

# Received Electronically @ SERB Aug 8, 2011 8:30 am

Before Louis V. Imundo, Jr., Fact Finder

In the matter of fact finding between

THE BOARD OF TOWNSHIP TRUSTEES, UNION TOWNSHIP, CLERMONT  
COUNTY, OHIO

and

LOCAL 3412  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

SERB Case No. 10-MED-10-1634

This matter was heard before Louis V. Imundo, Jr., Fact Finder, in Union Ohio on July  
21, 2011.

## **1.0 Introduction**

### 1.1 Appearing For The Township

- Lawrence E. Barbieri, Attorney at Law
- Ken Geis, Administrator
- Stan Deimling, Chief

### 1.2 Appearing For The Union

- Henry A. Arnett, Attorney at Law
- Mike Smith, President & Firefighter/Medic
- Rusty Huff, Treasurer & Firefighter/Medic
- Tim Stephens, Secretary & Firefighter/Medic
- Frances Delzotti, Vice President & Firefighter/Medic

## **2.0 Unresolved Issues**

**Article 6 – Safety**

**Article 7 – Non-Discrimination**

**Article 9 – Probationary Periods**

**Article 12 – Promotions**

**Article 13 – Personnel Files**

**Article 14 – Discipline**

**Article 17 – Hours of Work and Overtime**

**Article 18 – Wages**

**Article 20 – Vacation**

**Article 22 – Sick Leave**

**Article 24 – Leaves of Absence with Pay**

**Article 25 – Restricted Duty**

**Article 26 – Continuing Education**

**Article 27 – Uniforms and Equipment**

**Article 28 – Miscellaneous**

**Article 29 – Strike and Lockout**

**Article 32 – health and Physical Examination**

**Article 33 – Duration**

At the beginning of the Hearing the Parties, whose positions were either the same as, or similar on a number of the unresolved issues, reiterated and discussed their views and concerns. The articles where the positions were essentially or exactly the same were quickly settled. For those articles where the positions were similar the Parties, either on their own or with some input from the Fact Finder were able to settle them. After these discussions came to a close there were five unresolved articles. They were: Articles 6, 17, 18, 22 and 25. An attempt was made to settle the unresolved articles by mediation. Because these articles were interrelated a number of attempts were made to put together a package deal, none of which were successful.

### **3.0 Findings And Recommendations**

### **Article 6 – Safety, Section 6.1**

The Union proposed that the Township establish a safety concern reporting system and an exposure database. The Union asserted that a safety concern system will enable Management to more quickly identify defective equipment and either make repairs, or remove such equipment from service. The Union argued that making minor repairs is more cost effective than discovering that major repairs are needed. The Union argued that it is safer for employees and the community to take equipment that is likely going to fail out of service rather than to wait until it fails, which could result in serious consequences before taking it out of service. The Union contended that establishing a safety concern database will enable Management to address safety issues before they become major problems. In addition, such a system would provide Management with a history of employees' exposure.

It was Management's position that the Union's proposal is vague, and is far too costly to develop, implement, and maintain relative to potential cost benefits especially in view of the Township's current and projected financial condition.

After reviewing the record and considering the Parties' respective arguments the Fact Finder agrees with the Union that such a system, providing the software already exists, is inexpensive, easy to implement and inexpensive to maintain, could be useful and cost effective. However, in view of the Township's financial situation purchasing, implementing, and maintaining such a system is something that the Township cannot afford at this time. The Fact Finder recommends that Section 6.1's current language be carried over into the successor agreement.

### **Article 6 – Safety, Section 6.4**

The Union proposed written procedures should be used whenever new equipment is going to be put in service. The Union argued that written procedures, prior to placing equipment in service, would make for a safer workplace. Also, such procedures would facilitate creating a more uniform work environment.

Management opposed the Union's proposed change in Section 6.4's language. Management argued that such procedures are too costly to write and any potential benefit would be minimal, at best. Management also argued that manufacturer and/or supplier provided training and instruction materials are sufficient and if the township were to write such materials it would be redundant of what is already provided or available. Last, Management argued that monies for such an expense are non-existent and that training is being provided.

In the Fact Finder's opinion, the Union's proposal, if adopted, would not be a wise expenditure of very scarce funds. In addition, the Union failed to prove that training and/or written materials already available or provided are inadequate. The Fact Finder recommends that Section 6.4's language be carried over intact into the successor agreement.

#### **Article 6 – Safety, Section 6.5**

Management proposed that the last sentence in Section 6.5, which states: "Daily staffing will not fall below 12 full time personnel." should be removed. Management asserted that in view of the Township's current financial condition and the projections for the foreseeable future the Township cannot afford to maintain the 15 minimum staffing requirement. Management said that the current minimum staffing requirement is costing the Township \$150,000-\$200,000 a year in overtime and that eliminating it will result in a cost savings of approximately \$50,000 a year.

It was Management's position that contrary to the Union's claim that safety will be compromised if the minimum staffing falls below 15, the Mutual Aid Agreements with other communities will insure that a sufficient number of personnel respond to the scene of a fire or emergency.

It was Management's position that less than five percent of the annual number of calls for service require that 15 or more firefighters be on the scene. Twenty five to 30 fire calls annually required 15 or more firefighters.

Management argued that with the current staffing requirement 22 continuous operations staff are actually needed because of vacations, leaves, comp time, and Kelly days off whereas with a lower minimum requirement 18-19 continuous operations staff would be needed. Management pointed out that even if some of the fire stations are closed the current minimum staffing level requirement would not change.

Management strongly intimated that if this requirement remains in effect the entire Fire Department would be disbanded and firefighting services would be contracted out.

It was the Union's position the current minimum staffing level is absolutely necessary in order to provide the fire fighting and emergency services that the Township needs and that the citizens require. The Union argued that if the staffing minimum is reduced the department would not meet the standards for accreditation. The Union opined that any reduction would result in insurance costs increasing for homeowners, businesses, and institutions.

The Union argued that calls for service, fire, accident, medical, etc., are increasing and any reduction in staffing would adversely affect the level of service to citizens. It was the Union's position that Township firefighters are far more likely to be called on to provide mutual aid to surrounding communities as opposed to firefighters in those communities providing aid to the Township. The Union argued that if a decrease in minimum staffing occurs, when occasions arise when mutual aid is needed firefighters and equipment from the communities who are signatories to a Mutual Aid Agreement will be unable to respond in a timely manner because their resources are already severely strained. The Union pointed out that the trend for service has been going up while the number of bargaining unit firefighters employed by the Township has decreased from 64 to 59. Currently, there are no plans to hire additional personnel.

The Union also proposed that each station shall be staffed with a Lieutenant or acting Lieutenant. The Union claimed that 99 percent of the time an acting Lieutenant or Lieutenant is assigned to each station. The Union argued that it is overly burdensome on the senior firefighter to assume the responsibilities of a command officer on those occasions when such an individual is not on site, and for that reason Management should be required to always staff the position.

It was Management's position that the current system has worked well, and there has never been a problem. Management further argued that even if there were merit in the Union's position, the Township cannot afford the additional costs that would be incurred by such a requirement.

In the Fact Finder's opinion, Management and the Union made persuasive and compelling arguments to support their respective positions. Given the facts that the number of firefighters employed by the Township has decreased from 64 to 59 while the demand for services has increased it appears that the Department's human resources are under increased stress. While working firefighters overtime can reduce the stress on staff there is a point of diminishing returns. While some overtime is good, too much is bad. It has been well documented that when people work a lot of overtime, particularly in physically demanding, stressful and dangerous work situations their levels of concentration, awareness, and response time go down. In the Fact Finder's opinion, if the current level of minimum staffing is reduced the total number of overtime hours worked by the Department will likely go down, but the number of hours worked by individual firefighters will likely go up. If the demand for service remains constant and/or goes up and the number of firefighters on duty goes down then the likely outcome is that there will be more overtime worked by the reduced number of firefighters on duty. In addition, reducing the current level of minimum staffing could result in more off duty personnel being called in to work.

Considering the evidence the Union presented at the Hearing the Fact Finder has serious doubts that if the minimum staffing level is reduced that firefighters from other communities could be available and be able to respond in a timely manner if they were needed by the Township's firefighters to deal with a fire or some other kind of emergency.

The record establishes that the 15 minimum, which is not reflected in Section 6.5 of the expired agreement, resulted from a Memorandum Of Understanding, which became effective on July 13, 2008 and the subsequent passage of a levy. The MOU expired when the Agreement expired on December 31, 2010.

The Fact Finder believed that by now Ohio's economy would be improving. While anecdotal evidence suggests that it is improving, albeit far too slowly, the empirical evidence, which tells people what has happened as opposed to what is going on at the moment or what will be in the future, is inconclusive. While economic conditions in the State and the region are slowly improving how soon and how much the Township's financial situation will improve cannot be accurately predicted with confidence or certainty.

In the Fact Finder's opinion, the Union's rationale and arguments for requiring that each station be staffed with a Lieutenant or acting Lieutenant was not persuasive. There is currently no problem and the Union failed to show that if the proposed requirement is not put into effect there will be problems. The Fact Finder recommends that this proposed language not be adopted.

The Fact Finder recommends that the following language be adopted and memorialized in the successor Agreement: For 2011 and 2012 daily staffing will not fall below 12 full time personnel. If, by January 1, 2013 the Township's financial condition has not improved from what it was in 2011 the minimum staffing requirement may be re-opened.

#### **Article 17 – Hours Of Work And Overtime, Section 17.2**

Management proposed to delete the words: "...and hours employees work in excess of their regularly scheduled tour of duty..." from the first sentence. The sentence would then read: "Overtime hours shall be paid one and one-half (1-1/2) times the employees' rate of pay." Management's rationale for wanting this change was to save on overtime costs.

The Union proposed that the current language be carried over intact into the successor agreement.

In the Fact Finder's opinion, for many good reasons, this proposed change in language should not be adopted. If Management wants to reduce overtime costs, which are significant, the best way is to identify the cause(s) for the overtime, and to the extent realistically possible, deal with the causes before addressing the symptoms.

### **Article 17 – Hours Of Work And Overtime, Section 17.9**

Section 17.9 in the expired agreement reads as follows:

“Effective with the beginning of the first overtime period in January, 2010, the standard work day for continuous operation employees covered under this Agreement shall be 24 hours. This shall be known as the employees' 'tour of duty'. The standard work period of continuous operation employees covered under this Agreement shall consist of a 28 day work period with a Kelly day off each period. The continuous operation employee's standard number of hours worked annually will be 2,600.”

Management proposed the following changes in 17.9's language:

“The standard work day for continuous operation employees covered under this Agreement shall be 24 hours. This shall be known as the employees' 'tour of duty'. The standard work period of continuous operation employees covered under this Agreement shall consist of a 28 day work period with a Kelly day off the shift that works 10 tours of duty during the 28 day work period. The continuous operation employee's standard number of hours worked annually will be 2756.

In the Fact Finder's opinion, there is no reason for the first sentence and it should not appear in the new agreement.

In the Fact Finder's opinion, the current Kelly day off language is generous and adopting Management's proposed change to this sentence would save the Township some money and not be too harsh on employees. The Fact Finder recommends that Management's proposed change be memorialized in the successor agreement.

The Fact Finder believes that on average, nationwide firefighters work at least 106 hours bi-weekly, which equates to a 2,756 hour standard number of hours annually. This is consistent with the definition of “Firefighters Pay” under 5 U.S.C. Part 550.1303. In the Fact Finder's opinion, considering the Township's financial situation, Management cannot afford to be as generous as they have been in the past. In view of the recommendation that minimum staffing not be reduced the Fact Finder believes that the annual standard number of hours should be increased to 2,756.

In conclusion, the Fact Finder recommends that Management's proposed language for Section 17.9 be memorialized in the successor agreement.

### **Article 18 – Wages, Section 18.1**

The Union proposed the following:

Firefighter/EMT Step 1-4: a 1% raise the first year and a 3% raise in year 2 and a 3% raise in year 3 of the contract.

Firefighter/Paramedic Step 1-4: 0% raise the first year and 3% raise in year 2 and 3% in year 3 of the contract.

Lieutenant Step 3-4: a 0% raise the first year and a 3% raise in year 2 and 3% in year 3 of the contract.

Captain: a 0% raise in the first year and a 3% raise in year 2 and a 3% raise in year 3 of the contract.

All personnel with Paramedic Certification have an additional \$500.00 Medic Certification bonus built into the base in each year of the contract.

The Union argued that the proposed increases are reasonable, the Township has the means to pay, and the comparables show that bargaining unit members' pay is low. The Union made the point that the monies generated from the "Jungle Jim's" project will come to the Township in 2012.

It was Management's position that currently the Township does not have the funds for any wage increase, no less the funds to pay for what the Union is seeking. It was Management's position that the information contained in Exhibit D – Economic Forecast, Exhibit E – Serb Benchmark Data, and Exhibit F – 2010 Gross Earnings By Employee support their position that there should be a zero percent increase in 2011, 2012, and a wage reopener in 2013.

It has been well documented that over the past 15 years, and arguably even longer, the average private sector workers' total compensation (wages and benefits) has not kept pace with the overall increase in the cost of living. Workers with the education, knowledge, and skills that are currently and have been in high demand have fared much better than the average worker. For a variety of reasons, until relatively recently the average public sector worker has fared better than his/her private sector counterpart with respect to total compensation. Like their counterparts in the private sector, public

sector workers with the education, knowledge, and skill that are currently and have been in high demand have fared much better than the average public sector worker.

The result of the fact that for many years the average private sector worker, and more recently the average public sector worker has seen his/her standard of living decrease because their total compensation has not kept pace with the increase in the cost of living. When people have high expectations and enjoy their standard of living the last thing they want to see is for it to go down. Until the past four to five years the easy availability of credit coupled with peoples' desires to live the good life, which in our culture has been driven by materialism, or as the late comedian George Carlin used to joke about, the never ending drive to have more "things and stuff", motivated people to spend far more than they had the ability to pay for. The result has been an economic and financial apocalypse.

For a variety of reasons, as stated, on average, public sector workers, until relatively recently, were financially better off than the majority of private sector workers. The near collapse of the American economy a few years ago and the slow pace of recovery has had a devastating effect on all Americans, except for the very rich, and has severely adversely impacted the public sector. High unemployment, downsizing of companies, declining property values have cut deeply into the revenue streams of municipalities. Because Ohio, more so than many other states, has seen its revenue drop significantly monies that the State has historically given to municipalities has been cut.

For the public sector, improvement in the flow of revenue will likely be a long time coming unless the State's economy experiences a dramatic improvement. Improvement could be much sooner and better if businesses recognize the benefits, and there are many, of locating in Ohio, or expanding current operations in Ohio.

After reviewing the written information and the Parties' respective oral arguments it is the Fact Finder's opinion recommending any raise for firefighters at this point in time would be unwise. In the Fact Finder's opinion, in light of the recommendation that the current minimum staffing level be maintained any raise in wages would quite likely trigger layoffs.

In conclusion, the Fact Finder recommends that with very minor changes, Management's proposed language for Section 18.1 be memorialized in the successor agreement. The sentence reads: The above listed salaries reflect that all employees receive a 0% increase in 2011, a 0% percent increase in 2012, and a wage reopener in 2013.

#### **Article 22 – Sick Leave, Section 22.8**

The Union proposed that the maximum payout for employees who retire with 20 or more years of service be increased from 720 hours to 800 hours. The Union pointed out that the increase to 800 hours will match the payout that retiring police officers can be paid.

Management opposed the Union's proposal for the reason that the Township cannot afford the increase.

In the Fact Finder's opinion, although the Township's finances are under stress the cost of the Union's proposed increase in hours is very small. The Fact Finder recommends that the Union's proposed increase in hours from 720 to 800 be memorialized in the successor agreement.

#### **Article 25 – Restricted Duty, Section 25.2**

The Union proposed that the following sentence be added to the Section: Employees on restricted duty will not respond to emergencies or operate vehicles responding to emergencies or transporting patients to hospitals. The Union argued that allowing or sending personnel on restricted to duty to respond to emergencies, or driving vehicles responding to emergencies, or even allowing them to transport patients to hospitals could aggravate their medical condition and even result in re-injury, or a new injury.

It was Management's position that the proposed language in unnecessary because to date, there has not been a problem.

In the Fact Finder's opinion, common sense and good judgment, which appears to have prevailed to date, should guide Management in allowing, or directing personnel on restricted duty to respond to emergencies. In the Fact Finder's opinion, the Union's proposed language in unnecessary and would add to the cost of doing business.

In conclusion, the Fact Finder recommends that Section 25.2's current language be carried over intact into the successor agreement.

August 8, 2011

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Date

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Louis V. Imundo, Jr.  
Fact Finder