

**STATE OF OHIO**  
**STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT  
RELATIONS BOARD  
2011 MAY 20 P 3:30

**In the Matter of  
Fact-Finding Between:**

**OLMSTED TOWNSHIP**

**-and-**

**OLMSTED TOWNSHIP PROFESSIONAL  
FIRE FIGHTERS UNION, LOCAL 2845**

**Case No. 09-MED-10-1283**

**Jonathan I. Klein,  
Fact-Finder**

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**FACT-FINDING REPORT  
and  
RECOMMENDATIONS**

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Appearances

For the Union:

Ryan J. Lemmerbrock, Esq.

For the Employer:

William F. Schmitz, Esq.

Date of Issuance: May 17, 2011

**I. PROCEDURAL BACKGROUND**

This matter came on for hearing on April 7, 2011, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on February 16, 2011. The hearing was conducted between Olmsted Township (“Township” or “Employer”), and the Olmsted Township Professional Fire Fighters Union, Local 2845 (“Union”), at the Town Hall of Olmsted Township located at 26900 Cook Road, Olmsted Township, Ohio 44138. The Union is the sole and exclusive bargaining representative of all full-time employees in the Township’s Fire Department occupying the positions of Captain, Lieutenant, Fire Fighter/Paramedic, and Fire Fighter/EMT. (Union Position Statement, Tab 1; Employer Position Statement, Tab A). At the time of the hearing, the bargaining unit was comprised of approximately 16 full-time employees. (Union Position Statement, Tab 14).

As of the fact-finding hearing, the following issues remained open and are properly before the fact-finder for resolution:

1. Hours - work week (Article 12, Section 12.2)
2. Hours - notice of shift change (Article 12, Section 12.5)
3. Salaries (Article 19/Appendix A)
4. Drug and Alcohol Testing Policy (Article 40)
5. Staffing (New Article)
6. Total Agreement (New Article)

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement not otherwise modified during negotiations and the

fact-finding process. (Union Position Statement, Tab 2). In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

## **II. FACT-FINDING CRITERIA**

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

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-

upon dispute settlement procedures in the public service or in private employment.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS**

#### **Introduction**

The Employer is a township located in southwestern Cuyahoga County. The record establishes that the Township has approximately 10,575 residents,<sup>1</sup> and the estimated median household income in 2008 was \$56,312.00. (Union Position Statement, Tab 4). The estimated median value in 2008 for houses and condominiums in the Township was \$178,653.00. (Union Position Statement, Tab 4). The Township is comprised of 10 square miles. (Union Position Statement, Tab 4).

The most recent collective bargaining agreement between the parties expired on December 31, 2009. Since that time, the parties have engaged in bargaining concerning the provisions of a new contract. Although numerous tentative agreements were reached during the negotiation process, the parties remain at impasse regarding the abovementioned issues.

At hearing, both the Employer and Union presented argument and documentary evidence concerning the financial condition of the Township and whether it is in a position to pay wage rate increases during the term of the new contract. Evidence was also introduced regarding various jurisdictions which each party considered to be comparable to Olmsted Township. Based upon the record presented in this case, the fact-finder determines that the following jurisdictions

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1. Source: 2000 U.S. Census.

shall be utilized as comparables: North Olmsted; Olmsted Falls; Bath Township; Coventry Township; and Brimfield Township. The arbitrator notes that these jurisdictions were referenced as comparables by each party. (Union Position Statement, Tabs 9 and 10; Employer Position Statement, Tabs J and K).

**Issue 1: Hours - work week (Article 12, Section 12.2)**

*Position of the Union*

Section 12.2 of the collective bargaining agreement currently provides as follows:

Employees shall work a fifty-one (51) hour average week, based on a 23 day cycle with a day off two out of every three cycles selected by the employee, subject to the approval of the Fire Chief, which shall not be unreasonably denied.

The Union proposes to reduce the average work week of the Township's firefighters from 51 hours per week to 48 hours per week, effective January 1, 2012, as well as a modification to the work cycle to reflect the change in work week hours. Specifically, the Union proposes that Section 12.2 of the collective bargaining should be modified to provide as follows:

Effective January 1, 2012, employees shall work a forty-eight (48) hour average week, based on a twenty-one (21) day cycle with a day off every cycle, as selected by the employee, subject to the approval of the Fire Chief or his designee, which shall not be unreasonable denied.

The Union acknowledges that effective January 1, 2008, the firefighters' work week was reduced from 53 hours to 51 hours. Nonetheless, the Township continued to lose firefighters to neighboring fire departments due to the high work hours and low compensation paid by the

Township. The Union points out that “[a]mong the OTFD’s Weshare/west-side comparables, the Township’s Firefighters are working the second-highest average work week with an annual salary over \$7,000 *less* than the lowest paid full-time Firefighter unit in the area.” (Union Position Statement, 3). Furthermore, the average hourly wage rate for firefighters employed in comparable Weshare/west-side fire departments is \$24.75 per hour compared to \$18.19 per hour afforded the Township’s firefighters. (Union Position Statement, Tab 9). The Union also notes that comparable township fire departments in Ohio pay their firefighters an average of \$22.72 per hour. (Union Position Statement, Tab 10).

According to the Union, the proposed decrease in the hours per week worked by the firefighters will not have a significant impact on the Fire Department’s operating expenses. “While the Firefighters will have additional time off, the Firefighters are limited to scheduling a maximum of two (2) Firefighters off per shift. Thus, any increase in time off associated with an hours reduction will be scheduled evenly throughout the year, avoiding overtime expenses attributed to additional scheduled time off.” (Union Position Statement, 4). The Union indicated during the contract negotiations that it was willing to agree to a lower wage rate increase in consideration of a decrease in the hours worked per week. However, the Employer rejected the Union’s suggested compromise. Therefore, the Union is seeking a reduction in hours worked per week in order to address the considerable disparity between the hourly wage rate afforded the Township’s firefighters and those firefighters employed by comparable fire departments.

At the hearing, the Union confirmed that it is seeking a reduction in the work week due to the Township's position that there should be no wage rate increases. The Union acknowledged that while sick leave may create overtime, its proposal would not necessarily create additional overtime. It reiterated that the issue pertaining to the work week is intertwined with wages. The Union's "first proposal is pay us more, if not, give time off." It asserts that the firefighters employed by the Township are paid approximately \$6.00 per hour less than their counterparts in full-time departments in the surrounding area. The Union maintains that the Township is unable to retain firefighters, and it has lost 14 firefighters to other departments in the past 10 years. (Union Position Statement, Tab 12). According to the Union, the turnover rate of firefighters in the Department is 82%. It also contends that the longevity bonus is not a benefit until approximately 23 to 25 years of service. Additionally, Senate Bill 5 will do away with longevity bonuses.

*Position of the Township*

The Employer urges the fact-finder to maintain the status quo regarding Section 12.2 of the collective bargaining agreement. According to the Employer, the reduction in the work week sought by the Union would provide as many as six additional Kelly Days for each of the approximately 20 firefighters in the Fire Department. The Employer asserts that those lost days will have to be filled by hiring additional employees, paying more overtime, or abandoning the self-imposed four-man minimum staffing level. Additionally, the overtime rate would be increased due to the fact that the annual wage will be divided by a smaller number resulting in a

higher hourly wage. The Township does not have the resources which would be required under the Union's proposal.

In further support of its position that the status quo should be maintained, the Employer points out that firefighters employed by North Olmsted and Olmsted Falls work 51.7 hour work weeks. (Employer Position Statement, Tab K). Moreover, the current 51 hour work week required of employees in the Township Fire Department is below the average work week of firefighters employed by comparable jurisdictions. There simply is no compelling reason to reduce the work week, and further, the Union's proposal is cost prohibitive.

At hearing the Employer reiterated its position that it is opposed to the Union's proposal to reduce the work week from 51 hours to 48 hours. The Employer also indicated that it pays lower wages than cities because it cannot impose an income tax on Township residents. It further asserted that wages are lower because the Township simply "cannot afford it." The Employer points out that a \$3,000,000 surplus has decreased to \$800,000, and it will probably be \$200,000 next year. According to the Employer, an additional 102 days per year must be filled under the Union's proposal because of the increased Kelly Days, and "102 days off equals more overtime." However, it also acknowledged that those days would "not be filled if nobody calls off." The Department would just be at minimum manning for a greater number of days. The Fire Chief stated that he needs as many firefighters on duty at any given time due to an increase in the run volume. The Employer maintains that it simply cannot afford to give the firefighters more time off.

Final Recommendation

It is the fact-finder's recommendation that the Union's proposed modification to Section 12.2 of the collective bargaining agreement should not be incorporated into the new contract. The Union has presented insufficient evidence that a further reduction in the work week is warranted under the facts and circumstances presented. The fact-finder notes that the work week was recently reduced from 53 to 51 hours per week in the current collective bargaining agreement.

A review of the hours worked per week by firefighters in comparable jurisdictions reveals the following:

Bath Township	53 hour average work week
North Olmsted	51.7 hour average work week
Olmsted Falls	51.1 hour average work week
Brimfield Township	48 hour average work week
Bath Township	48 hour average work week

Based upon the aforementioned data, the average work week for firefighters employed by comparable jurisdictions is 50.36 hours. Thus, a 51 hour work week as set forth in the current contract for the Township's firefighters is essentially equal to the average work week for firefighters employed by comparable jurisdictions. The evidence presented regarding this issue also indicates that a reduction in the work week from 51 hours to 48 hours would increase the number of days that the Fire Department would be staffed at the self-imposed minimum requirement. As such, there may be an increase in overtime and associated costs under those situations in the event that an employee calls off or utilizes sick leave. The fact-finder recognizes

that the Union seeks to reduce the number of hours which comprise a work week in order to address the disparity in the wage rate between the Township's firefighters and their counterparts employed by comparable jurisdictions. That matter will be discussed further in Issue 3, below.

**Issue 2: Hours - notice of shift change (Article 12, Section 12.5)**

*Position of the Union*

The Union proposes to extend the requisite period of notice for a shift change as set forth in Section 12.5 of the contract from 14 days to 30 days, except in emergency situations. The Union points out that the personal lives of bargaining unit members revolve around their schedule of 24 hours on duty followed by 48 hours off duty. "When a Firefighters' shift is changed, his or her personal life is reshuffled, interrupting the routine schedules and events in place under the previous work schedule." (Union Position Statement, 4-5). According to the Union, 14 days is simply not enough time to make adjustments in child care arrangements, trips, and family events. Although the Union does not know if 30 days is really enough time for a firefighter to make adjustments necessitated by a shift change, it at least affords him or her more time to place their affairs in order. It maintains that a shift change occurs at least once every year. The Union also notes that it does not propose to eliminate the contract language which authorizes the Fire Chief to make shift changes.

Position of the Township

The Employer asserts that there is no need to change the notice period regarding shift changes from 14 days to 30 days, and therefore, the current contract language should be maintained. At hearing, the Fire Chief expressed his belief that a “one month [notice] is too long, and he feels that he needs 14 days.” According to the Fire Chief, bargaining unit employees “usually know well ahead of time” of any shift changes. He also indicated that “if a shift change is given he will work something out if days off are already scheduled.” Furthermore, he stated that shift changes may be necessary due to operational changes, and only one emergency situation has occurred.

Final Recommendation

The fact-finder recommends that there should be no change in the language contained in Article 12, Section 12.5 of the collective bargaining agreement. The fact-finder notes that adjustments in an employee’s non-work schedule must be made regardless of whether they are provided with a 14-day or 30-day notice regarding shift changes. The Union presented insufficient evidence that changing the notice period from 14 days to 30 days would result in significantly less interruption to bargaining unit members’ day-to-day lives outside of the workplace. Under the circumstances presented, a 14-day notice appears to be an adequate period of time for bargaining unit employees to make any necessary adjustments due to changes in their shifts. The fact-finder also notes that the Fire Chief indicated that he would work with employees if they had already scheduled days off at the time of a shift change. The Union

presented no evidence that the Fire Chief has refused to accommodate bargaining unit employees in this manner in the past. Lastly, the Fire Chief indicated that shift changes may be necessary for operational purposes. The fact-finder determines that the Union presented an insufficient basis for extending the notice period in light of the fact that shift changes may be necessary for operational purposes, coupled with the Fire Chief's commitment to work with bargaining unit members on scheduling conflicts.

**Issue 3: Salaries (Article 19/Appendix A)**

*Position of the Union*

The Union has proposed the following wage increases for the firefighters: one percent (1%) effective January 1, 2010; four percent (4%) effective January 1, 2011; and four percent (4%) effective January 1, 2012. It is clear that the Township's firefighters "... are far, far behind comparable full-time Departments in the area in terms of annual compensation and hourly wage rate." (Union Position Statement, 5). Nonetheless, the Employer claims an inability to pay the firefighters any wage increase other than a one percent increase in 2012. The Union contends that the Employer cannot establish an inability to pay in this case.

The Union points out that as of December 31, 2010, the Township carried over approximately \$350,000. According to the Union, General Fund revenues in 2010 were almost \$200,000 higher than in 2009, and \$290,000 more than the Township had budgeted for 2010. Additionally, General Fund expenditures in 2010 were \$157,000 less than in 2009, and \$137,000

less than budgeted by the Township. As of December 31, 2010, the Fire Levy Fund had a carryover balance in excess of \$100,000, which is approximately nine percent (9%) of the Fire Levy's total revenue in 2010. The Ambulance/EMS Fund also carried over approximately \$120,000 as of December 31, 2010. "In addition to the current healthy reserves in the General Fund, Fire Levy Fund, and Ambulance/EMS Fund, in May 2010, the Township's citizens approved a replacement Fire Levy plus one mill additional for the Fire Levy." (Union Position Statement, 6). The Union maintains that the Fire Levy will generate additional tax revenues of approximately \$280,000 per year for the Fire Department.

The Union's proposed wage rate increase of 4% translates into an annual increased cost of approximately \$40,000 for the Township. It acknowledges that a 4% increase is high in comparison to recent wage increases in the area. However, the Township can afford this additional cost and a wage increase is appropriate in this case. The wage disparity between the Township's firefighters and their counterparts employed at neighboring full-time fire departments is apparent. (Union Position Statement, Tab 9). The Union asserts that "[t]he Township's ability to pay the Firefighters an additional \$40,000 a year is clear given the current healthy reserves of the Fire and Ambulance/EMS Levies, and the projected \$280,000 annual increase in Fire Levy revenue." (Union Position Statement, 6-7).

At the hearing, Mary Schultz, the Union's consultant in this matter, discussed her analysis of the Township's finances. (Union Position Statement, Tabs 6 and 7). Schultz stated that the salaries for firefighters are paid from the Fire Levy Fund and the Ambulance/EMS Fund. She

also indicated that those funds had carryover balances. According to Schultz, her analysis focused on funds that affect the operations of the Fire Department, rather than all funds under the Township's presentation.

Schultz maintained that 16% of the General Fund is a good and healthy carryover. Additionally, the Fire Levy funds also had a substantial carryover balance, and the \$224,000 carryover in the Fire Fund can only be used by the Fire Department. She pointed out that the General Fund revenue in 2010 was higher than budgeted, and expenditures were down. Schultz also noted that the cost to the Township of the Union's proposed wage increase is \$141,751. (Union Position Statement, Tab 27). She asserted that the Township can afford this cost in light of the General Fund carryover and an increase in levy revenue. Schultz also stated that "things are improving and 2010 was better than 2009." Lastly, her analysis considered changes in the Local Government Fund under the proposed State of Ohio budget. (Union Position Statement, Tabs 28 and 29).

On cross-examination, Schultz maintained that the Fire Department deficit is not as high as claimed by the Township because \$224,000 is available in the Fire and Ambulance Funds. She acknowledged that House Bill 3 may eliminate the estate tax, however, the cut would not occur until 2013. Schultz also confirmed that the General Fund is down to \$300,000, however, the Fire Department will not run out of money because it has levy support. Schultz then admitted that she had no knowledge of a \$200,000 increase in the Township's health insurance costs which were not passed on to the employees. She indicated that the Union's proposed wage rate

increase will also increase overtime rates, and her analysis did not include either overtime costs or workers' compensation costs. Schultz confirmed that the General Fund is important to the Fire Department, and it must be kept in good condition in order to support the department.

Position of the Township

The wage schedule for firefighters effective January 1, 2009, provides as follows:

Starting Wage - \$36,666.56  
After One Year - \$41,629.67  
After Two Years - \$48,257.39

Due to its current financial position, the Employer proposes zero percent (0%) wage rate increases in 2010 and 2011, and a one percent (1%) wage rate increase effective January 1, 2012. It points out that the collective bargaining agreement “. . . contains a lucrative longevity provision which provides a 1% increase for each fire fighter after three years on the job, for each year of full time service thereafter provided.” (Employer Position Statement, 2). Therefore, a firefighter's actual wage increases 1% per year on top of any contractual wage rate increase. The Employer acknowledged that the firefighters start at lower wages than the Township's police officer, however, “. . . by the end of their careers [they] have eclipsed the Police by several thousand dollars, which is very desirable at pension time.” (Employer Position Statement, 3).

The testimony presented in this case reveals that the Township has been unable to balance its budget for the last several years. Therefore, immediate steps must be taken in order to correct the shortfalls. The Employer notes that Moody's recently reduced the Township's bond rating from Aa3 to A1. (Employer Position Statement, Tab M). It also points out that under Ohio law,

townships cannot collect income tax. The primary source of income for townships is property tax, estate tax and local government distribution from the State of Ohio. In 2010, the Township collected \$889,381.79 in property tax, down from \$934,336.94 in 2009. The proposed budget for 2011 reflects a 7% decrease in property tax. (Employer Position Statement, Tab D).

As it concerns estate taxes, the Township has collected an average of \$729,919 per year for the last five years. (Employer Position Statement, Tabs D and E). However, the Ohio General Assembly is currently moving to repeal the estate tax. While some political subdivisions may raise taxes in response to a repeal of the estate tax, “[t]he only option the Township will have will be cuts in services. With most discretionary cuts already made the future cuts will have to be personnel.” (Employer’s Position Statement, 5). The Employer also points out that the Executive Budget Proposal for state fiscal years 2012 and 2013 calls for drastic cuts in Ohio’s Local Government Fund. The Township has received an average of \$218,457.98 from the Local Government Fund over the past five years. (Employer Position Statement, Tab D). “The current executive proposal is to distribute 75% of the pertinent amount in 2011 and 50% of that amount in 2012. This will reduce Olmsted Township’s share by about \$56,563 in 2011 (Exhibit G) and considerably more in 2012.” (Employer’s Position Statement, 6). According to the Employer’s calculations, “[u]sing the five year average of estate tax loss added to the general fund reduction will create lost revenues of \$812,067 in 2013.” (Employer’s Position Statement, 6).

The Employer asserts that the fact-finder must consider the unique longevity provision contained in the contract when comparing the wages of the Township’s firefighters with the

wages afforded firefighters in other townships and local communities. Under the longevity provision, firefighters received a one percent (1%) increase in 2010, a one percent (1%) increase in 2011, and they will receive a one percent (1%) increase to their bases wages in 2012 regardless of any other increase. The Employer notes that “[t]he actual gross base wages paid to the Township’s Fire Fighters ranges from the contractual base for newcomers to \$59,160.66 for Fire Fighter Fudale, the senior Fire Fighter.” (Employer Position Statement, 7, and Tab H). With the inclusion of paramedic pay and overtime, most Township firefighters earn over \$60,000 per year. The Employer also notes that the longevity formula becomes quite lucrative for a Township firefighter over the years. Specifically, “[a] Fire Fighter that began employment in 1995 was paid an additional amount of approximately \$5,413.78 in base wages due to the longevity increases in 2010 on top of the base wage. Thus, the total base wages received were actually \$53,671.00.” (Employer Position Statement, 7-8).

In comparison, the Employer’s collective bargaining agreement with the police officers contains a common longevity provision. Under that contract, “[e]ffective January 1, 2012, a patrol officer with 15 years seniority will be paid \$54,067.48 plus a longevity payment of \$850.00 for a total of \$54,917.48.” (Employer Position Statement, 8 and Tab C). Thus, the compensation earned by a 15-year firefighter and a 15-year patrol officer employed by the Township is relatively equal. However, after 15 years the compensation afforded a firefighter will eclipse that which is paid to a patrol officer by one percent (1%) per year. The Employer asserts that the Union’s proposal would create a severe wage inequity between the Township’s

firefighters and patrol officers. According to the Employer, the disparity between a firefighter and patrol officer with 15 years of service with the Township would be \$5,101.66 in 2012, and compounding thereafter.

The Employer contends that its limited means of generating revenue exacerbates the common theme of fiscal restraint across the region. It points out that the Township will operate off its reserves in 2011, just as it has done since 2005. Since 2005, the Township has spent approximately \$4,715,007 of its reserves in order to maintain fiscal stability. Expenditures continue to outpace the revenue stream; however, to the Township's credit, ". . . the \$83,825 shortfall [in 2010] was the smallest in the last five years." (Employer Position Statement, 9). Nonetheless, this accomplishment should not be misconstrued to enable the Union to support its proposal as the Township is far from being in the fiscal clear. "The current revenue budget set at \$5,027,765 remains \$237,000 below the five year average of \$5,265,703 and the Full 2011 appropriations (expenses) total of \$5,620,439 will create a \$592,674 potential shortfall." (Employer Position Statement, 9). The Employer acknowledges that a levy which will generate approximately \$300,000 for both the Fire and Police Department will alleviate some of the fiscal strain on the budget. However, ". . . the historical figures and future conditions illustrate that the new revenues do not loosen the fiscal belt." (Employer Position Statement, 9).

The Employer points out that the General Fund has supplemented the Fire Department in the following amounts since 2006: \$346,625 in 2006; \$572,402 in 2007; \$228,023 in 2008; \$330,275 in 2009; and \$394,071 in 2010. (Employer Position Statement, Tab O). However, such

supplements will be restricted going forward, and the levy will simply account for the funds transferred from the General Fund. The Employer maintains that the wages, with longevity included, afforded the Township's firefighters are comparable to the wages received by firefighters employed in North Olmsted, and are above average compared to the wages of firefighters in other Ohio townships. (Employer Position Statement, Tab J). Furthermore, "[t]he Township is confident that after examining its finances and reviewing the inevitable loss of income due to State law that it will be apparent that the Township cannot afford wage increases of any kind." (Employer Position Statement, 10).

At hearing, Dan Foust, the Township's finance director, reiterated that real estate tax is the primary source of revenue for the Township, and estate tax and local government funds are secondary sources. He discussed the 5-year revenue status report and indicated that estate tax revenue in 2011 is projected to be \$92,000. Foust pointed out that the 5-year average for estate tax revenue is \$729,919.36. Additionally, interest income projected for 2011 will only be \$500. He also stated that the local government distribution fund projected revenue of \$226,251 in 2011 will be reduced by \$56,000 due to a 25% cut by the State of Ohio. Foust confirmed that Moody's downgraded the bond rating from Aa3 to A1 as a result of a drop in the Township's retained money and no solid plans for increasing revenues. He noted that no Township employees will receive raises in 2011.

Foust indicated that three funds support the operations of the Fire Department: the General Fund; the Fire District Fund; and, the Ambulance and Emergency Medical Fund.

(Employer Position Statement, Tab O). He stated that Fire Department expenditures are paid from revenue from the Fire District and Ambulance Funds, and the General Fund supports a shortfall. Foust also acknowledged that a carryover from levies in 2010 could be used to pay off shortfalls. He maintained that the Fire Department will continue to operate at a deficit in 2011.

As it concerns the wages afforded the Township's firefighters, Foust testified that longevity increases compound into their base wage rates on an annual basis. (Employer Position Statement, Tabs H and I). He also noted that firefighter Fudale earned more money than a comparable patrol officer employed by the Township.

According to Foust, the Township's unencumbered balance will decrease by more than \$200,000 this year, and the Township will operate at a deficit. In 2004, the Township had an unencumbered balance of \$5,000,000, and the unencumbered balance will be reduced to \$829,000 in 2011. (Employer Position Statement, Tab E). According to Foust, no wage rate increases for the firefighters are possible in 2010 and 2011. However, the firefighters will actually receive one percent (1%) increases in each of those years due to longevity compensation. He also noted that a significant increase of \$200,000 in health insurance costs was not passed on by the Township to the firefighters.

On cross-examination, Foust indicated that in 2010, approximately 18% of the funding for the Fire Department came from the General Fund, approximately 62% from the Fire levy, and approximately 20% from the Ambulance Fund. He confirmed that a levy passed in May 2010 will generate approximately \$300,000 each year in additional funding for the Fire Department.

Foust also stated that the Fire and Ambulance funds had carryover balances at the end of 2010 of \$104,000 and \$120,000 respectively. (Employer Position Statement, Tab O). He maintained that he is not comfortable with a wage rate increase despite the fact of the increased levy. Foust asserted that the Township is currently in a poor financial condition and it cannot afford wage increases regardless of any decrease in local government funds and estate tax revenue in the future. He stated that his primary concern is to balance the General Fund. As is concerns the local government fund, Foust acknowledged that “nothing is definite about Governor Kasich’s budget.”

Foust testified that Fudale is the highest ranked firefighter in the Fire Department, however, he also acknowledged that the Township has a “young department.” He asserted that the Township does not plan on hiring additional firefighters and it will continue to pay overtime. Foust confirmed that the Fire Department has received more than \$2 million from grants submitted by the firefighters. However, he pointed out that the grants are restricted to the construction of a new fire station and the purchase of equipment. Foust reiterated that 62% of the Fire Department budget comes from the levy, and it is not enough to cover all of the expenditures. He stated that the additional \$300,000 from the levy is accounted for in the budget.

Ralph Bertonaschi, a member of the Township’s audit committee, discussed the multi-year fiscal summary which he prepared. (Employer Position Statement, Tab E). He pointed out that the Township has operated at a deficit every year since 2004, and it has withdrawn \$2.26 million from the bank since 2003. The Township’s bank balance at the end of 2010 was

approximately \$907,000. According to Bertonaschi, estate tax is unreliable and the Township cannot count on that source of revenue. He also noted that building fees have substantially decreased over the past several years. As it concerns the local government distribution proposal, the State of Ohio plans to make cuts of 25% in 2011 and 50% in 2012. Bertonaschi asserted that expenditures will exceed revenues in the Fire Department in 2011, and the shortfall is estimated to be \$449,002. (Employer Position Statement, Tab G). He indicated that the projected deficit in the Fire Department will be covered by the General Fund, and it is normal for the General Fund to supplement the Fire Department. Finally, he claimed that the Township will break even if expenditures are reduced by five percent. Otherwise, the Township will have to dip into the unencumbered bank balance.

Final Recommendation

For the following reasons, the fact-finder recommends that the firefighters should receive the following wage rate increases: 0% effective January 1, 2010; 1% effective January 1, 2011; and 1.5% effective January 1, 2012.

Each party presented testimony and documentary evidence regarding the Township's finances. Such evidence included, but was not limited to, General Fund revenues and expenses; Fire District Fund revenues and expenses; Ambulance and Emergency Fund revenues and expenses; Local Government distribution account; and the estate tax account. The record clearly establishes that the Township's expenses have exceeded its revenues since 2005. In 2010, expenses exceeded revenues in the amount of \$83,825.00, and the Township projects that

expenses will exceed revenues by \$720,953.00 in 2011. As a result of the Township's recent deficit spending, its unencumbered bank balance has been reduced from \$5,729,377.00 in 2004 to \$907,114 by the end of 2010. (Employer Position Statement, Tab E). The testimony presented at the hearing indicated that the General Fund is currently down to an unencumbered balance of \$300,000. Due to its declining financial condition, the Employer maintains that it is unable to afford any wage rate increases for the firefighters other than a one percent (1%) increase in 2012. The Union strongly opposes the Employer's inability to pay argument.

The financial data and reports compiled by the parties and discussed at the hearing included an email from Moody's indicating that the Township's bond rating had been reduced from Aa3 to A1. (Employer's Position Statement, Tab M). The notification from Moody's indicates the following assessment of the Township's finances:

Difficult conditions in the township's broader economy have contributed to the weakening of the township's finances over the past several fiscal years. Major revenue streams including state aid, licenses and permits, and interest earnings have declined significantly in recent years while expenditures continued to increase, resulting in structurally imbalanced financial operations since fiscal 2003.

\* \* \*

Unaudited cash balances in fiscal 2008 and 2009 show further declines in General Fund cash reserves, with estimated operating deficits of \$488,000 and \$329,000 respectively. The operating deficits result in an unaudited fiscal 2009 cash balance of \$327,000, or a narrower yet satisfactory 16.4% of General Fund receipts.

\* \* \*

We expect township finances to remain narrow in the near term due to the lack of specific plans for the township to increase General Fund reserves. The township continued to spend down reserves despite stagnating revenues. In particular, the General Fund has for years subsidized the township's public safety expenses due to increasing expenditures despite dedicated police and fire levies. The majority of public safety expenses, which include Police and Fire, are paid out of the Special Revenue Fund which is comparable in size to the Township's General Fund. Due to increasing expenditures, public safety expenses paid by the General Fund totaled \$998,000 or 32.2% of General Fund expenditures in fiscal 2007. Favorably, in May 2009 voters authorized an increase of 1.00 mill in the police and fire levies which is projected to annually bring in an additional \$260,000 and \$172,000, respectively. However, contracts between the police and fire unions are still being negotiated which may potentially increase reliance on the General Fund for public safety costs.

\* \* \*

(Employer Position Statement, M).

Based upon the evidence presented in this case, the fact-finder determines that the overall financial condition of the Township has undoubtedly declined over the past several years. A reduction in the local government distribution received by the Township from the State of Ohio and the possibility that the State legislature may repeal the estate tax will result in a further reduction of the Township's revenue. Finance Director Dan Foust testified that the General Fund provides approximately 18% of the funding for the Fire Department. In 2010, the total revenue for the Fire Department and Ambulance Funds was \$1,476,180.33, and the total expense for those funds was \$1,870,251.06. (Employer Position Statement, Tabs E and O). Therefore, the

Fire Department sustained a net loss of \$394,070.73 in 2010. The testimony confirmed that the General Fund supplemented the Fire Department's shortfall in 2010. This has been the case since 2006.

However, the fact-finder notes that the Fire Department also had a carryover balance of \$224,365.12 as of December 31, 2010. Additionally, the record indicates that a replacement fire levy which passed in May 2010, will generate additional revenues of approximately \$280,000 per year over the next two years for the Fire Department. Furthermore, the General Fund revenue in 2010 was higher than budgeted. The fact-finder also notes that monies collected from the fire levy may only be utilized by the Fire Department. In sum, the fact-finder concludes that there are sufficient funds available to support a very modest wage rate increase for the firefighters during the term of the new collective bargaining agreement in the event that an increase is otherwise warranted.

Appendix A of the parties' collective bargaining agreement effective January 1, 2007 through December 31, 2009, provides that a firefighter/EMT employed by the Township shall be compensated, as follows:

Effective January 1, 2009	3.5%
Starting Wage	\$36,666.56
After One Year	\$41,629.67
After Two Years	\$48,257.39

As stressed by the Employer, the Township's firefighters also receive compensation based upon their longevity with the Fire Department:

After three (3) years of full-time employment, each employee will receive an increase in base wages of one (1%) percent of the annual wage then paid to a Fire Fighter/EMT for each year of full-time service thereafter provided. The longevity calculation for lieutenants and any captain that may be appointed will include the pertinent rank differential.

In addition to their base rate of pay and longevity compensation after three years of service, firefighters employed by the Township receive a paramedic premium of \$1,500.00 per year if they are certified as paramedics by the State of Ohio.

As previously indicated, the following jurisdictions shall be utilized as comparables:

North Olmsted; Olmsted Falls; Bath Township; Coventry Township; and Brimfield Township.

A review of the compensation afforded firefighters employed by these comparable jurisdictions reveals that the Township's firefighters initially receive lower salaries than the average of the comparables.

Articles XVIII and XIX of the contract effective January 1, 2009 through December 31, 2011, covering the North Olmsted firefighters provides, in part as follows:

18.1 Effective January 1, 2009, all employees shall be paid in accordance with the following schedule.

Cadet/Paramedic- 1 <sup>st</sup> year	\$44,665 Annually	\$1,717.88 Bi-weekly
Fire Fighter- 2 <sup>nd</sup> year	\$48,201 Annually	\$1,853.88 Bi-weekly
Fire Fighter- 3 <sup>rd</sup> year	\$51,754 Annually	\$1,990.54 Bi-weekly
Fire Fighter- 4 <sup>th</sup> year	\$55,304 Annually	\$2,127.08 Bi-weekly
Fire Fighter- 5 <sup>th</sup> year	\$60,879 Annually	\$2,341.50 Bi-weekly

Lieutenant-	\$68,793 Annually	\$2,645.88 Bi-weekly
Captain-	\$76,017 Annually	\$2,923.73 Bi-weekly

18.2 Wages for 2011 shall be determined by a reopener in November, 2010, as set forth under Article XL.

\* \* \*

19.1 Employees that are certified by the State of Ohio as a paramedic shall be paid a bonus of one thousand four hundred (\$1,400.00) dollars on or before the 15<sup>th</sup> of December, each year.

Article 46 of the Olmsted Falls firefighters' contract effective January 1, 2009 through December 31, 2011, provides, in pertinent part, as follows:

The Base Pay schedule for employees is as follows:

January 1, 2009 - December 31, 2011

Service Year	* * *	2% General Increase 1-1-2011	* * *
1	* * *	\$45,113	* * *
2	* * *	\$50,032	* * *
3	* * *	\$55,507	* * *
4	* * *	\$58,383	* * *
5+	* * *	\$61,379	* * *

Article XXIII of the Coventry Township firefighters' collective bargaining agreement effective February 1, 2011 through January 31, 2013, provides, in part, as follows:

Section 1. The Township agrees to increase each classification based annual salary as follows, and as set forth in the table below:

First pay cycle in February 2011      1% increase  
 First pay cycle in January 2012      2.75% increase

**Coventry Township Fire Department**  
 Base Wage Schedule

		<u>Eff.2/9/2011</u>	<u>Eff.1/x/2012</u>
	Increase	<u>101.00</u>	<u>102.75</u>
F/F EMT	Start	<u>42,912.93</u>	<u>44,093.04</u>
	After 1	<u>46,353.86</u>	<u>47,628.59</u>
	After 2	<u>48,525.76</u>	<u>49,860.21</u>
	After 3	<u>50,699.32</u>	<u>52,093.55</u>
	After 4	<u>52,872.86</u>	<u>54,326.86</u>
Firemedic	Start	<u>47,059.92</u>	<u>48,354.07</u>
	After 1	<u>50,538.25</u>	<u>51,928.05</u>
	After 2	<u>52,736.20</u>	<u>54,186.45</u>
	After 3	<u>54,932.53</u>	<u>56,443.17</u>
	After 4	<u>57,130.48</u>	<u>58,701.57</u>
	diff	10%	10%
*Lieutenant		<u>62,843.53</u>	<u>64,571.73</u>
	diff	10%	10%
Captain		<u>69,127.88</u>	<u>71,028.90</u>

Section 2. For each four (4) years of continuous service with the Township, and effective upon that employee's anniversary date, an additional one percent (1%) shall be added to the above stated base rate.

Article 30 of Bath Township's collective bargaining agreement covering its firefighters provides, in part:

Section 30.1. All bargaining unit employees shall, effective April 16, 2010, be paid in accordance with the following wage scale:

Year		Start	Step 1	Step 2	Step 3	Step 4
Effective April 16, 2010	Base annual	\$30,000	\$31,800	\$32,900	\$34,000	\$35,150
	Base per pay period	\$1,250.00	\$1,325.00	\$1,370.83	\$1,416.67	\$1,464.58
	Pre-set FLSA	\$36.81	\$39.01	\$40.36	\$41.71	\$43.10
	Base hourly	\$10.89	\$11.54	\$11.94	\$12.34	\$12.75
	Hourly OT rate	\$16.34	\$17.31	\$17.91	\$18.51	\$19.13
Effective January 1, 2011	Base annual	\$31,000	\$33,000	\$34,100	\$35,300	\$36,500
	Base per pay period	\$1,291.67	\$1,375.00	\$1,420.83	\$1,470.83	\$1,520.83
	Pre-set FLSA	\$38.03	\$40.46	\$41.81	\$43.30	\$44.75
	Base hourly	\$11.25	\$11.97	\$12.37	\$12.81	\$13.24
	Hourly OT rate	\$16.88	\$17.96	\$18.56	\$19.22	\$19.86

Effective January 1, 2012	Base annual	\$32,000	\$34,300	\$35,500	\$36,700	\$38,000
	Base per pay period	\$1,333.33	\$1,429.17	\$1,479.17	\$1,529.17	\$1,583.33
	Pre-set FLSA	\$39.24	\$42.08	\$43.53	\$45.02	\$46.61
	Base hourly	\$11.61	\$12.45	\$12.88	\$13.32	\$13.79
	Hourly OT rate	\$17.42	\$18.68	\$19.32	\$19.98	\$20.69

Article 34 of the Brimfield Township firefighters' collective bargaining agreement

effective January 1, 2011 through December 31, 2013, provides, in part, as follows:

Section 34.1- Wages. All full-time employees of the bargaining unit shall be paid in accordance with the following wage schedule. On the employee's anniversary date, the employee shall move to the next step higher on the wage schedule.

\* \* \*

Firefighter/Medic	2011	2012	2013
Start:	\$27,500.00	\$27,500.00	\$27,500.00
Begin 2 <sup>nd</sup> yr	\$30,000.00	\$30,000.00	\$30,000.00
Begin 3 <sup>rd</sup> yr	\$32,500.00	\$32,500.00	\$32,500.00
Begin 4 <sup>th</sup> yr	\$35,000.00	\$35,000.00	\$35,000.00
Begin 5 <sup>th</sup> yr	\$41,000.00	\$41,000.00	\$41,000.00
Begin 6 <sup>th</sup> yr	\$46,500.00	\$46,500.00	\$46,500.00
Begin 7 <sup>th</sup> yr	\$51,659.47	\$51,659.47	\$51,659.47
Begin 8 <sup>th</sup> yr	\$55,533.09	\$55,533.09	\$55,533.09

Section 34.3 Longevity. Each full-time employee will receive an additional payment of two hundred fifty dollars (\$250.00) after five

(5) full-time years of service. An additional fifty dollars (\$50.00) per year of full-time service will be added each year, up to a maximum of twenty (20) years of full-time service. Longevity payment will be paid in the first pay period of December of each year.

Section 34.4. Wage Reopener. This Article shall be subject to a reopener on or about September 2012, to discuss and negotiate wages for 2013. This reopener shall be in accordance with ORC Chapter 4117.

The average salary received by first year firefighters employed by comparable jurisdictions is \$39,427.58.<sup>2</sup> In contrast, a first year firefighter employed by Olmsted Township receives a salary of \$38,166.56, including paramedic pay effective as of 1/1/09. Additionally, the average salary paid to firefighters after their third year of service with comparable jurisdictions is \$48,063.91.<sup>3</sup> A firefighter employed by Olmsted Township receives an annual base wage rate of \$48,257.39 after three years of service with the Fire Department, plus \$1,500 in paramedic pay. The record also establishes that patrol officers employed by the Township receive a total salary higher than the Township's firefighters over approximately the first 14 years of their respective careers. (Union Position Statement, Tab 13). At the top rate of pay, the Employer's firefighters

- 
2. This amount is calculated using the base salary with paramedic pay of \$46,065 for North Olmsted effective 1/1/09 and 1/1/10; \$45,513 for Olmsted Falls effective 1/1/11; \$47,059.92 effective 2/9/11 for Coventry Township; Bath Township at \$31,000 effective 1/1/11; and Brimfield Township at \$27,500 effective for 2011.
  3. This figure is calculated using the base salary with paramedic pay of \$56,704 for North Olmsted effective 1/1/09 (and 1/1/10); \$58,383 for Olmsted Falls effective 1/1/11; \$54,932.53 effective 2/9/11 for Coventry Township; \$35,300 for Bath Township effective 1/1/11; and Brimfield Township at \$35,000 effective for 2011.

are paid approximately \$49,757.39 including paramedic pay compared with the average of \$61,129 *without* inclusion of paramedic pay for Olmsted Falls and North Olmsted – the two comparable jurisdictions which work a similar number of hours each year and are geographically close to Olmsted Township.

The testimony and documentary evidence presented by the Union indicates that the Township Fire Department has experienced difficulties retaining firefighters. (Union Position Statement, Tab 12). The fact-finder notes that the Employer acknowledges that a young complement of firefighters currently staffs the Fire Department. Based upon the disparity in starting salaries between the Township's firefighters and the average starting salaries of firefighters at comparable jurisdictions, the fact-finder determines that a modest wage rate increase is in order. However, the recent passage on May 5, 2011 by the Ohio House of Representatives of a budget that would repeal the estate tax for deaths occurring on or after July 1, 2013, has significant negative ramifications for the Employer. While this loss of revenue will likely occur in fiscal year 2014 – it will reduce the Employer's general funds tax receipts by an average of \$729,919.13.<sup>4</sup> When this loss is coupled with huge reductions in local government fund revenue sharing from the State of Ohio, the financial consequences to the townships, including the Employer, must be afforded considerable weight. Townships are without power to levy an income tax.

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4. This represents the average of such tax receipts for 2006-2010.

Accordingly, the fact-finder recommends the wage rate increases set forth above for the new collective bargaining agreement.

**Issue 4: Drug and Alcohol Testing Policy (Article 40)**

The parties executed a signed tentative agreement regarding Article 40 on May 17, 2011, attached hereto and marked, "Exhibit A." The fact-finder incorporates the signed tentative agreement into this report and recommends Article 40 be amended as provided in the tentative agreement.

**Issue 5: Staffing (New Article)**

*Position of the Union*

The Union proposes a new provision in the collective bargaining agreement which provides that only bargaining unit members are counted towards fulfilling the minimum level of on-duty staffing established by the Employer. Specifically, the Union proposes the following language:

- .1 Only Local 2845 bargaining unit members, as recognized under Article 3 of this Agreement, shall count towards the Olmsted Township Fire Department's on-duty staffing level.

At the present time, the Fire Chief counts non-bargaining unit personnel, such as himself and the Assistant Fire Chief, towards the Fire Department's minimum on-duty staffing level. The Union asserts that the Fire Chief and Assistant Fire Chief should not count towards the

complement assigned to a particular shift. According to the Union, the Fire Chief and Assistant Fire Chief frequently attend meetings which prevent them from responding to calls. (Union Position Statement, Tab 15). It also points out that unlike all of the bargaining unit members, the Fire Chief is not a certified paramedic. The Union maintains that it is not attempting to set the staffing levels in the Fire Department, and its proposal does not abridge the Township's management rights. The Union's proposal simply clarifies that non-bargaining unit personnel cannot be considered as firefighters for purposes of the staffing level.

*Position of the Township*

The Employer is opposed to the inclusion of any contract provision which restricts its management rights regarding staffing and scheduling of employees. It points out that there is no contractual or legal requirement governing the manning of the Fire Department, and the four-man minimum is a self-imposed staffing requirement. The management rights clause contained in Article 4, Section 4.1 of the contract specifically provides that the Employer retains the right to:

2. determine the number of persons required to be employed or laid off.
3. determine the qualifications of employees covered by this Agreement.  
\* \* \*
6. determine the work assignments of its employees.  
\* \* \*
10. determine work standards and the quality of the work to be produced.

(Employer Position Statement, 14).

The Employer also asserts that “[t]he new Article proposed by the Union flies in the face of the Township’s right to determine the adequacy of the work force and the qualifications of its employees. As a clear management right this subject is at best a permissive subject of bargaining.” (Employer Position Statement, 14). According to the Employer, it is impermissible for a Union to insist to the point of impasse on the inclusion of a permissive subject in a collective bargaining agreement.

Furthermore, the Employer contends that the Fire Department is adequately staffed. It points out that both the Fire Chief and the Assistant Fire Chief are qualified and certified fire fighters. Moreover, the Assistant Fire Chief is also a paramedic. The Fire Chief testified that there have been no safety issues when either he or the Assistant Fire Chief have been counted towards the manning requirement. According to the Fire Chief, “he may be the fourth man for one or two hours, but never for an entire day.” He also stated such a situation does not occur that often. “Staffing the Olmsted Township Fire Department is not an issue and the Union’s proposed new Article should not be recommended.” (Employer Position Statement, 15).

#### Final Recommendation

Based upon the evidence of record, the fact-finder recommends that the Union’s proposed contractual language regarding the staffing of the Fire Department should not be included in the new collective bargaining agreement. The Union presented insufficient evidence that the manner in which the Fire Department is currently staffed has resulted in either safety issues or a failure to

provide adequate services to the Township's residents. Additionally, the un rebutted testimony presented at the hearing by the Fire Chief indicates that situations in which he is considered to be the fourth man on a particular shift do not occur very often. Furthermore, the documentary evidence presented by the Union does not establish that the Fire Chief and the Assistant Fire Chief are frequently unable to respond to calls because they are attending meetings. The fact-finder also notes that the Union presented no evidence that either the Fire Chief or the Assistant Fire Chief are not qualified firefighters. In sum, the Union presented no compelling reasons for its position that the Employer's self-imposed staffing complement should be comprised of only bargaining unit employees.

**Issue 6: Total Agreement (New Article)**

*Position of the Township*

The Employer proposes that the following Total Agreement provision should be added to the collective bargaining agreement:

47.01 This Agreement represents the entire agreement between the Employer and the Union unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modification or discontinuance being subject to any grievance or appeal procedure.

According to the Employer, its proposal recognizes that the parties have negotiated to conclusion every necessary subject. The proposed language forecloses further negotiation on

subjects not raised and preserves the Employer's ability to make changes in matters not addressed in the collective bargaining agreement ". . . as deemed necessary for the good of the Department." (Employer's Position Statement, 16). The Employer asserts that it should be free to exercise the rights of a common law employer in all areas except those it has specifically surrendered in the contract. The Employer points out that under its proposal, the Union will be free to raise any negotiable issues following the expiration of the new contract. It also points out that similar "total agreement" provisions are contained in the collective bargaining agreements for various jurisdictions such as Parma, Brook Park and North Olmsted.

At the hearing, the Employer maintained that "anything not in the contract is a management right and can be changed." It also claimed that Total Agreement provisions are "working out well in other jurisdictions." The Employer requests that its proposal be recommended by the fact-finder.

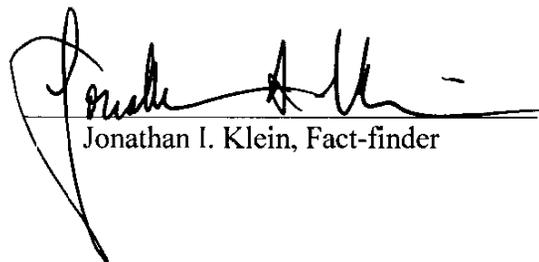
*Position of the Union*

The Union opposes the Employer's proposal to add a "zipper clause" to the collective bargaining agreement. According to the Union, it ". . . cannot be expected to have memorialized all benefits, practices, and regulations currently in place that would be considered a mandatory subject of bargaining." (Union Position Statement, 8). The Union points out that the Fire Department has numerous practices and procedures concerning various matters such as scheduling, shifts, and time off. It asserts that "[a]doption of the Township's proposed 'zipper clause' would prohibit the Union from effectively challenging any unilateral change in a yet-

unwritten practice or benefit.” (Union Position Statement, 8-9). The Union maintains that the parties should mutually reduce applicable practices and benefits to writing and bargain the appropriate language. There are unique situations that arise in the Fire Department and there is no need for a “gotcha” provision in the contract. For each of the aforementioned reasons, the Union contends that a Total Agreement provision is unnecessary in this case, and the fact-finder should recommend its position.

Final Recommendation

It is the fact-finder’s recommendation that the Employer’s proposed “zipper clause” language should not be added to the collective bargaining agreement. The Employer did not dispute the Union’s assertion that there are a number of practices and procedures utilized within the Fire Department. The Employer presented insufficient evidence which would indicate that a Total Agreement provision is necessary and proper based upon the facts and circumstances in this dispute.

  
Jonathan I. Klein, Fact-finder

Dated: May 17, 2011

**TENTATIVE AGREEMENT**

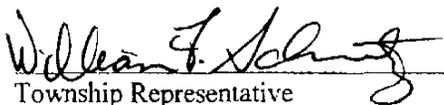
**ARTICLE 40, DRUG AND ALCOHOL TESTING POLICY**

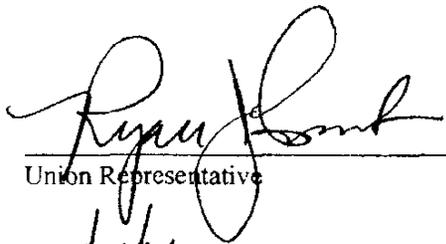
The Olmsted Township Firefighters, IAFF Local 2845 ("Union") and the Olmsted Township Trustees ("Township") have reached a tentative agreement regarding Article 40, Drug and Alcohol Testing. Article 40 will remain intact (current contract language) except for the following:

1. The list of drugs and levels tested will be amended to list those drugs and levels required to be tested in order for the Township to receive the discount available for workers' compensation premiums.

2. Article 40 will include a provision requiring the Township to notify injured employees who test positive for alcohol or any of the drugs prescribed by Article 40 that they may not be eligible for workers' compensation benefits.

3. Article 40 will also include a provision that states the parties agree that if any issue arises regarding the Township's ability to maintain the workers' compensation discount that the particular issue will be promptly opened for negotiation, and if the parties are unable to resolve the issue, it will be decided by an arbitrator under the rules for arbitration set forth in the Agreement's grievance-arbitration procedure.

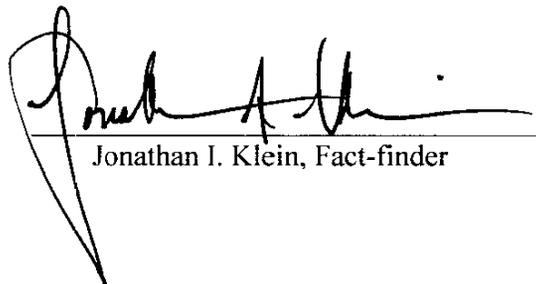
  
Township Representative  
5/17/2011

  
Union Representative  
5/17/11

**“Exhibit A”**

**CERTIFICATE OF SERVICE**

Originals of this Fact-finding Report and Recommendations were served on Ryan J. Lemmerbrock, Esq., Muskovitz & Lemmerbrock, LLC, 820 W. Superior Avenue, 8<sup>th</sup> Floor, Cleveland, Ohio 44113-1800, Lemmerbrock@mllabor.com; William F. Schmitz, Esq., Johnson Miller & Schmitz, LLP, 635 W. Lakeside Avenue, Suite 600, Cleveland, Ohio 44113, wschmitz@jmslaw.net; and upon J. Russell Keith, General Counsel & Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213, russel.keith@serb.state.oh.us; each by electronic mail and regular U.S. mail, sufficient postage prepaid, this 17<sup>th</sup> day of May 2011.



Jonathan I. Klein, Fact-finder

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ALSO ADMITTED IN  
FLORIDA & GEORGIA

May 17, 2011

William F. Schmitz, Esq.  
Johnson Miller & Schmitz, LLP  
635 W. Lakeside Avenue, Suite 600  
Cleveland, Ohio 44113

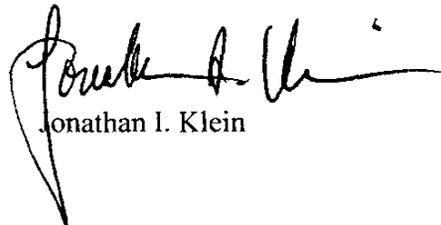
Ryan J. Lemmerbrock, Esq.  
Muskovitz & Lemmerbrock, LLC  
820 W. Superior Avenue, 8<sup>th</sup> Floor  
Cleveland, Ohio 44113-1800

Re: *Olmsted Firefighters, IAFF Local 2845 -and- Olmsted Township; SERB*  
Case No. 09-MED-10-1283

Gentlemen:

Enclosed please find the Fact-finding Report and Recommendations issued this date via electronic mail, together with an invoice for my services and expenses.

Very truly yours,

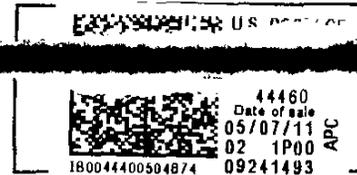
  
Jonathan I. Klein

cc: J. Russell Keith, Esq. (w/awd) ✓

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