

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

IN THE MATTER OF FACT-FINDING BETWEEN

SPRINGFIELD TOWNSHIP

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 3040

FINDINGS AND RECOMMENDATIONS

CASE NO: 2010-MED-09-1088

**WILLIAM C, BINNING PH.D.
FACT-FINDER**

For Springfield Township

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For IAFF Local 3040

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The undersigned was appointed Fact-finder by the State Employment Relations Board (SERB) pursuant to Section 4117.14 © (3) of the Ohio Revised Code.

The first meeting of the parties with the Fact-finder was scheduled for a full day of mediation on January 20, 2011. The mediation started at 10 am and ended at 7:00 p.m. A great deal of progress was made during that day but a possible settlement broke down in the last hour.

HEARING ON FEBRUARY 24, 2011

The parties met at 10:00 a.m. and worked continuously until 5:00 p.m. and all of the outstanding issues were addressed.

Prior to the opening of the hearing the Fact-finder, as he is obligated to do, under SERB rules offered to mediate. The parties agreed to mediate and one issue was settled, the uniform allowance check was tentatively agreed to. The parties have copies of that signed tentative agreement. There were no other issues resolved through mediation and at approximately 11:00 a.m. formal hearing was opened to consider the remaining 10 issues.

The following issues remained unresolved:

1. Insurance Article 14
2. Hours of Work Article 22
3. Wages Article 24
4. Call Back/Overtime Article 35
5. Sick Leave Article 32
6. Minimum Manning Article 35
7. Overtime Article 43
8. Grievance Procedure Article 20
9. Discipline Article 21
10. Successor Agreement New Language

CRITERIA

In compliance with the Ohio Revised Code Section 4117:14 and Ohio Administrative Code Rule 4117-9-05 (J) and 4117-9-05 (K), the Fact-finder considered the following criteria in making the findings and recommendations contained in this report:

- 1. Past Collective Bargaining Agreements 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 the 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, 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 determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.**

ISSUES AND RECOMMENDATIONS

ARTICLE 14

MEDICAL AND LIFE INSURANCE

UNION POSITION

The union proposed retention of existing language, including “substantially similar” to what existed at the time of the execution of the agreement. In summary the existing contract provides that the employee pay a premium share of 3% for an individual and 4% for a spouse and .25% for each enrolled child. There was also no change offered in the Life Insurance benefit proposed by either party so that will not be discussed and the same language will continue in the new contract.

EMPLOYER POSITION

The township offered a unique proposal. It offered the same 3%, 1% for a spouse and then additional premium share for children and then a family contribution. However rather than expressing it in percentages, the township expressed as a fixed monthly dollar amount. As an example, for a Single the Township would pay \$443.37, the employee would pay \$13.71 for a total of 457.08.

The township offered to continue to make that fixed contribution as stated as a dollar amount and not a percentage and then proposed that any increase in the premium would be split 50% -50% between the employee and employer. This employer argued would create an incentive for the employee Insurance Committee to keep premiums down and would even offer to share if any savings were realized.

DISCUSSION

There is no doubt that the escalation of health insurance premiums is an increased and unpredictable burden on employers and often outpaces increases in actual payroll. There is also no doubt as the employer’s proposal suggests there is no incentive for

employees to seek out health cost reductions as long as there is a third party payer. There are numerous schemes to create market pressure on health care consumers to seek to contain costs. The Union said it prefers a percentage to what is likely to be an unknown dollar amount if the employer's scheme was adopted.

RECOMMENDATION

Section 14.1 The Township will offer to Bargaining Unit Member a hospitalization plan substantially similar to the hospitalization plan which was in effect upon the date of execution of this Agreement including dental and vision coverage and at least one other hospitalization plan. An employee who enrolls in one of the offered plans will pay Seven (7%) of the premium per month. An employee who enrolls a spouse will pay an additional one percent (1%) and one-quarter (.25%) for each child.

The Life Insurance language will remain as it is in the current agreement since it was not brought up by either party.

Section 14.4 As soon as possible, after ratification of this Agreement, the Township will establish a Section 125 plan pursuant to IRS regulations for pre-tax employee premiums and/or a dependent care reimbursement account.

Section 14.5 The Township shall continue the Joint Health Care Committee consisting of at least one (1) representative of the IAFF Local 3040, one (1) representative of the FOP, one (1) representative of the Teamsters Local 436 and three (3) representatives of the Township. The Health Care Committee shall have full access to information on the cost of health insurance, claims experience (in the aggregate) and other relevant financial information in order to be fully informed about the Township's health care coverage. The Committee shall meet on regular basis, but at least quarterly, in order to address the increasing cost of health care and to explore options to reduce health care costs to employees. The Committee shall have the authority to direct the Township to submit requests for proposals (RFPs) for alternative coverage and/or to explore the option of self-insurance. The Committee may recommend changes to the Township's health insurance coverage to the Unions and the Township Trustees that it believes to be beneficial. The Committee's goal will be to contain the cost of health coverage for the Township. The Committee will first try to obtain comparable coverage to that in existence at premium cost below the levels then existing. If the Committee is unable to do so, it will develop ways to obtain alternate coverage at cost at or below those same cost levels and make recommendations to the Board as to plans composition and offerings.

The Fact-finder believes this meets a number of the concerns of both parties. First, for the employer, the employee's premium share is significantly increased. Two, it allows the

employee to choose between at least two different plans and the burdensome premium share will encourage the employee to take a close look at costs and benefits. For the employee, although the cost is heavier to bear, it is expressed as a percentage and will be more predictable over time.

ARTICLE 22

HOURS OF WORK

UNION POSITION

The Union proposes significant changes in hours of work. It proposes to go from 208 hours in 28 days to eventually reach 192 hours in 28 days.

EMPLOYER POSITION

The Employer wants to retain current language, which is 208 hours in 28 days.

DISCUSSION AND RECOMMENDATION

The problem I faced in reducing hours of work schedule is my strong recommendation to retain Article 35 Minimum Manning. Reduction in hours will in my opinion result in more overtime. These articles are linked. See note to Conciliator and the Parties in discussing Article 35. Recommendation: existing language (CBA January 1, 2008 through December 31, 2010).

ARTICLE 24

WAGES

UNION POSITION

The Union asks for a wage increase of 2% in 2011, 3% in 2012 and 3% in 2013. The Union argues the Township is awash with a cash surplus.

TOWNSHIP POSITION

The Township position is quite complex. Its financial offer is a 1% lump sum the first year, then 1.5% for each succeeding year. It is also proposes to restructure the wage schedule out to 10 years from the current seven years. The township is offering a two tier pay scale.

DISCUSSION AND RECOMMENDATION

The Union should not assume that just because the Township carries over a large fund balance from one fiscal year to the next that it has a claim on that money. The Township officials should be commended for good fiscal management. In addition the township advocate correctly points out that local governments are going to be hurt by the forthcoming budget in Ohio and also the possible loss of inheritance tax.

The Township proposal for restructuring the steps is not supported by the offered comparables so that is not recommended.

The following wage increase is recommended: one percent (1%) for the first year (retroactive to January 1, 2011), one and one half percent (1.5%) the second year and two percent (2%) the third year. It is hard to justify any significant pay increases. The *NEW YORK TIMES* reported this last Sunday that the core inflation rate was at 1%.

In addition on the issue of the two tier pay scale, like merit pay Offered by SB (5), how can it be expected that a junior member be asked to run into a burning fire risk has life and receive a 2nd tier rate of pay. Also, how can it be expected that a firemen asked to risk his life be compensated on the basis of merit pay, the risk to his life is the same as every other member on that call of duty.

To their credit the Union rejected a two tier wage scale to retain good morale since all firefighters face the same danger. Last year, my first cousin's son was killed fighting a fire in his first year in uniform. This rejection will cost the senior firefighters money in the long run. But at least they are unwilling to send the new hires under the bus or in this case the fire truck.

ARTICLE 25
CALLBACK/OVERTIME

UNION POSITION

The Union proposes existing contract language except for adjustment of rate of overtime hourly pay to any wage increase.

TOWNSHIP POSITION

The Township proposed a number of changes to existing language for this section of the contract. The Union wants FLSA overtime which would pay for only hours work and exclude a number of hours currently counted as overtime. Also the union wants to eliminate double-time payment for the first hour of callback time and “instead pay it at its applicable rate,” (Township Issue 4)

RECOMMENDED LANGUAGE

ARTICLE 25

CALLBACK (OVERTIME)

Section 25.1 existing language (CBA January 1, 2008 through December 31, 2010.)

Section 25.2 existing language (CBA January 1, 2008 through December 31, 2010)

Section 25.3 existing language (adjust to pay increase)

Section 25.4 existing language

Section 25.5 Callback While on Leave. Members on leave are permitted to return to duty status for answering emergency or non-emergency call-back requests as recalled by the Chief or his designee but not for shift fill. (This 25...5 This language was agreed to by the parties at the hearing)

Section 25.6 existing language (CBA January 1, 2008 through December 31, 2010).

Section 25.7 existing language.

ARTICLE 32

SICK LEAVE

UNION POSITION

The Union proposes existing contract language with some slight language modifications.

TOWNSHIP POSITION

The township proposes to significantly change the sick leave language. They offer 13 hours instead of the current practice of one and one quarter days (1 1/4) for those on 24/48 shift a day is 24 hours for sick leave purposes. The township argues this is far too generous. The township also proposes changes in language for Documentation, Employer Required Exam and Excessive/Usage Patterned Abuse.

DISCUSSION AND RECOMMENDATION

The Union defends the use of 24 hours for sick leave since 24 hours is what is taken if they take a sick day. The township's offered language for Documentation, Employer Required Exam and Excessive/Usage Patterned Abuse was not supported by evidence that there is a need to change existing language. Recommendation: Article 32 Sick Leave retain existing contract language (CBA January 1, 2008 through December 31, 2010)

ARTICLE 35

MINIMUM MANNING

UNION POSITION

The Union asserted that this was the most important language in their contract and they did not want it altered.

TOWNSHIP POSITION

The Township proposes to eliminate the entire Article. The Township asserts that this is a subject of permissive bargaining; that it is a management right and that it results in excessive overtime costs for the Township.

DISCUSSION AND RECOMMENDATION

This Fact-finder recommends retention of existing language. I would like the parties and the possible Conciliator to know that in my recommendations, I linked Article 22 hours of work to this minimum manning Article 35. I did not recommend relief on hours of work because with the retention of this manning requirement that would likely result in even more overtime. The Township said the current cost of overtime related to this manning clause is over sixty thousand dollars. Recommendation: existing language (CBA January 1, 2008 through December 31, 2010).

ARTICLE 43

RULES FOR OVERTIME SHIFT FILL

UNION POSITION

The Union proposes existing language for the rules for overtime shift fill.

TOWNSHIP

The township proposes a number of language changes.

DISCUSSION AND AWARD

The Township proposes to extend its management rights over the Rules for Overtime Shift Fill. The Fact-finder proposes a mixture of the language offered by the parties. The Overtime rotation seemed to be of particular interest to the Chief. He appeared very professional and saw this as a needed assertion of a management right. This was a difficult issue for the Fact-finder and it is likely the most controversial Section of the offered language offered below, Recommended language:

Section 43.1 There shall be two types of overtime shift fill; offered and mandated.

Section 43.2 Overtime shift fill may be offered to employees when the Fire Chief feels that additional on-duty personnel may be needed.

Section 43.3 Mandated overtime shift fill shall only be used when manning drops below minimum as described in Article 35 of this Agreement. The shift must be offered to Bargaining Unit Members prior to the shift being mandated.

Section 43.4 Bargaining Unit Members shall receive the overtime rates as established in Article 25 of this Agreement for all hours worked while on offered overtime.

Section 43.5 Overtime that is offered will be given to the Member, within the classification where it is being offered, wishing to work who has the least number of shift-fill overtime hours for the year. A shift-fill Overtime list will be created to track the hours that each member works while on overtime shift-fill. The list will read from the member with the least to the member with the most number of hours in each classification. The list will be reset annually according to classification seniority with the most senior members at the top of

the list and the least senior at the bottom. The list will be maintained by the Union and an updated list will be forwarded to the fore Chief.

43.6 Except for emergencies, overtime being mandated will be given to the member who is next on the Mandated List. The list will be created based on classification of seniority with the most senior member at the bottom and the least senior member at the top. The mandate list will be maintained by the Union and the updated list will be forwarded to the Fire Chief. (If conflict between 43.6 and 43.5 -43.6) prevails but I left 43.6 in despite the fact the employer took it out to retain the sense of fairness)

Section 43.7 Out of Classification Payments/Supervisor Shift Fill: If the shift Supervisor or Lieutenant is on leave, his position may be filled by a Bargaining Unit Member from that shift, as a full-time firefighter and has completed supervisor orientation. If a fire medic is filling for a shift Supervisor or Lieutenant, he will receive One Dollar (\$1.00) per hour less than the top rate of pay for the position which he fills. If a Shift Supervisor or Lieutenant is filling is a shift for another Shift Supervisor or Lieutenant, he will assume the role of his position rather than another Bargaining Unit Member.

ARTICLE 20

GRIEVANCE PROCEDURE

UNION POSITION

The Union supports retention of current language, "if it is not broken don't try to fix it.

TOWNSHIP POSITION

The Township offered some significant changes in the Grievance Procedure language.

DISCUSSION AND AWARD

It might be time to update some of this language, however it is my impression that it was never seriously negotiated and the grievance procedure needs to be negotiated. It should not be contract language addressed by an outside party. All of the parties need to consider the Grievance process fair. In addition to that, this employer language proposal was not born out of a bad experience with current language. Recommendation: retain existing language (CBA January 1, 2008 through December 31, 2010).

ARTICLE 21

DISCIPLINARY ACTION

UNION POSITION

The Union offers existing language with pretty much the same argument offered for the issue above "if it is not broken don't try to fix it."

TOWNSHIP POSITION

The Township offered extensive new language.

DISCUSSION AND AWARD

There was considerable discussion of the Township's language and the parties seemed to agree that some parts had some merit. I have cobbled together various positions and recommend the following language for Article 21 Disciplinary Action:

Section 21.2 All disciplinary actions involving Bargaining Unit Members, including written reprimands, suspensions, demotions, reduction in pay or employment termination (except layoff or reductions in force) are hereby subject to the following procedure.

A. Pre-Disciplinary Conference Whenever the Employer/designee determines that an employee may be suspended, reduced in pay or position, or terminated, a pre-disciplinary meeting will be scheduled to investigate the matter within forty- five (45) days of the Chief's knowledge of the incident on which the discipline is based. The Employer/ or his designee shall provide notice to the Union and the employee in the form of a written statement describing the occurrence which is the subject to the disciplinary action and what form of discipline may be imposed. This Notification shall also include the time and place of a pre-disciplinary meeting, to be held no sooner than twenty-four (24) hours, between management and the employee. The employee may be accompanied by a Union steward or officer during the pre-disciplinary meeting. Should the employee wish to not be represented by the Union, a Union representative will be allowed in the pre-disciplinary meeting as an observer only. The employee shall have an opportunity in this meeting to respond orally to the charges prior to discipline being imposed.

B NOTICE OF DISCIPLINE Within fifteen (15) days of the pre-disciplinary conference, the Employer/designee shall provide written notification to the employee and the Union what form of discipline, if any, is recommended, and transmit that recommendation to the Board of Trustees for consideration.

C ACCEPTANCE OF DISCIPLINE The employee may sign the disciplinary notice to accept the discipline as recommended and conclude the matter. The disciplinary notice will contain space for statement of explanation by the employee if he/ she so chooses. An employee may have a Union

representative to represent him/her at all steps of the disciplinary procedure.

D. DISCIPLINARY APPEAL If the disciplinary matter is not resolved by Step C then the Bargaining Unit Member must submit within (7) calendar days of the Notice of Discipline being issued, appeal the disciplinary action to Step 2 of the grievance procedure set forth in Article 20 GRIEVANCE PROCEDURE.

Section 21.3 No member shall be disciplined except for just cause.

Section 22.4 Internal Investigation/Confidentiality When an employee is charged with or is under investigation for an alleged violation of department rules and regulations, anonymity is encouraged. A reasonable effort consistent with applicable law shall be made without publication of the employee's name and extent of the disciplinary action taken or contemplated until such time as a final inter-departmental has been made and served on the employee. (MOVED FROM ARTICLE 19 PERSONNEL FILES AND RECORDS).

Section 22.5 Prior Discipline for Minor Occurrences. Any adverse material in the employee's file that is a minor occurrence shall not be relied upon in disciplining the employee after two (2) years from the date of the violation. **Minor Occurrence:** Defined as documentation of verbal warnings for minor performance deficiencies or minor policy violations, so long as the documentation of this disciplinary action is properly documented, and the employee and the Union is provided with written notification that the documentation is being placed in their public personnel file. (MOVED FROM ARTICLE 19 PERSONNEL FILES AND RECORDS).

Section 22.6 Prior Discipline for Major Occurrences Any adverse material in the employee's file that is a major occurrence shall not be relied upon after four (4) years from the date of the violation. **Major Occurrences** Defined as documented written warnings for performance deficiencies or policy violations or upon receiving three or more verbal warnings during one year of continuous service. Suspensions and/or disciplinary demotions are also classified as major occurrences. (MOVED FROM ARTICLE 19, PERSONNEL FILES AND RECORDS).

ARTICLE 45
NEW ARTICLE SUCCESSOR CLAUSE

Union Position

The Union is concerned about talk of a merger of Springfield Township Fire Department with a neighboring political subdivision. Therefore it proposes the new language for Article 45 offered below.

Township Position

The township is opposed to this new language based upon a subject of permissive bargaining argument and management rights.

Recommendation

The following language is recommended:

Section 1. In the event the Employer enters into a Regional Fire District or otherwise combines fire services with one or more political subdivisions, all existing Local 3040 bargaining unit members will be offered employment in the District or combined entity.

The Fact-finder respectfully submits the tentative agreements agreed to by the parties, and the recommendations stated above on the outstanding issues to the parties this 1st day of March 2011 in Mahoning County.

William C. Binning Ph.D.

Fact-finder