

STATE EMPLOYMENT  
RELATIONS BOARD

IN THE MATTER OF

2010 FEB 26 P 1: 30

Hamilton Township Ohio Trustees

Employer,

and

SERB Case Nos. 09-MED-10-1190

09-MED-10-1191

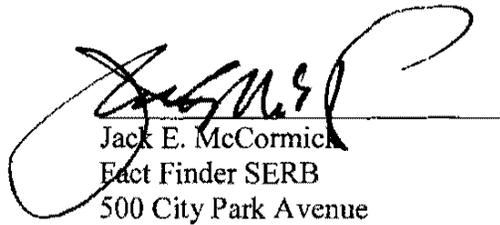
The Fraternal Order of Police, Ohio Labor Council

Union.

Hearing Date: February 18, 2010

Report Date: February 25, 2010

FACT FINDER'S REPORT



Jack E. McCormick

Fact Finder SERB

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Columbus, Ohio 43215

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Pursuant to the Rules and Regulations of the State Employment Relations Board a fact-finding hearing was convened at 9:45 a.m., February 18, 2010, at the Hamilton Township Trustees' Office.

Present at the fact-finding were the following:

For the Union

Mark Scranton  
Quellan Short  
Tim Rector  
Terry Viel  
Richard Smith  
Jeff Braley

For the Employer

Gary Boeres  
Frank Richardson  
Melissa Brock  
Warren J. Ritchie

The Employer Hamilton Township, hereinafter referred to as the "Township" failed to serve the Fact Finder with a prehearing statement pursuant to SERB rules. Accordingly, only those issues which were contained within the Fraternal Order of Police (FOP) prehearing statement of February 18, 2010 were considered.

The Township is located in Warren County, Ohio and the bargaining unit consists of sixteen employees including full-time police officers, sergeants, and lieutenants. The latest collective bargaining agreement (CBA) expired on December 31, 2009.

The parties met to negotiate on October 5, 14, and 27; November 16; and December 1 and 8, of 2009. Certain articles were not reopened, but remain in place. Those are Articles 1 through 9; 14 through 24; 27, 29, and 30.

The following articles were open and have resulted in tentative agreements which are hereby adopted by this report and if fully set forth herein: Articles 10 through 13, Articles 15, 18, 25, 26, and 31.

This leaves remaining for a fact-finding Article 28, Wages.

The FOP submitted three proposals to be considered by the Fact Finder on this Article. In the Supervisors' contract, section 28.4, the FOP is proposing the Off Duty Detail rate be increased from \$33.00 an hour to \$35.00 an hour. The Township has already agreed for this rate for the Patrol Unit. The FOP asserts that the Township is in agreement with this issue. The second proposal, which the FOP also believes the Township is in agreement with, deals with longevity. For the purposes of counting time for years of service the FOP is proposing that only full-time years with the Hamilton Township Police Department should be considered. Unfortunately for the Fact Finder, neither party addressed these issues in their oral presentations directly. The only presentation made relating to these issues was the written presentations of the FOP. Inasmuch as the Township failed to rebut the FOP's assertion that it was in agreement on these issues, the Fact Finder makes the following finding:

**Section 28.4 of the supervisor's contract shall reflect that the Off-Duty Detail rate be increased to \$35.00 an hour. For the purpose of counting time for years of service only full-time years with the Township Police Department are to be considered. Payments of sums due under this Article will be made by way of a separate check consistent with the Township's current practice.**

The third and final issue to be addressed deals with wage rates for both groups. As it relates to the contract year of 2012 both parties are agreed, and stipulate, that the wages for that year of this CBA shall be the subject of a re-opener.

As to this issue the parties' positions at fact-finding were that the Township is proposing one percent (1.0%) wage increases for both groups in 2010 and 2011. The FOP is proposed four percent (4.0%) wage increases in 2010 and 2011, as well as increased differential percentage increases for sergeants and lieutenants. The Township asserts that it has the inability to pay any wage increases beyond that which is offering at the fact-finding.

Both the law in Ohio as well as Administrative Rule 4117-9-05(K)(3) mandate that a fact finder must consider an employer's "ability to pay" in making any recommendations.

Accordingly, prior to determining whether is any merit for these employees to receive any increase in wages, the Fact Finder must first determine if this employer, in fact, has an ability to pay the FOP's proposal, or any other proposal beyond that being offered by the Township.

The Township's Police are funded by a permanent three mill levy (a one mill levy having expired in 2010). The Trustees chose not to renew the levy, nor make any provision for making up the lost funds, perhaps because the fund already had a \$773,937.84 carry-over into 2010.

In order for this neutral, or any other to make a factual finding as to this issue it is necessary to do a thorough budget analysis. The parties presented numerous documents directly related to this issue. Unfortunately, after exhaustive study by this Fact Finder the documents presented by the Township are confusing and sometimes contradictory, making them less than enlightening. To further exacerbate this situation, for some inexplicable reason, the Township scheduled this fact-finding on the day that the only person whom they say can provide answers and explanations of these documents was unavailable. It is extremely frustrating to a neutral when one, or both parties, raise complex budgetary issues and then do not make available to the neutral the necessary personnel to allow a thorough examination of those documents.

For the edification of any conciliator who may succeed this neutral, the Fact Finder thoroughly examined all the documents presented by both the parties in making his findings herein. The Fact Finder must set forth illustrations of the deficiencies in the Township's presentation he found in this examination.

Taken at its face value, Attachment A hereto titled "Hamilton Township Police District Revenue" (which was submitted by the Township) indicates that they anticipate a decline in

revenue from 2009 to 2010 of 2.76 million dollars to 2.29 million dollars. This represents an anticipated 47 million dollar reduction which, could be easily foreseen, at least three years ago. .

The next confusing document is Attachment B hereto which was apparently prepared on July 15, 2009. Item 9 is the Police District Fund. It should be noted that at that time the Township estimated that its carryover for 2010 would be \$512,861.44. On February 3, 2010 in Attachment C herein, which is from the Certificate Of The Total Amount From All Sources Available For Expenditures and Balances the carryover balance is \$773,937.84. Returning to Attachment B under the sub-category of Receipts, the Township has estimated that in 2010 its total tax receipts would be \$3,050, 319.87, an increase of \$1.1 million over 2009. The representative for the Township stated that this three million dollar figure was “not correct” because it did not take into consideration the expiration of the one mill levy. This raises the question as to why the Township clerk in July 15, 2009 would place a revenue figure for property taxes in this document that did not take into account the known expiration of the levy in 2010?

On February 22, 2010 in a post hearing email the Township now estimates that it will use \$604,029 of the 2009 carry over in 2010, but still anticipate a carry over of \$169,908.65 into 2011.

Another other curious item in Attachment B is that the Township is indicating that it is going to receive \$78,750.00 income from “bonds.” Nowhere on Attachment C can the Fact Finder find any provision for this income.

Now we come to another curious document enclosed hereto as Attachment D which is page 8 of the Township Annual Appropriation Resolution dated February 10, 2010. Looking at the Police District Fund it is noted that the salaries are going to be exactly \$1,400,000. Even more bizarre is that while this employer pays 17.1% of payroll for pension pick-up, they only budget \$48,602 for that item. In the Fire District Fund there is an appropriation for 2010 of \$150,000.00 for pension pick-up on salaries of \$170,000.00. In the Road and Bridge Fund there is an appropriation of \$0.00 for salaries yet they provide \$80,000.00 for pension pick-up and \$75,000.00 for Workers' Compensation. Workers' Compensation for the Police is \$10,000.00, for Fire it is \$80,000.00.

Now we come to Attachment E hereto entitled Amended Official Certificate of Estimated Resources. On this document dated February 3, 2010 under the column "Police Taxes" the amount is \$1,370,000. Unfortunately neither this document, nor any of the other financial documents, are footnoted, however, it is assumed that the \$1,370,000 figure now takes into account the expiration of the one mill levy. However, that in itself is problematic. Returning to Attachment, B it is noted that the 2009 tax revenue for the Police with the 4.4 mill levy was \$1,952,686.00. Assuming that the one mill levy reduces the total levy millage by 25%, all things remaining equal, the actual tax receipts should be \$1,464,514.00 (75% of the 2009 tax receipts.) This is approximately \$94,500.00 more than what is in the Amended Certificate (Attachment E.) It is possible that the Township's clerk could provide explanation and clarification on all of the items herein above, but unfortunately by the Township's own actions they did not make her, or anyone else available.

Assuming that the Township is correct that it will have a carryover (listed as "New Buildings and Additions" in Attachment D) of \$773,937.84 then the reduction in revenue

realized by the expiration by the one mill levy is much less than this carryover certified as late as February 10, 2010. Suffice to say the budgetary documents submitted by the Township are lacking.

Left to his own resources, the Fact finder will attempt to do his own calculations. Assuming the Township's figure for Police Personal Services in 2010 of \$1,400,000.00 is correct, then each one percent increase, using 30% percent for "roll-ups" would cost the Township \$18,200 in 2010 and an additional \$18,437 in 2011, for a total of no more than \$36,637 (the Chief of Police estimated that the roll-ups may be as low as 26%, but here again no one was available to provide the exact figure and it is not contained in any of the Township's documents).

The Chief also opined that "any wage increase beyond what the Township offered would result in lay-offs". Now we will closely examine that assertion.

In examining a claim of "inability to pay" a neutral may explore all legally available funds of an employer. The Township concedes that this includes "general revenue funds", but insists it, as a matter of policy does not wish to fund units that have a dedicated funding source , such as is the case with the Township police department. This fact finder respects the Township's position, but does not believe it is a categorical imperative.

In the Amended Certificate of Estimated Resources dated February 3, 2010, the Township indicates that it has an unencumbered balance as of January 1, 2010 of \$535,428.03 in the General Revenue Fund.

However, the Appropriations passed by the Township trustees on February 10, 2010 demand close scrutiny.

An examination of 2010 appropriations for all categories reveals some startling items.

For example:

In all the different departments there is contained a line item named "Other Expenses" without footnotes. The grand total of these line items is an astounding \$1,197,771.20. However, it does not stop there. There is also a separate Fund called Miscellaneous (99) for which there is contained another \$880,912.90, listing several sub-items such as "repairs, supplies", and of course, "others" again, all of which are also contained in the individual fund categories already.

The total for all categories for "Insurance" is \$565,000.00. Is this health and dental insurance, and if so why \$15,000.00 for Police, \$150,000.00 for Road and Bridges ? \$200,000.00 for the Fire Fund? For the sake of brevity this Fact Finder will not list the numerous other anomalies and outright errors contained in the Township's documents.

Clearly, this legislative body was satisfied with these appropriation documents. However, this fact finder is not. He cannot agree that modest wage increase for this bargaining unit can not be funded from either, the Police Fund and/or the General Fund. A mere ten percent reduction in the appropriation for the nebulous "Other Expenses" would result in making almost \$120,000.00 available for wage increases. The assertion that any wage increase beyond the one percent offered by the Township simply has no basis in fact.

A neutral must examine whether or not those wage increases sought by the employees are merited. The FOP presented comparables for both police officers, sergeants, and lieutenants. In its presentation the Township chose not to dispute either the validity, nor relevance of those comparables, nor did they present any comparables of their own. Therefore, the FOP's shall be used by the Fact Finder.

Examining the six surrounding police departments finds that Hamilton Township is well below the top paid department (Miami Township at \$51,084.00) and only slightly above the lowest (Sugar Creek at \$39,582.00). As to sergeants they are well below Miami again and only slightly above Butler. In summary, this township is in the low to low-mid range of the comparables. Of course, other things like fringe benefits and vacation accruals, etc., might skew the comparisons, but since the Township presented no evidence regarding this it will be assumed they do not quarrel with using these comparisons.

As it relates to the FOP's proposal to adjust the differential presently existing between the pay of patrolmen, sergeants and lieutenants this Fact Finder appreciates the FOP's position, but is reluctant to address this at this time. The precise costs in the years going forward are difficult to calculate since there will be a wage re-opener in 2012.

Accordingly, the Fact Finder makes the following finding:

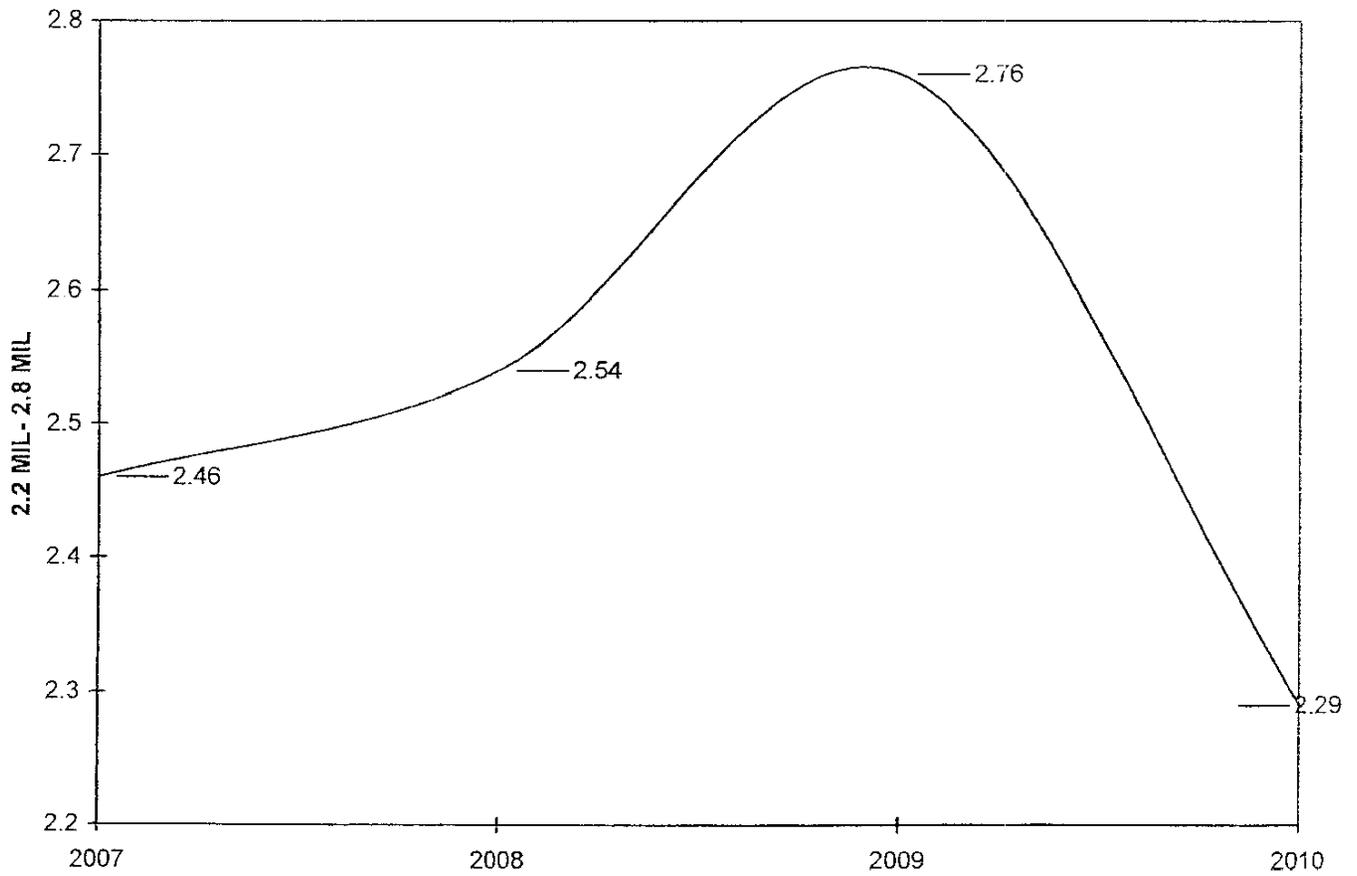
**Effective January, 2010 all members of the bargaining unit of the Hamilton County Township Police Department shall receive a three percent (3%) wage increase from their base pay then existing; effective January 1, 2011 all members of the bargaining unit of the Hamilton County Township Police Department shall receive an additional wage increase of three percent (3%) of their base salary then existing at that time. The total two year costs to this employer will be no more than \$93,925.00**

The Fact Finder herein certifies that the Employer herein has the ability to pay the economic findings contained herein.

  
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Jack E. McCormick  
Fact Finder, SERB

"A"

### Hamilton Township Police District Revenue



3 & 4  
Long term  
Revenue 2007-2009



ME-SCC	Cash Balance as of December 31, 2009	Encumbrances as of December 31, 2009	Advances not Repaid	Carryover Balance Available for Appropriation	Total Amount from all Sources Available for Expenditures	Total Amount Available plus Balances
	535,428.03	—	—	535,428.03	1,495,798.47	2,031,226
	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXX
Tax	35,175.47	—	—	35,175.47	55,858.92	91,034.3
	171,335.28	—	—	171,335.28	250,000.00	421,335.
	609,610.45	—	—	609,610.45	784,265.38	1,393,875
	4,377.97	—	—	4,377.97	48,700.00	53,077.9
	773,937.84	Police	—	773,937.84	1,515,602.01	2,289,53
INING	981.00	—	—	981.00	—	981.0
	2,259,764.14	—	—	2,259,764.14	2,798,581.55	5,058,3
	83,689.04	—	—	83,689.04	217,222.75	300,911.;
S FUND	382,083.04	—	—	382,083.04	13,946.17	396,029
FUND	1,377,708.11	—	—	1,377,708.11	1,207,400.00	2,585,10
FUND	THIS IS FUNDED BY GENERAL FUND YEAR	—	—	FUNDED BY GENERAL FND	188,263.54	188,26
VD	100,490.00	—	—	100,490.00	—	100,490
	THIS IS FUNDED BY GENERAL FUND	—	—	FUNDED BY GENERAL FND	63,426.78	63,426
OT FUND	18,168.45	—	—	18,168.45	30,000.00	48,168.
NSE TAX	58,223.07	—	—	58,223.07	205,600.00	263,823
FUND	460,001.00	—	—	460,001.00	319,725.00	779,726
ICATION	577.95	—	—	577.95	—	577.9
UNDS	6,336,122.81	—	—	6,336,122.81	7,698,592.10	14,034,71

8-A-4	Land Purchases	_____	\$	<u>    </u>
8-A-5	Tools and Equipment	_____	\$	<u>    </u>
8-A-6	Supplies	_____	\$	<u>    </u>
8-A-7	Repairs	_____	\$	<u>    </u>
8-A-8	Contracts	_____	\$	<u>    </u>
8-A-9	Other Expenses	_____	\$	<u>    </u>
Total Garbage and Waste Disposal District Fund (Carry Frd. to Recap., P 18)			\$	<u>    </u>

**9 POLICE DISTRICT FUND 09**

That there be appropriated from the POLICE DISTRICT FUND:

9-A-1	Salaries	_____	\$	<u>1,400,000.00</u>
9-A-2	Employer's Retirement Contribution	_____	\$	<u>48,603.01</u>
9-A-3	Workers' Compensation	_____	\$	<u>10,000.00</u>
9-A-3a	Unemployment Compensation	_____	\$	<u>15,000.00</u>
9-A-4	Assessments and Contributions	_____	\$	<u>    </u>
9-A-5	Land Purchases	_____	\$	<u>    </u>
9-A-6	New Buildings and Additions	_____	\$	<u>773,937.84</u>
9-A-7	Tools and Equipment	_____	\$	<u>10,000.00</u>
9-A-8	Supplies	_____	\$	<u>10,000.00</u>
9-A-9	Repairs	_____	\$	<u>5,000.00</u>
9-A-10	Contracts	_____	\$	<u>    </u>
9-A-12	Insurance	_____	\$	<u>15,000.00</u>
9-A-13	Training	_____	\$	<u>    </u>
9-A-14	Other Expenses	_____	\$	<u>2,000.00</u>
Total Police District Fund (Carry Frd. to Recap., P 18)			\$	<u>2,289,539.85</u>
9W03	WebCHECKS	_____	\$	<u>981.00</u>

**10 FIRE DISTRICT FUND 10**

That there be appropriated from the FIRE DISTRICT FUND:

10-A-1	Salaries	_____	\$	<u>170,000.00</u>
10-A-2	Employer's Retirement Contribution	_____	\$	<u>150,000.00</u>
10-A-3	Workers' Compensation	_____	\$	<u>80,000.00</u>
10-A-3a	Unemployment Compensation	_____	\$	<u>25,000.00</u>
10-A-4	Assessments and Contributions	_____	\$	<u>    </u>

2,290,520.85

✓ E

Rev. Code, Sec. 5705.36  
List all funds separately

FUND	Unencumbered balance 1/1/10	Taxes	Other Sources	Total
General Fund	535428.03	650000.00	845798.47	2031226.50
Special Revenue Fund	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXXXXXXXXXX
Motor Vehicle	35175.47	0.00	55858.92	91034.39
Gas	171335.28	0.00	250000.00	421335.28
Road & Bridge	609610.45	740000.00	44265.38	1393875.83
Cemetery	4377.97	0.00	48700.00	53077.97
Police	773937.84	1370000.00	145602.01	2289539.85
Webcheck Fingerprinting	981.00	0.00	0.00	981.00
Fire District	2259764.14	2710000.00	88581.55	5058345.69
Zoning	83689.04	0.00	217222.75	300911.79
Misc-EMS	382083.04	0.00	13946.17	396029.21
Tax Increment Financing	1377708.11	0.00	1207400.00	2585108.11
Admin Bldg Bond	0.00	0.00	188263.54	188263.54
Expendable Trust	100490.00	0.00	0.00	100490.00
Bond	0.00	0.00	63426.78	63426.78
Drug & Law Enforcement	18168.45	0.00	30000.00	48168.45
Permissive Veh Lic Tax	58223.07	0.00	205600.00	263823.07
Amb & EMS Fund	460001.00	0.00	319725.00	779726.00
Enforcement & Ed	577.95	0.00	0.00	577.95
	0.00	0.00	0.00	0.00
				0.00
				0.00
Total Special Revenue	6336122.81	4820000.00	2878592.10	14034714.91

V F U

# AMENDED OFFICIAL CERTIFICATE OF ESTIMATED RESOURCES

Rev. Code, Sec. 5705.36

Office of the Budget Commission, Warren County, Ohio.

Lebanon, Ohio, February 3, 2010

To the TAXING AUTHORITY of Hamilton Township

*The following is the amended official certificate of estimated resources for the fiscal year beginning January 1st, 2010, as revised by the Budget Commission of said County, which shall govern the total appropriations made at any time during such fiscal year:*

FUND	Unencumbered Balance as of January 1, 2010	Taxes	Other Sources	Total
General Fund	535428.03	650000.00	845798.47	2031226.50
Special Revenue Funds	6336122.81	4820000.00	2878592.10	14034714.91
Debt Service Funds	0.00	0.00	0.00	0.00
Capital Projects Funds	0.00	0.00	0.00	0.00
Special Assessment	92209.33	0.00	361278.23	453487.56
Enterprise Funds	0.00	0.00	0.00	0.00
Internal Service Funds	1019947.93	0.00	469589.29	1489537.22
Fiduciary Funds	0.00	0.00	0.00	0.00
TOTAL	7983708.10	5470000.00	4555258.09	18008966.19

Budget Commission:

Nick Nelson, Secy  
dy

CERTIFICATE OF SERVICE

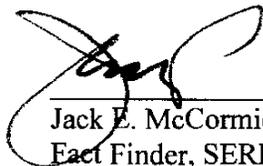
A copy of the foregoing was mailed by ordinary mail, postage prepaid, this ~~24~~<sup>25</sup>th day of  
February, 2010 to:

Melissa Brock  
Hamilton Township Trustees Office  
7780 South State Route 48  
P.O. Box 699  
Hamilton, Ohio 45039

Mark A. Scranton  
Staff Representative  
FOP/OLC  
5752 Cheviot Road, Suite D  
Cincinnati, Ohio 45247

and

J. Russell Keith  
Assistant Executive Director  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

  
\_\_\_\_\_  
Jack E. McCormick  
Fact Finder, SERB