

STATE EMPLOYMENT
RELATIONS BOARD

2010 JUN -3 P 4: 39

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

June 1, 2010

CONCORD TOWNSHIP FIREFIGHTERS
IAFF LOCAL 3329

CASE # 09-MED-09-1079

and

FACT FINDING REPORT

CONCORD TOWNSHIP

APPEARANCES

For the Union

Daniel Leffler, Attorney
Tim Vlach, President, Local 3329
Tyrone Bilal, Vice President, Local 3329
Mike Biddell, Negotiating Committee Member
Luigi Ianiro, Negotiating Committee Member

For the City

John Wiles, Attorney
Mike Warner, Chief
Ron Terriaco, Deputy Chief
Jack Nettis, Township Administrator

ROBERT M. LUSTIG
Fact Finder
615 Leader Building
526 Superior Avenue, E.
Cleveland, Ohio 44114-1964

Introduction

This fact finding involves the full-time firefighters (“Firefighters”) of the Concord Township Fire Department represented by the International Association of Firefighters (“IAFF”) and Concord Township (the “Township”). The Agreement between IAFF and the Township expired December 31, 2009.

The undersigned was duly appointed Fact Finder. The fact finding hearing was set, by agreement of the parties, for May 10, 2010. Mediation resolved some issues. The remaining issues were heard. The hearing commenced at 9:30 AM and was closed at 3:30 PM.

Both sides presented such evidence as they desired. All documents were received without objection from the other party. This includes the position statements, Union Exhibits A through Q and City Exhibits 1 through 17. The Fact Finder thanks both parties for their professionalism, courtesy and well organized presentations.

In reaching the recommendations made in this report, the Fact Finder considered the criteria set forth in Ohio Administrative Code Rule 4117-9-05 which are:

- 1) Past collectively bargained agreements, if any.
- 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 private employment.

Facts

The parties entered in an agreement covering the period 1/1/07 through 12/31/09 which has expired. Wages have been paid to date in 2010 based on the wages and hours under the expired agreement.

As to economic issues, the Township does not assert an inability to pay as a basis for any of the economic issues but does assert that its positions are based on sound, conservative financial management of the Township's finances and the fact that the Fire Department is separately funded by two levies.

It was agreed that we are dealing with a new three year contract for the calendar years 2010, 2011, and 2012.

The Township has 15 full-time firefighters, five of whom are Lieutenants and ten are firefighters. The Fire Department also has 40 part-time firefighters who are not covered by the agreement. The Township has a population of approximately 20,000, and contains about 23 square miles. There are two fire stations manned 24/7. Minimum staffing is eight fire fighters per shift of which two must be bargaining unit members.

With that background, we turn to the issues that were presented at the fact finding hearing, bearing in mind that the burden of proof is on the party advocating a change.

Union Proposals
Issue No. 1

Union Position:

Rate of Pay - Article 16
Hours - Article 17
Salaries - Article 19

- a) Rate of Pay: To be based on 2,620.8 hours per year
- b) Hours: a 50.4 work week
- c) Salaries: 3% increase for each year over base wages for 2009

Wages, hours and salaries are intertwined and must be dealt with together as a change in one affects the others.

Currently, firefighters are scheduled to work 56 hour weeks (2,912 hours annually). The rate of pay is based on a 53 hour work week which is 2,756 hours annually. The additional three hours per week is paid at overtime rates. A reduction to a 50.4 hour work week would bring the department in line with hours worked in the other jurisdictions in Lake County.

To bring the member's base wages at a level comparable to the surrounding Lake County communities, all but one of which are municipalities, the previous base pay (based on 2,756 hours annually) would be retained. A three percent (3%) annual increase is justified by comparable pay and increases already negotiated by other adjacent departments.

The Township is well able to afford the increase in wages. While revenue from real estate taxes for the fire department levies is relatively flat, the Township's own projections show a carry over, for the fire department, at 2010 in excess of \$1,000,000. Further, revenue from charges for EMS services, which is not included in the fire department budget, have grown from \$200,000 in 2007 to a projected \$350,000 in 2010.

Township Position:

- a) Rate of Pay: Opposes rate of pay based on annual totals. Pay is based on hours.
- b) Hours: 53 hour work week commencing July 1, 2010 with 6.5 Kelly days annually (3.25 Kelly days for 2010)
- c) Salaries: Increase hourly rate 8.47% effective July 1, 2010 with 2% raises for each of 2011 and 2012.

Firefighters are currently scheduled to work a 56 hour work week. They are paid overtime for hours in excess of 53 per week as is required by law. The Township pays the overtime rather than granting Kelly days as is permitted by law.

Despite being labeled “Salaries”, firefighters are paid, under the current agreement, on an hourly basis.

The Township would agree to a 53 hour work week with 6.5 Kelly days annually and adjust the hourly rate to maintain present levels of pay. Reducing the hours per week to 50.4 and filling the hours to be worked with part timers would cause the Township to incur approximately \$115,000 additional wage expenses to fill out the required minimum manning and will likely increase overtime expenses to cover holidays, vacations and sick leave.

The Township argues that the Union’s claim that the Township should be compared to surrounding Lake County departments is inappropriate as the employer is a Township, not a municipality and lacks a municipality’s access to other sources of revenue. It proposes to compare the department to other townships in Summit, Trumbull and Erie counties.

The relatively large fund balance is due to the fact that the Township receives no revenue from real estate taxes from the county until April so must retain sufficient cash on hand to cover the first three months of operating expenses each year.

Findings

Concord is an affluent community with a population larger than many cities. It is in Lake County where there are 12 fire departments, two of which, Concord and Painesville Township are the only townships. Using other, out of county townships, without evidence that these other townships are comparable in area and resources to Concord is inappropriate. The surrounding Lake County municipalities and the one other township are the appropriate entities against which to measure wages and hours.

Of the other 11 departments, three have 53 hour work weeks, one has 52, one has 51.7, four have 49.8 and one has 48 hours. A 53 hour work week is certainly not out of line.

Concord pays wages but no other pay. Every other department in Lake County provides some kind of additional pay such as longevity (7 departments), a uniform allowance (8 departments), extra pay for qualification as a paramedic (7 departments) or some other item (4 departments).

Two departments, Mentor and Willoughby, have pay scales that are considerably above the other Lake County departments. However, even after removing them from the total pay (and correcting the total pay for all departments on Union Exhibit B), Concord is plainly at the bottom of the pack.

Thanks to the two fire levies and the revenue now being collected by charging for emergency runs, the Township has the means to bring its department more in line with pay and hours in surrounding communities and still provide for capital expenses out of the fire department budget.

The scheduled work week should be adjusted from 56 hours per week to 53 hours, with

3.25 Kelly days for the balance of 2010 and 6.5 Kelly days for each of 2011 and 2012.

To start to bring Concord more in line with surrounding communities, hourly wage rates to be increased 10% effective July 1, 2010 with 2.5% increases effective January 1 of each of 2011 and 2012.

Contract Language:

Article 16 - Rate of Pay

Change years to 2010, 2011 and 2012. Otherwise, no change

Article 17 - Hours

17.1 **Commencing July 1, 2010 the work schedule shall be reduced from 56 hours to 53 hours per week (weekly average) with 3.25 shifts off (Kelly days) in the remainder of 2010 and 6.5 shifts off in each of 2011 and 2012** on a three (3) platoon, twenty-four (24) hours shift commencing at 0700 hours and continuing through 0700 hours the following day. Nothing in this agreement, however, shall be construed as preventing the Employer from restructuring the normal scheduled work day or work week for the purposes of promoting or improving services nor shall anything in the Agreement be construed as a guarantee of overtime.

Article 19 - Salaries

Recalculate hourly rates to reflect:
10% increases effective July 1, 2010
2 ½% increases effective January 1, 2011
2 ½% increases effective January 1, 2012

Issue No. 2
Overtime - Article 20

Proposals regarding overtime were agreed to in part. As to the items which remain unresolved:

Union Position

- a) In Section 20.1, hours actually worked at straight time shall be 151.29 in each 21

calendar day cycle.

- b) In Section 20.2, "Hours actually worked" should include personal leave.
- c) In Section 20.2, if called in to work certain holidays (as opposed to those holidays being part of the firefighters regular schedule) the pay should be at double time.

The 151.29 hours at straight time reflects the Union's position that the work week should be 50.4 hours. "Hours actually worked" presently excludes personal leave and sick leave. The Union proposes to include personal leave along with vacation time, floating holidays and compensatory time in this definition and the Union seeks pay at double the hourly rate on seven designated holidays if a firefighter who was scheduled off, is called in to work on any of those holidays.

Township Position

Opposes all changes not agreed to in mediation and would maintain existing contract language.

Findings

The Union's proposal for overtime on all hours over 151.29 is based on a 50.4 hour work week. That proposal was denied in Issue 1.

Adding personal leave to the definition of "hours actually worked" was agreed so that "hours actually worked" includes vacation time , floating holiday time, compensatory time and personal leave.

Double time if called in or held over on the seven named holidays is common practice.

Contract Language

Section 20.1 - No change from existing languages.

Section 20.2 - Changes in the first paragraph and entire second paragraph were agreed to by the parties. New language in bold face:

Employees shall be compensated at the rate of one and one-half (1½) times their regular hourly rate or accrue compensatory time, **at the Employees option**, at the same rate for all authorized "hours actually worked" in excess of up to one hundred fifty-nine (159) hours in each twenty-one (21) calendar day cycle and for all hours actually worked as a result of "Personnel Recalls" or "Mandatory Call Ins." ("Hours actually worked shall include **all approved leaves except sick leave**).

Employees assigned work in excess of their normally assigned work schedule shall be paid at the rate of one and one-half (1½) times their regular hourly rate or accrue compensatory time, at the Employee's option. In the event an employee is called in to work after he has left work or on a day when he is not scheduled to work, the employee will be guaranteed a minimum of two (2) hours pay at one and one-half (1½) times their regular hourly rate or for all hours actually worked, whichever, is greater, providing such hours do not abut the employee's normally scheduled work day.

If called in to work on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day, the individual will be paid at double time, with a two (2) hour minimum. "Overtime hours" on these holidays shall be interpreted to include those hours an employee is on overtime commencing at 0700 hours on the holiday and continuing through 0700 hours the following day.

The remaining provisions of Article 20 are unchanged.

Issue 3

Sick Leave - Article 22

Many changes have been agreed to. Two proposals remain:

Union Position

- a) Increase sick leave buy out from present 35% of accrued hours up to 1,272 hours to 50% of accrued hours with the pay out calculated on a maximum of 600 hours.

- b) Provide a sick leave incentive plan that would award 20 hours compensatory time off for each six (6) months in which the employee does not use any sick leave.

The Union says the buy out proposal would bring the current contract in line with state law and with practice in other fire departments.

The incentive program is just that, an incentive.

Township Position

Opposes both proposals.

Increases in the sick leave buy out increases the ultimate cost of what is an unfunded liability. This cost would not be paid until a firefighter retired and this is a young department.

The incentive plan should be unnecessary. Firefighters are expected to work if they are not sick.

Findings

State law *allows* but does not require the higher buy out.

If someone is sick, you don't want that individual coming to work and spreading germs, especially when people are together for 24 hour shifts, but that's the incentive if one is trying to preserve their bonus for not using sick days.

Contract Language

For convenience, the same section numbers are maintained. New language is in boldface.

Article 22 - Sick Leave

- 22.1 Sick leave shall be defined as an absence with pay necessitated by the illness, **pregnancy, quarantine**, injury of the employee, exposure to a contagious disease communicable to other employees, **or death, illness or**

injury in the employee's immediate family. When the use of sick leave is due to an illness or injury in the employee's immediate family, "immediate family" shall be defined to include the employee's parents/step parents, grandparents, spouse, spouse's parents, children/stepchildren, siblings or spouse's siblings, or any other relative residing with the employee.

- 22.2 Maintain current language.
- 22.3 Maintain current language.
- 22.4 Maintain current language.
- 22.5 Sick leave may be used in segments of not less than four (4) hours, **except in the case of the Employee's doctor and dental appointments or hospital visits to members of the immediate family, where the employee may use sick leave in one (1) hour segments, providing the employee gives the Employer notice of such appointment at the beginning of his work shift.** Use of sick leave shall be deducted from an employee's sick leave accumulation on the basis that every hour paid shall be an hour deducted.
- 22.6 Before an absence may be charged against accumulated sick leave, the Fire Chief may require such proof of illness as may be satisfactory to him. In the event an employee is absent for more than two (2) tours of duty, **the Employee must supply a physician's report that the employee may return to duty "without restrictions"** to be eligible for paid sick leave, unless such report is waived by the Fire Chief.
- 22.7 **Eliminate.**
- 22.8 **If an employee is absent for more than two (2) tours of duty and** the employee fails to submit adequate proof of illness, injury or death upon request, or in the event that upon such proof as is submitted, or upon the report of medical examination, the Fire chief finds there is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may, at the Fire chief's sole discretion, be considered an unauthorized leave

and shall be without pay. The attending physician's statement shall be deemed adequate proof unless the Employer has a reason to suspect such report is erroneously supplied.

- 22.9 Current contract language.
- 22.10 The Fire Chief may require an employee who has been absent for **more than two (2) tours of duty** due to personal illness or injury, prior to and as condition of his return to work, to be examined by a physician designated by the Employer and paid by the Employer, to **determine whether the Employee is fit-for-duty** in the performance of his normal duties and that his return to duty will not jeopardize the health and safety of other employee.
- 22.11 Should there be a conflict between the employee's doctor and the doctor designated by the Employer over an opinion concerning the employee's ability to return to work, a third neutral doctor will be chosen by mutual agreement between the Employer and the Union, who shall examine the employee and decide the matter in question. **All relevant medical information, including doctor or hospital reports, that pertain to the condition shall be transmitted or a limited Medical Release and Authorization signed by the employee provided to the third neutral physician.** This jointly-appointed doctor shall be paid by the Employer and the Union, with his fee being shared equally by the parties.
- 22.12 Current contract language.
- 22.13 In addition to personal illness or injury to the Employee, absence due to pregnancy or pre-childbirth by the Employee or the **mother of the Employee's child** may be charged against the Employee's accrued, but unused sick leave account.
- 22.14 Upon the normal retirement, disability retirement, or death of an employee, such employee (or the Employee's estate in case of death) shall be entitled to receive a cash payment equal to twenty-five percent (25%) of his accrued, but

unused sick leave credit to a maximum accrual of twelve hundred and seventy two (1272) hours (twenty-five percent (25%) of twelve hundred and seventy two (1272) hours) **at the hourly rate of pay at the time of retirement or death.**

Should the Employee have twenty (20) or more years of continuous, full-time service with Concord Township, or should the Employee die while in the line of duty with Concord Township, said Employee (or the Employee's estate in the case of death) shall receive cash payment in the amount of thirty-five percent (35%) of his accrued, but unused, sick leave credit to a maximum of twelve hundred and seventy-two (1272) hours (thirty-five percent (35%) of twelve hundred and seventy-two (1272) hours) **at the hourly rate of pay at the time of retirement or death.**

22.15 Current contract language.

Issue 4
Bereavement Leave - Article 23

Union Proposal

- a) Increase bereavement leave from 24 to 48 hours.
- b) Expand the definition of family to include grandchildren.
- c) Provide the request for bereavement leave will not be unreasonable withheld.

The changes requested in (b) and (c) are agreed.

Township Position

Opposes (a).

Findings

The existing contract provides that, the Chief may grant additional time off for bereavement which may be charged to sick leave, vacation time or personal days or, if those are exhausted, may grant unpaid leave. The addition of the "not be unreasonably withheld" language

is adequate.

Contract Language

New language is in boldface.

Article 23 Bereavement Leave.

Bereavement leave may be granted up to twenty-four (24) hours, per instance, as a result of the death of a member of the employee's family defined as: spouse, mother, mother-in-law, father, father-in-law, step-parent, step-parent-in-law, grandparents, grandparents-in-law, **grandchildren, step grandchildren**, brother, brother-in-law, step brother-in-law, sister, sister-in-law, step sister-in-law, child, step-child, legal guardian or other person who stands in place of parent (loco parentis). If additional time is required, the individual may be granted, with the approval of the Fire Chief, either sick leave, vacation leave, personal leave, or time off without pay (should sick leave or vacation time be exhausted) or a combination thereof. **Approval of an employee's request for additional leave shall not be unreasonably withheld.** Bereavement leave may not be accumulated, nor shall it be paid out at the termination of employment.

Issue 5

Total Agreement - Article 41

Union Proposal

Modify the integration clause to require negotiations regarding changes in rules, regulations and practices.

Township Position

Opposes.

Findings

This article has remained unchanged from the past several contracts.

Contract Language

Existing contract language.

Issue 6
Longevity Pay - New Article

Union Proposal

Additional pay of \$100 for each year of service after the first five years of service.

Seven of the surrounding communities have such a provision.

Township Position

Opposes.

This is just another means of increasing pay.

Findings

This township does not provide additional pay for longevity, uniform allowance, qualification as a paramedic, etc. However, it is the intention of this Report to address all areas of compensation under the wage and hour issue.

Contract Language

No change.

Township Proposal
Issue 1
Health Care

Make health care benefits equal to those provided all other township employees.

The current provision requires current coverage and benefits be maintained. The township needs greater flexibility.

Union Position

Opposes.

Pay is already the lowest in the county. Health care levels should be maintained at current levels.

Findings

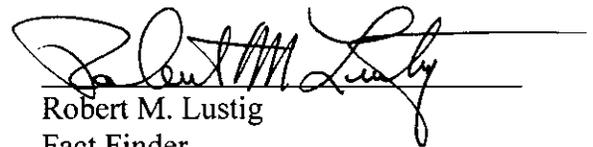
This is, potentially, a major change in benefits, the impact of which is unknown and uncertain. The requested change would make health care benefits dependent on what the Township negotiates with other, non-bargaining unit employees.

Contract Language

Retain existing Article 33.

Stipulation

The new agreement shall be for a term of three (3) years commencing January 1, 2010 through December 31, 2012.



Robert M. Lustig
Fact Finder
Cleveland, Ohio
June 1, 2010

CERTIFICATE OF SERVICE

A copy of the foregoing document was sent, by agreement of the parties, by email and by regular U.S. Mail, postage prepaid, June 1, 2010 to:

John W. Wiles, Attorney for
Concord Township
37265 Euclid Avenue
Willoughby, Ohio 44094

Daniel J. Leffler, Attorney for
International Association of Fire Fighters
1075 Amy Trail
Tallmadge, Ohio 44278

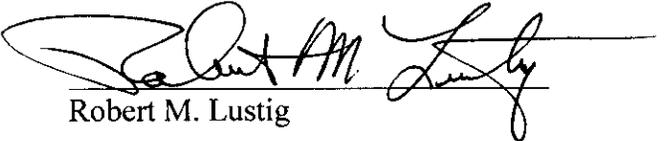
Via Email: jwiles@wilesrichards.com

Via Email: danielleffler@sbcglobal.net

and by U.S. mail only to:

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65 East State Street, 12th Floor
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Attn: J. Russell Keith
General Counsel and
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June 1, 2010

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Concord Township
37265 Euclid Avenue
Willoughby, Ohio 44094

Daniel J. Leffler, Attorney for
International Association of Fire Fighters
1075 Amy Trail
Tallmadge, Ohio 44278

Via Email: jwiles@wilesrichards.com

Via Email: danielleffler@sbcglobal.net

Re: Concord Township Firefighters and Concord Township
Case No. 09-MED-09-1079

Dear Messrs. Wiles and Leffler:

Enclosed is my Fact Finding Report in the above matter and my bill.

Thank you for your courtesy and professionalism.

I sincerely hope you can resolve any remaining differences.

Very truly yours,



Robert M. Lustig

RML:hem
Enclosures

cc: SERB

✓ Attn: J. Russell Keith