

**Before the State Employment Relations Board
State of Ohio**

STATE EMPLOYMENT
RELATIONS BOARD

2010 DEC 27 A 10:43

In the matter of

Liberty Township Board of Trustees
Employer

Case No. 10-MED-09-1223

And

Sandra Mendel Furman,
Fact finder

IAFF Local 2075
Union

FACT FINDER'S REPORT

Procedural Matters

SERB appointed this fact finder by letter dated December 13, 2010. The matter was scheduled for hearing on December 14, 2010 by a prior agreement of the parties.¹ Pre hearing statements were received by the fact finder and served by each party upon the opposing party at or prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The hearing was held on December 14, 2010 at the offices of the Liberty Township Administration. The fact finder offered to mediate any/all of the issues. The parties engaged in mediation then proceeded with their proofs. A full hearing was had. The parties presented witnesses and exhibits in support of their respective positions. Representing the Employer was Patrick Ungaro, Township Administrator. Also present on behalf of the City was Fire Chief Michael Durkin. The Union was represented by William Opsitnik, President IAFF Local #2075 and two members of the bargaining committee- Ron Stauffer and Philip Lucarell.

¹ The fact finder was appointed due to the resignation of the prior appointee. The date had been set by the parties prior to the undersigned's appointment.

The parties had engaged in several bargaining sessions for a successor agreement prior to appointment of the fact finder. At the date of hearing there were multiple issues left for determination by the fact finder: wages; health insurance; uniform allowance; additional training/certification; longevity pay; sick leave; overtime pay; health maintenance standards; rules and regulations; rights of the parties, part time employees ; college reimbursement and enhanced vision care benefits.² The report is submitted at the date stipulated by the parties.

Findings of Fact

1. The Township's population is approximately 13,000. It was not established whether or not there is a projected increase or decrease in population based upon the 2010 census. .
2. The Township's income relies upon a variety of sources. The Township has had periods where it was in dire need of current operating income. In December 2009 the Township could not make payroll for its non Fire Department employees. Funds were transferred from the Fire Department's operating funds to meet payroll on that occasion. These funds have not been repaid to date. Currently the Township is \$500,000 in debt.
3. Both parties represented that Liberty Township was a commercial and bedroom type community. There was no additional information provided about the economic make up of its citizens.
4. The Fire Department's funding sources are independent of the Township.
5. The parties have had a collective bargaining relationship for over 25 years.
6. The IAFF is the certified bargaining representative. The unit consists of all members of Fire Rescue Department, excluding the Fire Chief. and secretary .The unit classifications are Captain, Captain Fire Inspector, Lieutenant and Fire Fighter.
7. The bargaining unit has fifteen (15) positions including Lieutenants and Captains. The positions provide fire prevention and emergency response services for the Township. All fifteen (15) positions are currently filled There was no testimony about any plans to expand current levels of hires. Gaps in the staffing caused by vacations and illness are filled by part time employees.
8. The current contract negotiation is only the second occasion the parties went to fact finding. The labor relationship appeared to be cordial and positive.

² The Union withdrew certain of its proposals during the fact finding hearing: fitness bonus and college reimbursement for classes related to the job. It was noted that the Chief has been successful in obtaining scholarships for courses for the employees.

9. The current contract's expiration date is December 31, 2010. It is a three year agreement.
10. The Township is unwilling to sign a waiver under RC 4117.14.(G) (11).
11. The Township plans to build a new central fire station. There was no discussion at the hearing as to the projected timetable for this project. Money for this project was earmarked from the proceeds of sale of property from a one time donation to the Township. Proceeds were \$260,000. (approximately)
12. There was no testimony concerning other major planned capital improvement projects for the Fire Department. The checking balance for capital improvements as of 12-1-10 is zero.
13. There is a plan to purchase two (2) additional fire trucks at some unspecified future date. The projected cost is \$400,000. This cost will be paid for from the ambulance fund.
14. There was a carryover in 2009 in the Fire Department. This surplus existed despite the borrowed amounts taken by the Township for other funding uses..
15. The Fire Department's funding sources are from personal property taxes; state grants and the ambulance fund which operates on a fee for service basis.³ No money from the Township's general fund is received by the Fire Department.
16. The Fire Department is owed repayment of a \$331,996 loan made to the Township for operating expenses. Details of the loan repayment plans were not stated at the hearing.
17. The Township indicated that continued state funding is likely to be negatively affected by the State's large deficit. No direct evidence of future funding levels was produced.
18. The Township has the ability to pay for the various increases sought by the Union.
19. No employees have been laid off in the Fire Department..
20. There have been no wage freezes in prior contracts.
21. The Township is a self insurer for health insurance. It has a HSA/HRA plan through Anthem. The current plan has been in place since March 2010. The prior plan was also through Anthem but had a different co-pay and out of pocket structure.
22. The Township negotiates its health insurance and is informed of its health insurance premium payments on a yearly basis in March.
23. Premium costs were substantially reduced compared to 2009 levels. There is no information to date about expected premium costs in 2011.
24. The health insurance plan description for 2010 also projected a lesser cost for the HRA. Neither the policy nor the cost analysis is in

³ Both parties commented on the Chief's skills and abilities in acquiring scholarships and grants for the Department.

- evidence. A plan summary comparing the 2009 and 2010 benefits was admitted into evidence.
25. Current employee reimbursement levels for health insurance are 8% for single or family coverage. This was increased over the term of the current agreement from 4-6-8%
 26. The Township seeks an increase of employee share of the premium payment to 10%. The Union seeks to maintain its current level and maintain its cap. The Township has no commitment to continue or to discontinue the HRA at this time. It is shopping for the best plan for all its employees: all bargaining units are covered by the plan.
 27. A wellness program initiated by the Township during the term of the current contract has had great positive impact in the bargaining unit. The terms of the program are not part of the contract. The parties expressed an intention to continue the program.
 28. The Union proposed a "fitness" bonus for employees who achieved certain levels of achievement in fitness. This proposal was withdrawn at fact finding.
 29. Part time employees are not in the bargaining unit. The Union seeks by contract language to limit the number of hours the part timers can work in a week and for a year. The Township did not oppose the Union position; the goal is to avoid the part timers' entitlement to fringe benefits. There are currently 6 part time employees and 4-5 on call (paid "volunteers")
 30. The Township has fifty-six (56) employees as of the date of hearing. There was no mention that any positions had been eliminated or were on lay off status.
 31. The firefighters are the first bargaining unit of the multiple units in the City to proceed to fact finding this bargaining cycle. The other bargaining units are the OPBA police officers unit and the OPBA sergeants and above unit in the Police Department, OPBA also represents the Dispatchers in the Operations call center⁴. The Teamsters represent the secretaries and the street department employees.
 32. There is no joint bargaining. There was no testimony that the Township seeks parity among its various units.
 33. There are "me too" clauses in the current contract. Neither side proposed this language for the successor contract.
 34. The Township has not agreed to retroactivity to any contract provisions.
 35. In the current agreement the IAFF percentage wage increase was 3% each year of the three (3) year contract. The police units received like increases.

⁴ Dispatchers serve dispatch functions for both safety forces. Their relative wage and benefits were not presented as part of the hearing. No information was available as to the contracts for the non uniformed employees.

36. The Township currently pays both the employee and employer contribution amount to the Ohio Police and Fire Pension Fund. Article 37 section 2. .
37. There is a significant disparity of wages between the OPBA unit and that of the Fire Department. The disparity is most glaring in the officer ranks.
38. There is limited parity between benefits received by the Fire and Police Department employees; a like benefit is Lasik reimbursement. Both have caps on the amount of years that can be accumulated for longevity pay calculations and longevity pay. Many other benefits are dissimilar or would not have application due to the particular job specifications. A comparison sheet was prepared by the Township and made part of the record.
39. For jurisdictions in and around Liberty Township it appears that it is at or below the wages for like positions in the Fire Department . Data presented came from SERB wage studies from 2009. The Township did not present comparables.
40. There was no evidence that the Township has recruitment issues. The majority of the unit's employees are long term employees. There are no currently projected new hires planned.

ISSUE NO. 1. Article 19 Sick Leave⁵

The Union seeks to remove the cap of 2496 hours for accrued sick leave. The Township did not present counter arguments; it just said it would not agree.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).⁶ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.⁷

There is no economic or policy reason to deny the Union's request. There was no showing that the provision would be difficult to administer. It would have no effect on public services and would arguably be a benefit encouraging greater saving of sick leave hours.

⁵ Recommended changes, deletions and additions to the contract language are signified by bold, italicized, underlined text.

⁶ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

⁷ In this case, the lawful authority of the public employer was not in dispute on any issue submitted to fact finding. The Township did not present any comparables. The effect on public services was not in dispute on any of the matters submitted to fact finding. The parties did not present the fact finder with any stipulations.

Recommendation

It is recommended that the parties approve the following language:

Article 19 Conversion of unused sick leave

Section 1.

A) Last sentence of paragraph deleted.

ISSUE NO. 2. Article 27 Holidays/Personal Days

Holiday pay

The Union requests multiple change in the Holiday pay language of the contract. It seeks parity with the language in the police units' agreement with regard to the amount of hours to be paid if the employee is required to work. Current contract language provides for eighteen (18) hours additional pay at the employee's regular pay rate. The Union seeks to increase the amount of hours to increase to twenty-four (24). It makes a further argument that increasing the amount of hours from 18 to 24 will provide an additional incentive to fill the schedule on holidays.

The Township opposes this adjustment due to cost factors. The Township did not comment on the alleged difficulty of filling the schedule on holidays.

Neither side presented costs for this proposal.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

For reasons explained more fully below in the Wages article, the fact finder is not recommending a change in current language as to the amount of hours to be paid when any employee is required to work on the specified holidays.

Number of holidays

The Union made a further request for change in the number of holidays listed in the contract. Currently the contract lists ten (10) holidays. The Union

seeks the addition of two (2) extra holidays: Columbus Day and Martin Luther King Day. The Union previously had those two (2) holidays in prior contracts.

The Township did not argue any specifics as to this proposal; it stated it would not agree to it.

Neither side provided an estimated cost for this benefit. It is clear that there is accost attached to this proposal; the Department operates 24-7 and the holidays are premium pay days.

The Police units receive a benefit equivalent to twenty (20) paid holidays. The Union herein seeks twelve (12)

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The fact finder finds that the Union has presented sufficient equity arguments so as to provide a basis for granting two (2) additional holidays. The internal parity argument was not adequately rebutted by countervailing evidence by the Township. The Union did not seek twenty (20) holidays but sought to restore two (2) that had been exchanged in the prior agreement. There is a cost to adding holidays but the Township did not claim inability to pay.

Recommendation

It is recommended that the parties approve the following language.

Article 27 Holidays/Personal Days

Section 1:

Each full-time employee shall receive eighty (80) hours off each year as paid holidays. It is further agreed that when any employee is required to work on any of the following holidays he shall receive eighteen (18) hours of pay at his regular hourly rate. When working a twelve (12) hour shift overtime on a holiday, each full-time employee shall receive time and one half pay plus an additional nine (9) hours pay. Those holidays are:

New Year's Eve (December 31st)

New Year's Day (January 1st)

Martin Luther King Day (Township observance)

Independence Day (July 4th)

Thanksgiving Day

President's Day (Township observance)
Memorial Day (Township observance)
Labor Day (Township observance)
Columbus Day (Township observance)
Veterans Day (Township observance)
Christmas Eve (December 24th)
Christmas Day (December 25th)⁸

ISSUE No. 3. Article 32 Uniforms

The Union seeks to increase the amount of the uniform allowance from \$600 to \$650. It states that the cost of uniforms has increased and the adjustment will offset rising costs. It also points to the police contracts; the uniform benefit in those units is \$775. No evidence was produced to illustrate the difference in costs between police and fire uniforms.

The Township stated it had no objection to a \$50 reimbursement increase for each year of the contract.

Because the parties agreed at hearing to the change, the fact finder omits the analysis of the statutory factors.

Recommendation

It is recommended that the parties approve the following language:

ARTICLE 32 Uniforms

Section 1. Each full-time non probationary employee shall be entitled to a uniform allowance of Six Hundred Fifty Dollars (\$650) paid in cash to the firefighter on the first pay in May of each year. In addition to the purchase of uniforms, each firefighter shall be required to purchase from the Six Hundred Fifty Dollars uniform allowance any necessary gloves, hoods, flashlights, batteries and helmets. The Township will continue to provide bunker coats, pants and boots.

ISSUE No. 4. INSURANCE COVERAGE

Lasik

The Union proposes changes to Article 36 Section 6. It seeks reimbursement of up to \$1600 every ten (10) years for Lasik surgery. It argues that

⁸ The fact finder added in the two holidays in chronological order; the parties listing does not mirror the calendar so these were added in existing language.

eye glasses are a safety concern when wearing full gear and that current medical knowledge indicates a potential need for the surgery on a ten (10) year cycle.

The Township stated it opposes the request due to cost.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Most of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The fact finder was insufficiently convinced there is a real need to add to this benefit at this time. Apparently no one is currently approaching the ten year point. It seems that the time is not yet ripe for such a proposal. There is also some concern about the fact no research or documents were presented to substantiate the Union's position.

Employee contribution to premiums/caps

The Township seeks to increase the employee share of contribution from current level of 8% to 10%. The current contract has a phased in contribution rate of 4%-6%-8%. It points to the unknown costs that may be incurred when the insurance plan is revisited in March. It states that the employees must share in the spiraling costs. Although the Township was able to effectuate a reduced premium cost for 2010 it doesn't know what the numbers will be in 2011 and thereafter.

The Union is an active partner in the health care selection process per Section 4 of Article 36. The parties will work together in its committee review to hold the line. But the Township believes it is equitable and reasonable to increase the share to 10%.

The Union predictably wants to maintain its current level of benefits. Recognizing that a new contract may lead to a new system of payment/reimbursement it seeks language protecting its member's maximum reimbursement/out of pocket amounts at the current levels. The Union also sought to retain its cap of \$110 per month for family contributions.

No comparables were presented on this issue from adjoining communities.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability and thus are outside of the record.

The fact finder believes that it is neither unreasonable nor overly onerous to require employees in this climate to share more costs related to health insurance. Neither side projected the costs of the increase of 2%. Because of the great uncertainty related to health care costs and giving recognition to the Township's concerns regarding public accountability and fiscal responsibility the fact finder concurs that the 2% increase in employee contribution rates is modest and appropriate.

There is mutual self interest in finding the lowest cost, maximum benefit plan for all parties concerned. Even though it is difficult for a jurisdiction of Liberty's size to compete and negotiate the past year showed that some gains could be made when dealing with an insurer. The wellness program may also have a positive impact on the demographics for rating purposes.

Without firm data as to other options the Township's proposal appears to be reasonable and prudent. Both parties agreed that due to the flux rampant in health care costs it would be best for all concerned to have a re-opener at the end of the first year of the contract limited to the issue of percentage reimbursement. There is also joint recognition of some uncertainty as to the impact of the federal health care changes on the local unit.

Similarly the Union's proposal of a cap of \$110 per month should also take into account rising costs. A rise in the cap to \$125 poses no undue burden on the employees. There are a multitude of jurisdictions that do not provide for a cap; retaining a cap despite the Township's contrary position controls the burden to the employee and palliates to some extent the increased percentage. Changed facts in 2011 may very well command a different result.

Life Insurance for Retirees

The Union proposes that the Township be required to maintain a life insurance policy in the amount of \$10,000 for full time members of the Department

who retire after twenty-five (25) years of continuous service and retire with a non service related disability. The cost was described as nominal- between \$18-\$50 per year per employee. (There were no materials or firm quotes provided at hearing). This is a new proposal as there is no current language in the contract to maintain life insurance benefits for retirees. It states that this is an appropriate acknowledgement of loyal service. Information provided at hearing reflects that two persons may become eligible for this benefit during the successor contract term.

The Township opposes this benefit without explanation.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability and thus are outside of the record.

The fact finder agrees that this low cost item is an appropriate recognition of long service in the safety force. The anticipated impact to the budget is nominal.

Recommendation

The parties' current language should be amended as follows:

Article 36 Insurance Coverage

Section 2.

The Employer shall continue to provide full time bargaining unit employees and their eligible dependants, major medical, dental and vision insurance coverage as outlined in Appendix A. Effective the first pay period, (following the execution of this agreement, bargaining unit employees, covered under the employers health insurance plan, as defined in Appendix A, shall pay an employee health insurance contribution (of the total combined cost coverage for major medical, vision and dental) according to the following schedule :

<u>Single:</u>	<u>10% of yearly premium</u>
<u>EE/Dependant(s) :</u>	<u>10% of yearly premium</u>
<u>EE/Spouse:</u>	<u>10% of yearly premium</u>
<u>Family:</u>	<u>10% of yearly premium</u>

Payments will be made through bi-weekly payroll deductions, calculated as follows:

Yearly health premium (appropriate monthly premium x 12 months) times yearly percentage contribution (2011:10%)

The parties may re-open this provision pursuant to statute and rule at the end of the first contract year, or such other time as the parties may both agree.

...

For a one year period ending December 21, 2011 the employee health insurance contribution for "Family" rates shall be capped at \$125.00 per month.

...

For the period of this contract the Township will provide a life insurance policy in the amount of \$10,000 for all employees who retire after twenty five (25) years continuous service on a service retirement (non disability).

All remaining language in the current agreement in Article 36 is to remain unchanged.⁹

ISSUE 5. Article 35 Section 5. Staffing minimums

The Union states that current practice since 1998 has been to staff four (4) full time firefighters per shift. The Township agreed. The Union seeks to have current language conform to current practice.

Due to the agreement of the parties the fact finder will not analyze the statutory factors.

Recommendation

The parties current language should be amended as follows:

Article 35 section 5:

The Employer agrees to schedule four (4) full time firefighters per shift. In the event that daily staffing drops below four full time firefighters due to vacation leave, injury or other reason, a minimum of three firefighters will be on duty. Part time employees may be utilized to conform to the requirements of OSHA

⁹ There is a "me too" type provision in Article 36 relating to equivalency of benefits between the safety forces and the fire fighter unit. Neither side discussed its position on this provision but both indicated the me too provision was not meant to survive the current agreement. As stated in the recommendation section, all other provisions in Article 36 remain unchanged, ***except*** that the paragraph stating : For the term of this Agreement, it is agreed that the union members of the Fire Department, represented by IAFF Local 2075 will receive the same health insurance package deductibles, co-pays, types of benefits and any other pertinent services) as offered to any other Liberty Township safety forces unit." Is eliminated. As a practical matter the Township offers the same health insurance plan and benefit levels to all its employees.

1910.134(g)(4). If a part time employee is not available, then the fourth firefighter from the bargaining unit will be paid overtime to fill the vacancy.

ISSUE 6. Part timers Article 35 section 6

The Union expressed a concern that actual practices with respect to scheduling part timers are not currently reflected in contract language. The Union further opined that without clarification the Township may run afoul of legal provisions relating to that group's eligibility for benefits

The Township agreed that it did not intend to increase the use or scheduling of part time employees.

The parties agreed at hearing to add a clarifying sentence to Article 35 section 6. to reflect their mutual intentions. Due to the consensus reached, the fact finder did not apply the statutory factors.

RECOMMENDATION

Article 35 section 6 should be amended as follows:

The Employer may utilize part-time employees to compliment the existing personnel provided that all such part-time employees are certified paramedics and are at minimum Firefighter II certification. No premium pay will be paid to part-time employees. Part –time employees will not accumulate more hours per week than any full time employee of the Liberty Fire Department. Part time employees will not exceed more than 24 hours per week or more than fifteen hundred (1500) hours per year. Part time employees shall not be scheduled sufficient hours to merit entitlement to fringe benefits under state or federal law.

Issue No. 7. Pension Pick up Article 37

The Township proposed that new hires in the Fire Department not receive pick up of employee's share of the Ohio Police and Fire Disability and Pension Fund as is currently provided in Article 37 section 2 to current employees.

The Union did not present countervailing arguments other than to point out that no new hires were planned during the successor contract cycle.

The Township responded that it needed to begin to rein in costs and this was not going to affect any current members.

The fact finder has taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-

05(J) and (K). Some of the factors are not relevant. Others have no evidentiary support in the record. There was no showing by either party regarding comparables for this provision.

The fact finder while generally adverse to two tier systems understands that benefit levels achieved by long term bargaining relationships do not carry the same heft as benefits defined for new hires. In the absence of strong arguments from the Union the fact finder recommends the proposal of the Township.

Recommendation

The parties should amend Article 37 section 2 as follows:

Section 2:

For the term of this agreement, the Employer shall continue to pay 100% of the employee's share of the Police and Fire Pension contribution, up to and not exceeding a total of ten percent (10%), or to a rate as established by the Ohio Police and Fire Pension Fund. For all persons hired on or after January 1, 2011, the employee's contribution will no longer be paid by the employer.

ISSUE No. 8 Rules and Regulations Article 12

The Township proposed as follows:

The new proposed Liberty Fire Department Rules and Regulations January 2011, will be accepted and implemented with the signing of the new Collective Bargaining Agreement.

The Union responded that it was prepared to review the rules and regulations but not agree to them upfront without such a review.

The fact finder did not have the benefit of the Township's explanation for the need for this language due to an unavoidable schedule conflict of the Fire Chief. The fact finder reviewed current language in Article 12 and found it covered the issue posed by the Township's proposed change. The Township's right to promulgate rules and regulations is stated and the need to refine or revise that section was not supported by the record. There is also a Management's rights section in the agreement.

Recommendation:

The fact finder recommends that the language in Article 12 section 1 remain unchanged.

ISSUE No. 9. Article 35 Rights of the Parties - Additional certifications

EMT-B

The Township proposes that all members hold an EMT B certification at the Township's cost and those with current certification remain certified.

The Union does not oppose this proposal but sees it as a quid pro quo for a wage increase.

The fact finder has taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the factors are not relevant. Others have no evidentiary support in the record.

The fact finder concludes after reviewing current language and weighing the statutory factor of the welfare of the public that the requirement to obtain/ maintain EMT-B certification is reasonable and is necessary for the better operation of the Department. Since there is no cost to the employees and it is assumed that taking the course is scheduled so as to not result in lost wages the requested language change is recommended.

Recommendation:

Article 35 should be amended as follows:

ADD a new section 8

All members of Local 2075 engaged in/assigned to fire suppression will become EMT-B certified and/or maintain said certification. Costs associated with the certification will be borne by the Township.

Fire Safety Inspection certificate

The Township proposed language setting forth requirements that certain positions obtain certifications relevant to job performance. It requested that Captains be required to obtain and maintain an Ohio State Fire Safety Inspection certificate. The Township stated it wanted a better trained, more proficient group of employees..

The Union response was that it supported the requirement in theory. In order to provide appropriate incentives for these employees to achieve higher levels of certification the Township should make appropriate rewards and adjustments in wages.

The fact finder has taken into consideration relevant factors set forth in R.C.4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Some of the factors are not relevant. Others have no evidentiary support in the record.

The Township's proposal is consistent with the mission of the Fire Department. There is no cost to the bargaining unit member for obtaining the requested certification. The Union tacitly agreed that such certification is appropriate. It did not explain to the fact finder's satisfaction why this requirement must be linked to a wage increase. Regardless as the wage increases will be discussed below this point becomes moot.

Recommendation:

Article 35 should be amended to add a new section 9 stating as follows:

Add new Section 9.

All Fire Department officers appointed to the rank of Captain must obtain within one year of the date of promotion an Ohio State Fire Safety Inspector Certificate. He must maintain same as current and in good standing during the period he serves as Captain. All training and certifications will be paid for by the Township.

The additional language below was agreed upon to conform to the parties' understanding.

It is acknowledged that in special situations and/or emergency situations suppression personnel may perform inspections. These persons will not be considered part of the Fire Prevention Division.

Issue 10. Longevity Pay

The Union proposes that the current cap of twenty-five (25) years for receipt of longevity pay be lifted. The Union argues that it is an incentive for long tenure. It points out that the Police units receive a higher amount of longevity pay. (\$6).

The Township opposes this proposal on the basis of increased costs.

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). Certain factors however were not present in the record. Other

factors were not relevant to the determination. Only internal comparables were presented.

The fact finder was not persuaded that the sought for benefit is justified at this time. Interestingly the Union did not propose removal of the cap per month of \$100. This it appears that an employee receiving credit for more than 25 years would not be able to receive more than \$100 making the benefit illusory. The parties generally and the Union in particular did not present the fact finder with actual proposed contract language but rather "concepts". Because of the anomaly the request for unlimited accrual of years of service for longevity purposes is not sufficiently supported by the record.

As another note although the police units receive a higher monthly stipend their benefit caps out at 25 years of service as well. The service department employees represented by the Teamsters have no cap on years of service but receive a lesser amount than the safety forces. Because the Union did not seek parity with the Teamsters on this or any other aspect of their contract terms, the fact finder is not persuaded by this factor.

Recommendation:

Article 38 language should remain as written.

ISSUE 11. Article 18 Sick Leave

Overtime eligibility

The Township proposed a change to the sick leave language regarding eligibility for overtime after sick leave usage. After discussion at the hearing the parties reached agreement as to new language. There was no need for the fact finder to apply the statutory factors.

Recommendation:

Article 18 Section 11 should read as follows:

Any member of Local 2075 when reporting off on sick leave will not be allowed to work overtime until the member has worked a full 24 hour shift prior to the assigned overtime shift.

Holiday eligibility

Although it abandoned its full parity argument it maintained it was still a relevant factor for internal comparables to take into account the large wage disparity between the Fire department employees and the Police department employees.

The Union produced the current checking account balances for December 1, 2010. These show \$426,624.21 in Fire District funds and \$39,099.41 in Ambulance funds .

The Township argues that it has had a very poor economic experience in 2009 causing it to borrow money. It says it owes the Fire Department \$250,000 –money it borrowed last year to meet payroll in the Police Department. This has not yet been repaid. It has also borrowed \$200,000. (lending source unknown).

Funds were also borrowed from the Fire Department to meet payroll obligations of the 911 dispatchers in the Emergency Dispatch Center, a service used by the Fire Department.

The total amount borrowed from the Fire Department is approximately \$331,996. Repayment dates and terms of repayment were not part of the record at hearing. ¹²

It argues that due to the State's budget problems it is likely that local revenues usually received from the State will be curtailed or reduced.

It points to the uncertain future of Ohio's estate tax which is a primary source of revenue for the Township. The amount of estate tax received by the Fire Department was not in evidence and was not one of the listed revenue sources.

It states that there will be an actual loss of \$197,161.61 in personal property taxes next year. There was no supporting documentation presented,

All equipment purchases must come out of the ambulance fund, and two fire ladder trucks are due to be purchased during this contract term at a projected

¹² From the 2009 cash summary report it appears as though \$34,241.88 was also borrowed against the Ambulance fund. The fact finder makes no findings on the propriety of the borrowing of the funds. It is significant only to illustrate that there are sufficient funds to fund wage and fringe benefit increases.

cost of \$400,000. No specific timetable was discussed for the fire truck purchases. The stability of the ambulance fund was conceded by the Township.

It points out that loss of home values and foreclosures (numbers not in evidence) will result in a decline in real estate tax collections.

The existing surplus of \$260,000 has been previously earmarked for use in building a new central fire station. This the money is not "available" for wage increases according to the Township. This surplus cannot be replaced as it came from a one time sale of donated personal property to the Township.

It states that "A wage freeze is absolutely necessary to maintain current staffing levels and to avoid layoffs." But it did not assert that layoffs were imminent for the Fire Department or provide any other details.

The fact finder has several comments. Regarding the claim that Ohio's estate tax provisions are in jeopardy it may be true but at this juncture the loss of revenue is speculative. Likewise the impending decrease in local revenues from the State may be inevitable or highly likely. But as of the date of the hearing the full impact of the budget deficit is yet an unknown. Declining property tax revenues also were a matter of conjecture not evidence.

Even more problematic for the Township's position of wage freezes is the admitted fact that the Fire Fund is less \$331,900 due to the Township's efforts to maintain services and employment levels for its non Fire Department employees. Although it was conceded that the money must be restored to the Fire Department's ledger the when is not in evidence.

There is no doubt that this wage issue is the most challenging to decide. The Township must be mindful of accounting principles, fixed expenses, the public trust, ability to promote and secure levy passage and the inevitable "rainy day". These are valid concerns even if it is not a claim of inability to pay.

The Union failed to show these concerns were shallow, over dramatized or otherwise subject to challenge. It is not a classic "inability" to pay scenario argued by the Township. It is an unwillingness to pay. Balancing all of the statutory factors the fact finder agrees that *any increase to achieve full parity* in this contract at this time under these facts is grossly untenable. Granted the

Union pulled that request. It also is noted that the theory behind a claimed entitlement to parity was never explicated.

Having so stated that does not foreclose the reasonableness of a wage increase per se. The fact finder also notes that the fact that the Fire Department is flush with cash is not a predicate for spending it all down to zero surplus. Thus the fact finder is unwilling to recommend the 7-5-5- and the 5-5-5 percentage increases sought by the Union.

The fact finder believes that a 3% across the board increase for all three years of the contract is reasonable, equitable and appropriate for the firefighters below the rank of Lieutenant. Captains and Lieutenants should receive a one time bump to 5% in 2011, then 3%-3% the remaining two years of the contract. This wage increase is consistent with prior contracts and will not unduly stress the fire fund.

The recommended 5-3-3 percentages for command officers and 3-3-3 percentages for firefighters wage increase based will be of course tempered by the potential of escalating health care costs and unknown external economics such as inflation.

It is also unclear what the economic outlook will be for this area of Ohio, which historically since the 1990s has been economically depressed. Even so the prospects for the Township's financial health and growth are not crystal clear. There was no evidence presented on unemployment rates, population decline/increase, demographics, and economic development efforts in surrounding communities that may spur revitalization here in Liberty Township. . Unknown developments may provide for more of an income base. The parties will meet again in three years to assess the situation and bargain again. The equities and facts will undoubtedly be different.

Recommendation

Article 37 Wages Section 1 should be amended as follows:

Captains to receive a 5% increase for the first year of the agreement; and 3% each of the remaining two years; Lieutenants ; same.

Firefighters to receive a 3% across the board increase for the term of the contract.

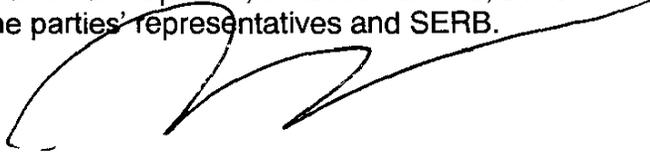
Respectfully submitted,



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Certificate of Service

An original and true copy of the fact finder report were sent by ordinary US mail to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215 and to Mark Finamore, Esq. and by overnight US mail Patrick Ungaro, and William Opsitnik, on December 20, 2010. An electronic copy was also sent to the parties' representatives and SERB.



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