for overtime purposes by the Fair Labor Standards Act.

The Township basically opposes the Union proposal to move to a 28 day work schedule with the addition of one EDO. The Township suggests that, if the Fact Finder decides to recommend the Union's proposal, he then should incorporate the management proposals on Article 13. Additionally the Township would oppose an increase of one EDO but suggest that the current number of EDOs be reduced from 7 to 6.5. The Township states that 6.5 EDOs correspond to the number required by the FLSA under a 28 day work period.

Position of the Union:

The Union rejects the proposal to include reference to the Fair Labor Standards Act as unnecessary. The Union also expresses its opposition to allow the Township to change the

work period even in light of the ability of the parties to meet regarding the intentions of the employer.

The Union states that vacation and sick leave were added to the Agreement as time worked in 2000 and 2003 respectively. It is "regressive" to now delete these from the definition of time worked.

The Union proposals to return to the 28 day work period and the adding of one additional EDO are beneficial to both parties. It is easier to manage and track a 28 day work period. The parties agreed to move to the 19 day cycle as a trial two labor agreements ago, but the 28 day work period makes more sense and is more efficient. In order to move to the 28 day cycle, it is necessary to move to 8 EDOs in order to absorb four hours of overtime. The Union states that the Fire Departments in the following jurisdictions utilize a 28 day work cycle, Kettering, Miamisburg, Washington Township and Moraine. In addition Liberty Township utilizes the 28 day period (Union Exb. 4). It is a burden for management and employees to track a 19 day work period. The proposal creates no financial burden on the Township.

Recommendation:

The parties have numerous proposals which have the potential to create substantive changes to Article 13. The proposal to move to a 28 day work and pay cycle appears to have some merit, and the Township appears to see some of the merit. Nevertheless the Township indicates that, in order to consider the proposal, it must have the other changes it proposes for Article 13. The Township also states that it cannot agree to an increase of one EDO.

What is apparent is that the parties have spent little time bargaining over these comprehensive changes. The Fact Finder sees merit in some of the proposed modifications, but cannot recommend such wholesale changes in light of the fact that the parties have not spent the time necessary to reach consensus. **Article 13 will not be modified for the term of the new Agreement. Status quo will be maintained.**

ARTICLE 16, WAGES

Both parties submitted wage proposals to the Fact Finder. The Union has proposed an across the board wage increase of 4% effective and retroactive to December 1, 2009 which is the anniversary date of the Agreement. The Union then proposes an additional 4% wage increase effective December 1, 2010 and 4% effective December 1, 2011.

The Township has proposed a wage freeze for the new three year collective bargaining agreement.

Position of the Union:

The Union argues that many public employers are stating that they are broke including Miami Township, but in realty funds are available for wage increases. The Union referenced a financial projection that was provided by the Township during the previous negotiations in 2007 (Union Exb. 6). This document illustrates the increase in Fire Department revenue for 2009. Based on the Township's own projections, the Fire Department is in sound financial condition in 2010 and beyond (Union Exb. 7). The fund balance for 2010 is \$5,402,558, and the balance increases in 2011. Contrary to assertions made by the Township, the fund balance can support the wage proposals of the Union. The Township argues that it must build new fire stations, but the Union has heard all of this in the past, and to date construction has not started. Even with the construction of one new fire station, the Union's wage proposal is reasonable and affordable. Union Exb. 8 illustrates that the Miami Township wage rates at the top level of the pay scale compare low to surrounding community fire department employees. The comparison is made to Kettering, Miamisburg, Washington Township and Clearcreek Township. Union Exb. 9 illustrates this further. The top pay for Miami Township Fire Department employees compares in the bottom third among area Fire Departments. Union Exb. 10 is a wage increase report obtained from the State Employment Relations Board Clearinghouse. It illustrates that Clearcreek Township Fire Department employees received a 3% increase in 2009, 3% in 2010 and 3% in 2011. Wage increases for the same years in Kettering are 3%, 3% and 3.5%. Wage increases at the City of Miamisburg are 3%, 3% and 3%. Likewise Washington Township employees receive 3%, 3% and 3%. During the previous collective bargaining agreement, employees received increases totaling 13%. The Union's opening proposal for the new Agreement is only 12% over three years.

The Township attempts to compare itself to Moraine, Trotwood and West Carrollton. These are not fair comparables as these communities have lost manufacturing jobs, are poor working class areas and have lost a portion of their income tax base. Even if the Township builds one new fire station, revenues are available to fund the Union's proposal. The Union asks, what are more important, paying fire department employees fairly and filling critical job vacancies or building new facilities? The Township has been talking about new facilities for years but there is never follow through. Withholding funds for a reasonable wage increase based on the remote possibility of constructing new facilities is unfair to the employees. The relationship between the Township and Union has been negative. Is this the reason that the

Township has proposed a three year wage freeze? The Union urges the Fact Finder to recommend its complete wage proposal for the three year contract.

Position of the Township:

The proposed wage freeze is reasonable in light of the economy. The Township presents numerous exhibits which illustrate how the recession impacts the country, state and region. The Dayton area is particularly hit hard with job loss and shrinkage of the tax base. Negotiated wage increases during the past twelve years have exceeded the CPI for the Cincinnati-Hamilton region significantly (Twsp Exb. 36). Had the Township provided lower wage increases over the past years, there may have been funds available for an increase now. The entry level firefighter salary is \$47,926, and the top salary is \$57,725. These are above average among comparable jurisdictions. In light of declining revenues, the wage proposal is fair and fiscally responsible. The Township is willing to maintain the current pay scale with no reductions.

The Township's fire stations are small and completely outdated. They must be replaced. It is the practice of the Township to save a significant portion of the cost in order to avoid major debt. Nevertheless, the Township only holds an A1 bond rating from Moody's. Currently the Township has \$4.5 million saved to begin the construction project. The Union's argument that some of those funds should be used for its wage proposal is without merit. Two weeks ago the Township Trustees authorized the expenditure of \$3.2 million for design and architecture planning for the first new station.

The current trend of low inflation does not support the Union's wage proposal. Regional inflation was minus .5% in 2009, but the Union received a pay increase of 3.5% during this same period. As a matter of fact, Union wages have nearly doubled the rate of inflation over the past 12 years.

Revenue from the fire levy is down 1% in the first two months of 2010. The Township anticipates a projected loss of revenue for 2010 of 9%. The Fire Department may be operating in the red by 2014. Additionally health care costs are projected to increase by 12%.

Internal comparables are critical in this case. Unionized employees are significantly better off than nonunionized staff. Nevertheless, nonunionized employees will receive no wage increase in 2010, and longevity payments have been ended along with other benefits and perks. The Township is in negotiations with the Union representing the Police Department. The Township's proposal is also a three year wage freeze along with furlough days.

In response to Union comparables which illustrate higher pay rates than Miami Township, the Township states that West Carrollton has implemented a wage freeze; Trotwood has also instituted a wage freeze; Moraine has laid off 187 employees; and Miamisburg is asking its voters to approve a ½% income tax increase on the May ballot. The Montgomery County Sheriff's Department has instituted a wage freeze.

Township Exb. 37 (1-4) illustrates that, when pension pick up is included, Miami Township wages are in the top half of regional comparables. Based on the current economic climate, the projected revenue stream, past wage increases and the need to replace one fire station immediately and three in the near future, the Township argues that its proposal for a three year wage freeze is reasonable and fair.

Recommendation:

Both parties make strong arguments for their respective positions. It appears that the parties spent little time negotiating and discussing their proposals with each other which is unfortunate during a difficult and complex economic climate. There are a number of critical points to be considered in developing a recommendation. First, there is no question that the recession has had a significant impact on the regional economy, and the State of Ohio is hit worse than many states. The Dayton region has experienced major job loss. Tax revenues are dramatically down in many jurisdictions, and Miami Township cannot help but to be impacted. Miami Township is realizing decreased revenues, but the loss is not as severe as other jurisdictions as its operations are supported by property tax as opposed to income tax. The revenue from the Fire Levy has seen a small decrease in the first two months of the year, but it appears to be fairly healthy over the next three years.

Over the term of the last collective bargaining agreement, 2007 to 2009, the CPI increased 6.2%. At the same time, fire department wages increased by 13%, more than double the increase in the CPI. This factor must be considered in determining wage increases for the new Agreement.

There is no question that the Township does not have adequate and modern facilities to house its fire operations, but the construction has been in the talking stage for many years. Although the Township has finally allocated funding for design and architecture planning for one facility, it is uncertain if three new fire stations will be built in the foreseeable future. The Union raises a legitimate argument that wages should not be held captive over this long term and uncertain planning.

Comparables place Miami Township firefighters slightly above the average in the region when the pension pick up is included in overall salary, and many jurisdictions have negotiated pay increases during this period.

The following recommendation is based then on the following: The Township is experiencing revenue shortfalls in a difficult economic climate, but there is no projection of a deficit in the fire department levy funding during the term of a new three year Agreement. It is the fire levy which will fund any increase in wages. Each 1% increase in wages has a cost factor of approximately \$30,000.00. Fire Department wage increases more than doubled the increase in the CPI during the term of the previous collective bargaining agreement. It is important for the Township to move forward with the construction of the first new fire station, but not at the complete expense of employee wages and benefits. While nonunionized employees have been subjected to a wage freeze and loss of longevity benefits, the Township funds a greater portion of their health care benefit, and the Township has the ability to resume paying longevity at any time. Additionally, the outcome of the Police Department negotiations has not been determined at this time. Based on the presentations of the parties and ORC 4117.14 (G) (7) (a,b,c, d,e, f), the following recommendation is made:

Effective 12/1/2009:	0%
Effective 12/1/2010:	2%
Effective 12/1/2011	2%

ARTICLE 17, INSURANCE

The Union proposes a reduction from 20% to 10% of the employee share of the monthly premium for health care insurance. The Union also proposes an opt out plan which would pay employees, who do not apply for the Township health care benefits, \$1000.00 per year.

Position of the Union:

The 20% monthly employee share of the health insurance premium is higher than area comparables. Only unionized employees of Miami Township pay 20%. Nonunionized employees pay 10%. This is an inequity that must be rectified.

The opt out plan would benefit employees and the Township. The Township would save considerable funds in paying employees an annual fee for non participation in the health care plan.

Position of the Township:

The Township rejects the Union’s proposals. The Township cannot afford to subsidize a greater portion of employee health care especially in a time of increased costs and an uncertain economic climate. The higher share of premium cost compared to nonunionized employees is justified in light of the higher rate of compensation and benefit package enjoyed by unionized staff. Based on the current economic climate and the reduced revenue forecast, the Township does not possess the ability to pay for this proposal.

The Township views the opt out proposal as nothing more than a windfall for the eight employees who presently do not participate in the Township health care plan. Most employees who do not participate are covered by an outside plan usually obtained from the employment of a spouse. The opt out proposal would reward employees for something they would have done in any event.

Recommendation:

History of bargaining shows that the 20 - 10 disparity between bargaining unit employees and nonunionized staff has existed since 1996. One wonders what other benefits may have been negotiated by the bargaining unit to make up the difference for this practice to have existed for this length of time. Additionally, with reduced revenues and an uncertain economic climate, this is not a good time to bargain higher payments for the employee share of premium payments. Likewise, while the opt out plan looks like a win – win on paper, more than 25% of the bargaining unit currently do not participate in the Township health care plan. The Township’s argument that this would become a windfall for those already outside the plan has merit. **Article 17 will not be modified during the term of the new Agreement. Status quo will be maintained.**

ARTICLE 19, HOLIDAYS

The Township proposed to eliminate holiday pay for employees who are not scheduled to work on a given holiday. In addition the Township proposes to modify the compensation received by those employees who are scheduled to work. Currently employees who are scheduled to work receive straight time pay for the twelve hour shift and time and one-half for all hours actually worked. This amounts to pay equal to 2 1/2x for all hours actually worked on the twelve hour shift. The Township’s proposal would reduce payment for hours worked to time and one-half only, and the straight time pay would be eliminated.

Position of the Township:

Off duty holiday pay costs the Township over \$32,000.00 annually. This is equivalent to a 1% pay increase, and it is a cost factor that is not in line with good fiscal management in a difficult economic climate. Off duty holiday pay costs the Township more than on duty holiday pay. Paying off duty holiday pay reduces the incentive for employees to serve the Township by working on a holiday. The Township proposal to reduce the amount of holiday pay for those employees who do work allows for better management of holiday pay costs. The Township proposals align with external comparables.

Position of the Union:

The Union negotiated the holiday pay provision in the previous contract. To now eliminate what was recently negotiated is regressive and an unfair take-away. The Union rejects both proposals of the Township.

Recommendation:

The manner in which Miami Township currently pays for holidays is not an unusual arrangement in the public sector. Straight time pay for the holiday, worked or not, and time and one-half for time worked, although not universal, are fairly common. The City of Miamisburg pays straight time whether an employee is scheduled to work or not. It then pays an additional straight time for actual hours worked on a holiday except that it pays time and one-half for all hours worked for seven specified holidays. The practice at Clearcreek Township closely mirrors that of Miami Township, and Moraine and Washington Township maintain pay practices which are similar to Miami Township. **Article 19 will not be modified during the term of the new Agreement. Status quo will be maintained.**

ARTICLE 20, VACATION

The Union proposes to double the vacation carry over rate to a two year rollover.

Position of the Union:

This proposal would benefit employees and, at the same time, would not be a cost factor for the Township. Based on the fact that only two employees are able to take time off at any given time, there would be no additional cost to the employer. Miamisburg fire department employees enjoy this benefit as do employees at the City of Moraine.

Position of Township:

This proposal will increase staffing costs. A firefighter would have the ability to take time away from work for two months based on this proposal in addition to personal days and earned days off. There is the potential for additional overtime costs to maintain staffing levels especially in the event of a call off due to sickness. The Chief states that some employees lose vacation now with the one year roll over because they do not have time to take it. A two year roll over does not make sense at this time. The Township granted additional roll over during the previous negotiations.

Recommendation:

There are basically three factors that come into play with this recommendation. First, it appears that firefighters, in some cases, cannot use all of their vacation roll over now. Second, the roll over amount was recently increased in the last negotiations. Third, there is the potential for increased staffing costs, and this is not a wise course of action during a time of shrinking revenues. **Article 20 will not be modified during the term of the new Agreement. Status quo will be maintained.**

ARTICLE 25, INJURY LEAVE

This provision of the Agreement was modified during the previous negotiations. The change involved the placing of an injured employee on a specific shift. Following the completion of negotiations, two employees were placed on injury leave in the manner in which the Union believed conformed to the new contract language. Then a third employee was injured, and the Township utilized a different approach. The Union grieved the matter, and the Township stated that it believed it followed the recent contractual agreement.

The Union states, in its pre-hearing statement, that the grievance is now pending arbitration. The Township did not include this matter in its pre-hearing statement. The parties asked the Fact Finder to include a recommendation regarding the grievance in the Report and Recommendation. At hearing both parties made brief statements and comments regarding their respective positions on this matter.

Recommendation:

The Fact Finder will not make a recommendation regarding this matter. Although the parties may have discussed the matter during negotiations, it is clear that this Article of the Agreement is not a part of the current negotiations. The Fact Finder was not presented with a

copy of the grievance, and no witnesses testified to the facts surrounding the dispute. Additionally, the Township did not present this issue in its pre-hearing statement, and the Union presented only a brief summary of the matter. The Fact Finder simply does not possess sufficient information to make a recommendation. The parties must accept or reject the Fact Finder's Report and Recommendation as a whole, and this issue should not control what the parties may otherwise do with it. The matter should continue to progress through the grievance and arbitration procedure.

ARTICLE 26, SICK LEAVE

The Township makes two proposals to modify Article 26. It proposes that "employees shall schedule appointments with doctors, dentists, etc. on their non-duty time."

The second proposal is a modification of sick leave conversion upon retirement. The current policy allows for 100% conversion for the first 1000 hours and a ratio of 3 to 1 beyond the first 1000 hours of accumulation without a ceiling. The Township does not propose to modify the payout for employees killed in the line of duty.

Position of the Township:

Firefighters work a schedule that allows for two days off following a 24 hour shift. As a result, firefighters have sufficient time to schedule medical appointments during off-duty hours. Routine doctor and dentist appointments are not appropriate reasons to use sick leave. When an employee schedules appointments during on-duty time, the Township is hit with additional costs to schedule a substitute employee.

The Township's proposal on sick leave conversion is supported by internal and external comparables. Nonunionized employees, hired after 1992, receive a payout of sick leave at a ratio of 1 to 4 up to a maximum of 2000 hours which results in a total potential payout of 500 hours. Unionized police officers, who were hired prior to March 1, 1998, receive a maximum payout of 500 hours, and those hired after this date receive a maximum of 443.3 hours. External comparables also support the Township's proposal. Twsp. Exb. 37 -10 clearly shows that most jurisdictions provide a much smaller benefit compared to the current policy at Miami Township, and most jurisdictions impose a cap.

Position of the Union:

The Union argues that these proposals are punitive in nature. The most recent sick leave conversion formula was just negotiated in 2003. There is very little documented history

regarding how many employees use sick leave for medical appointments during on-duty time. There is no justification for either proposal.

Recommendation:

Both parties maintain reasonable arguments regarding the medical appointment proposal. What was not presented was perhaps the more important factor. How many medical appointments have occurred during on-duty time over the past year or during the term of the previous collective bargaining agreement? Without knowing the number of occurrences and cost to the Township or whether the provision has been abused by employees, the Fact Finder is unable to determine the true need for the proposal of the Township. **Article 26 will not be modified regarding medical appointments. Status quo will be maintained.**

The Township and Union make strong arguments to support their positions regarding the sick leave conversion benefit. The Township provided numerous external comparables to support its argument the Miami Township Firefighters receive a greater benefit than most other jurisdiction in the region. Its case is strengthened with internal Miami Township comparables. What is confusing is that the Union negotiated the current benefit in 2003, and this is a number of years after the Township reduced the same benefits for nonunionized employees and the Police Department. There probably was good reason to negotiate a greater benefit for Fire Department employees, but the parties did not present the rationale. It would also have been important for one or both parties to illustrate the number of potential retirements that are anticipated during the term of the new Agreement and what the cost would be to the Township based on total accumulated sick leave hours of each retiree. It is very possible that no Fire Department employee in the bargaining unit will retire during the term of the new Agreement. Without this information, it is difficult for the Fact Finder to analyze this benefit as part of the total economic package. **Article 26 will not be modified regarding sick leave conversion. Status quo will be maintained.**

ARTICLE 35, LONGEVITY PAY

The Township proposes to eliminate Longevity Pay for the Fire Department bargaining unit effective January 1, 2010.

Position of the Township:

This proposal is based on the economic climate and budget forecast. Bargaining unit wages have outpaced the increase in the CPI over the last twelve years. The current budget

forecast does not support this additional compensation. The Budget Commission of Montgomery County is forecasting an overall decline of Township revenue of over \$6 million. As already mentioned, the Township must have sufficient revenue to build three new fire stations. Longevity pay has been eliminated for nonunionized employees of the Township effective January 1, 2010, and, in the ongoing negotiations with the Union representing the Miami Township Police Department, the employer has proposed the elimination of longevity pay.

The Township also argues that regional comparables support its proposal. Of thirteen regional jurisdictions listed in Twsp. Exb. 37-7, eight do not provide a longevity pay benefit. Five jurisdictions provide longevity benefits which are comparable to Miami Township. The City of Miamisburg does not provide longevity pay to its Firefighters.

Position of the Union:

The Union argues that this proposal is being used as a “whipsaw” and as leverage for other economic issues on the bargaining table. It claims that this proposal is a “bad faith tactic.” It is easy for the Township to eliminate longevity pay for nonunionized employees because they do not have the right to collective bargaining. Longevity Pay has been a negotiated benefit for the past sixteen years. The Union rejects the proposal by the Township.

Recommendation:

Generally Miami Township wages are in the middle range of the comparables. Based on this analysis, there is justification to not eliminate the longevity pay plan that is contained in the Agreement. The Township also makes a strong case based upon regional comparables. Eight of thirteen jurisdictions have no longevity pay benefit. The Department that is geographically closest to Miami Township is the City of Miamisburg. The collective bargaining agreement at Miamisburg does not contain a longevity pay benefit. The relevant internal comparable is the Police Department. Although the Township has proposed the elimination of longevity for this bargaining unit, it is not possible to guess at the outcome. There is less justification to eliminate longevity for current employees, but, in the future, the parties may wish to base compensation exclusively on the negotiated wage rates. **Effective upon the signing of the new Agreement, longevity pay will be eliminated for all new employees in the bargaining unit hired after the date of execution. Current employees will continue to receive longevity pay benefits as contained in Article 35.**

APPENDIX A, PENSION PICK UP

The Union proposes that the pension pick up provided by the Township be moved to the base rate of employees and then deducted back out in order to increase, on paper, the base wage. This would allow a higher pension for employees who may retire in the future. Currently the employer pays the employee share of the pension deduction which is currently 10%. The Union proposes further that the Township would pay any increase in the employee share of pension deductions that may occur during the term of the new Agreement.

Position of the Union:

Except for the potential of the escalator proposal, there is no additional cost to the Township. This benefit would enhance retirement benefits for employees, and the Township would not spend additional funds. The escalator protects employees in the event the pension board increases employee contributions.

Position of the Township:

In the event the Township agreed to the Union's proposal, it would be subject to all of the roll up costs involved. In order for the Township to "break even," it would be necessary to only increase base wages by 7.886%. Anything more will immediately increase costs for the Township. The Township rejects the Union proposal to add an escalator provision to the Appendix. This would further increase costs that the Township cannot afford in an uncertain economic climate. The legality of rolling the 10% employee contribution back into the base wage and then deducting it back out was questioned by the Township and noted as a concern.

Recommendation:

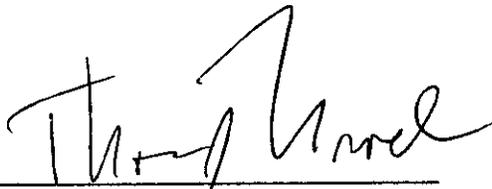
The Township questioned the legality of the Union's proposal, specifically that portion that would have the Township deduct the 10% contribution back out to then be sent to the pension plan. No one at hearing was able to provide guidance to this concern. In addition the Township appropriately expressed the concern of an escalator provision which would provide economic uncertainty during the term of the new Agreement. As pension funds struggle to recover from the recession, increased contributions by employers and employees are a possibility. This negotiated benefit, which directs the employer to pay for the employee share of the pension contribution, is beneficial to employees and is not universally shared by regional jurisdictions. This is a case of leaving well enough alone. **Appendix A will not be modified regarding pension pick up for the term of the new Agreement. Status quo will be maintained.**

SUMMARY

The wage recommendation is for a period of three years. Therefore the new collective bargaining agreement should be for a three year period commencing on December 1, 2009. After review of all facts presented to the Fact Finder and having given consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14 (G) (7) (a) to (f), this Fact Finder recommends the provisions as contained in this report.

In addition, the parties withdrew proposals on Articles 27, 34 and 37. Those withdrawals are incorporated in this Fact Finding Report and Recommendation. It appears that the parties did not achieve tentative agreement on contract proposals during the negotiations. In the event that a tentative agreement was overlooked by the parties, those are also incorporated by reference as a part of this Fact Finding Report and Recommendation. The grievance regarding Injury Pay is not a part of the Report and Recommendation.

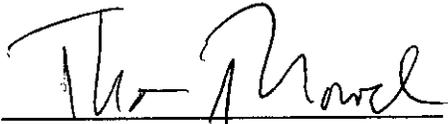
Respectfully submitted and issued at Maineville, Ohio this 22nd day of April, 2010.

A handwritten signature in black ink, appearing to read "Thomas J. Nowel", written over a horizontal line.

Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finder's Report and Recommendation was served by Overnight UPS Delivery upon Peter J. Rakay, Rakay and Spicer, 11 West Monument Building, Suite 307, Dayton, Ohio 45402; and Joseph Scholler, Frost Brown Todd, LLC, 9277 Centre Pointe Drive, Suite 300, West Chester, Ohio, 45069; and, by regular mail, Russell Keith, General Counsel, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215 on this 22nd Day of April, 2010.

A handwritten signature in black ink, appearing to read "Thomas J. Nowel", written over a horizontal line.

Thomas J. Nowel
Fact Finder

THOMAS J. NOWEL
ARBITRATOR AND MEDIATOR
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April 22, 2010

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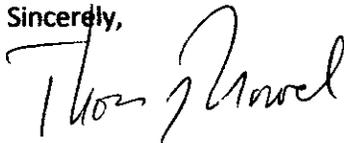
STATE EMPLOYMENT
RELATIONS BOARD
2010 APR 23 P 4: 31

RE: 09-MED-09-0843
Miami Township and Miami Township Career Firefighters, Local 2951
Fact Finding

Dear Attorney Rakay and Attorney Scholler:

Enclosed is the Fact Finder's Report and Recommendation in the case as captioned above. In addition I have enclosed my billing for this case. It was a pleasure to work with excellent and professional advocates as yourselves. It is my hope that the negotiations may be concluded in a spirit of cooperation and partnership. Thank you for allowing me to be of service to the parties.

Sincerely,



Thomas J. Nowel
Fact Finder

c: Russell Keith