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IN THE MATTER OF FACT FINDING

BETWEEN

AUSTINTOWN TOWNSHIP

AND

TEAMSTERS LOCAL 377 (PART-TIME FIRE FIGHTER UNIT)

SERB CASE # 11-MED-08-1064

Robert G. Stein, Fact-finder

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INTRODUCTION

The parties to this matter are Teamsters Local 377(hereinafter "Union" or "Local") and Austintown Township (hereinafter "Township", "Employer" or "Department"). The Employer is located in northeastern Ohio. The bargaining unit is comprised of approximately twenty-seven (27) part-time Firefighters, 4 part-time Fire Lieutenants, and 4 part-time Captains. Prior to fact finding the parties agreed to approximately 20 articles and parts of the articles not completely resolved. This left 11 unresolved issues that were moved to fact finding. The fact finder first attempted to resolve the issues through mediation, but that effort proved fruitless. The basic position of the Union in regard to all the issues in these negotiations, with the exception of proposing to receive a signing bonus of \$375.00 and those sections of the open issues already agreed upon, is to maintain current contract language. The Employer is the moving party in all but the signing bonus proposal.

General/State/Local Economic Outlook

General/State: Uncertainty appears to be an apt characterization of the state of the current national and international economy that by virtue of world interdependence can, in a matter of hours, impact the economy of a township in northeastern Ohio. The economy in Ohio continues to suffer the effects of a national recession that is subject to the financial health of the United States and

other countries, particularly those who are currently facing considerable debt in Europe. In Ohio the unemployment has hovered in the 9% range and it has not moved appreciable in the past several months. When it has dropped the conventional wisdom appears to indicate that that is due in large part to people who have stopped looking for work, rather than to substantial gains in employment. The facts indicate that Ohio is in a very slow recovery that is still plagued by foreclosures and a lack of well-paying jobs. Several months ago what has been called the great recession was declared to be officially ended. Yet, for people in Ohio who are unemployed, underemployed, have experienced dramatic declines in their home values, face or have faced foreclosure, have given back benefits and paid days, have foregone wage increases for years, and have been laid off, such declarations are ring hollow. The impact of the recession upon Ohio's revenue stream is plain and employers in the public sector are feeling the effects of the state of Ohio significantly reducing its financial support to local governments. The Ohio legislature and the current Governor have dramatically reduced funding to local governments as the state of Ohio seeks ways to cut costs, generate revenue, and continue to balance its budget. Townships like Austintown have suffered from the effects of a Wall Street/Banking meltdown and the losses in housing values. As the rapid economic decline took hold, business as usual was about to change in a very permanent sense. However, it took a while for management and labor in the public sector to experience the effects of a dramatic decline in what were

formerly dependable revenue streams and to come to terms with the new reality. At this point in time it is difficult to say what path Ohio must take to economic recovery or even how economic recovery will be defined in the future. As stated above we are living in uncertain economic times and every month, and lately it seems every week, on a national and international front, there is both positive and negative economic news that causes wild fluctuations in the financial sector. And given the contentious climate in Washington, little help seems to be forthcoming to Ohio in the near term. One of the more certain and troubling aspects of the current Ohio economy is the loss of high paying skilled jobs. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. All the news is not negative; there are indicators of recovery and some employers are doing well in the aftermath of the recession. Natural gas exploration has provided a reason for optimism for a large portion of eastern Ohio that has long suffered losses in its economic base. And, there are states that are weathering the recession much better than Ohio. Prudence would dictate that the sobering realities of dramatically fluctuating and anemic economic indices currently need to be factored into any projected budgeting process for a public employer in Ohio. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and

township public employees in and outside of Ohio have and continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. When dealing with concessionary bargaining, evenhandedness of sacrifice takes on even greater significance than it does in more normal times where needed market based equity adjustments can be reasonably addressed as a customary subject of negotiations. The critical and central factor during times of economic hardship is authenticity. If sacrifice is called for by employees and managers alike, then it must be based upon reality and not hyperbole.

Locally, Austintown Township has experienced several rounds of unfavorable financial news that has followed declines in its property tax base, with the most recent being dramatic cuts in local government funds and the forthcoming elimination of the estate tax that will occur in 2013. The Union does not disagree that the Township has financial problems, but does not agree they are as severe as the Township indicates.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements

2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

<u>Issues 1 Article 7, Section 1, Compensation/Health Insurance</u>
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Current Language (see CBA)

Employer's Position. The Employer is seeking to eliminate multiple rates of pay for the same classification from 6 to 3. It argues that the employees are already receiving a bonus for retaining EMT certification and it should not have to pay twice for this certification.

Union's Position. Maintain current language because it keeps the bargaining unit in line with the full-time bargaining unit

Discussion: The parties have agreed to eliminate Section 2 of the language of Article 7, Section 1 on August 12, 2011. While I understand the financial concerns that the Township finds itself, eliminating pay is a drastic step that is not justified at this time.

Recommendation: Maintain Current Language, except for those sections previously agreed upon or eliminate.

Issue 2 Article 7, Section 3, Compensation/Health Insurance

Current Language (see CBA)

Employer's Position. The Township argues it can no longer guarantee 1040 hours of maintenance work to an employee irrespective of need given its financial position.

Union's Position. Maintain current language. This is only one employee who performs essential maintenance work.

Discussion: It appears that the employee in question is a handyman who provides some valuable service to the Township on an annual basis. However, to guarantee one employee in the bargaining unit a set number of annual hours appears to be a commitment that may be impacted upon the uncertain times faced by the Employer. Continuity of fire service to the public, even in difficult economic times, is paramount when reductions in hours and personnel have to be made. That is not to say a change will occur in the hours, in as much as the work must be performed. However, the Employer's argument for flexibility is justified based upon its revenue. The Employer's position is also supported by comparable data listed in Ex. B. Most importantly, the language of the recently negotiated agreement with the IAFF, which represents full-time fire fighters, calls for not being able to use part-time firefighters if a full time firefighter is laid off. (Ex. C)

Recommendation: Modify as follows:

Section 3. Delete this language

Issues 3 Article 7, Section 4 Compensation/Health Insurance

Current Language (see CBA)

Employer's Position. The Employer proposes to modify the language of this EMT Response Bonus to include a minimum responding of 25% of the calls from home. It is seeking, in its words, "...a reasonable amount of performance ...where a benefit of this nature would be paid. Once again the comparable data supports the Employer's position. (Ex. B)

Union's Position. Maintain current language. The Union argues that no change in this is necessary and it is unfair to certain firefighters. It also argues that the EMT Response Bonus should be for just maintaining EMT certification.

Discussion. The fact finder finds the Employer's argument to require some accountability in terms to performance to be persuasive and reasonable, but it appears that going from no response rate requirement to a minimum response rate of 25% is a dramatic shift to impose on employees all at once.

Recommendation: Modify the Current language as follows:

Section 3 (old section 4) EMT Response Bonus. All EMT's shall receive a \$300.00 annual bonus to be paid first pay period in June for keeping the EMT cards/certification **and responding to 10% of annual calls from home in 2012 and responding to 20% of annual calls from home in 2013.**

Issues 4 Article 7, Section 4 Compensation/Health Insurance

Current Language (see CBA)

Employer's Position. The Employer's proposal is consistent with its proposal in the prior issue.

Union's Position. Maintain current language

Discussion. Once again the Employer's proposal has merit, but the amount it is proposing for the first time appears to be burdensome on the bargaining unit. A change of this magnitude needs to be phased in over contract periods if agreed upon.

Recommendation: Modify the Current language as follows:

Section 3. Response Rates. All employees shall be required to respond to at least 10% of the calls from home in 2012, and 20% in 2013. Failure to do so will result in the removal of the employee's name from the roster, at the discretion of the Employer. When calculating the percentage of an employee's responses to call outs from home any call outs that occur while the employee is working the crew will not be added to the total annual call outs.

Issues 5 Article 7, Section 6 Compensation/Health Insurance

Current Language (see CBA)

Employer's Position. In terms of minimal work the Employer is seeking to require additional hours per month from part time employees and to assert its discretion in such matters. The Employer argues that in this proposal it is attempting to maintain minimal skill levels among its part-time workforce.

Union's Position. Maintain current language.

Discussion. The Employer's proposals of requiring a minimum of 8 annual crew hours is not unreasonable in terms of maintaining qualified part-time staff. An employer has the right to establish the quality of its workforce.

Recommendation: Modify the Current language as follows:

Section 5 Mandatory Minimum Crew Hours. At the discretion of the Township, all, employees shall be required to work at least **eight (8)** annual crew hours. An employee may split up the required **eight (8)** annual crew hours in scheduled segments with the mutual agreement of the Fire Chief and the affected employee. **Additionally, all employees may be required to work a minimum of eight (8) hours per month on the crew, if work is available.**

Issue 6 Article 7, Section 7 Compensation/Health Insurance

Current Language (see CBA)

Employer's Position. The Employer in proposing its language is anticipating its obligations under national federal health care legislation.

Union's Position. Maintain current language. The Union argues that the Employer's proposal is "overkill" given the current language.

Discussion. The parties agreed to eliminate Section 8. The Employer's proposal addresses a potentially important issue, however, at this point in time there is considerable political and legal uncertainty about the obligations of national health care, or even if it will survive in its current form in the contemporary economic and legal climate. Therefore, a minimum at this time appears premature; however, the Employer's need to respond to national health care legislation is recognized.

Recommendation: Modify the Current language as follows:

Section 7 Maximum Hours/Health Insurance Coverage. All part-time employees have agreed to opt out of the Township's group medical insurance without compensation. **In the event of the implementation of federal health care legislation that directly affects the Township, the Employer, after consulting with the Union, shall have the option of establishing a maximum number of work hours a bargaining unit employee can work on an annual basis.**

Issue 7 Article 8, Clothing Allowance

Current Language (see CBA)

Employer's Position. The Employer proposed to modify the contract language to require an employee who receives \$100 per year in a clothing allowance to work a minimum of 200 hours, rather than between 1 and 300 hours.

Union's Position. Maintain current language

Discussion. The Employer's argument that providing a \$100 allowance to employees who may only work one hour in a year is persuasive, particularly when an employee who works 300 hours receives the same benefit. This range to qualify for the same benefit is irrational in its face. A reasonable minimum needs to be established that conforms to the "doubling" rationale contained in Section (b) of the provision.

Recommendation: Modify the Current language as follows:

Section 1 (A) and Sections (a) and (b) Maintain current language, but modify (c) as follows:

(c) \$100.00 per year for employee(s) who work 100 hours to 200 hours.

Issue 8 Article 9, Working The Crew

Current Language (see CBA)

Employer's Position. The Employer proposes to modify sections 1 and 4. As in an early issue, the Employer argues it must modify the language of this provision in order to comply with the requirements of the full-time firefighter's agreement in the event there needs to be a reduction in force of a full-time firefighter. Also the Employer's proposal is intended to maintain a level of competency.

Union's Position. Maintain current language, except for what has been agreed to on 8/12/11.

Discussion. The parties have agreed upon Sections 2, 3, 5, 6. The relevant comparable data favors the Township's position in this matter; no surrounding townships have required hours. The Township must be able to maintain services to the public in the event that its finances dictate a need to reduce its full-time fire fighting forces. Moreover, it is very common in labor relations for part-time employees to be laid off prior to full time employees. The requirement of a performance test is unclear in its requirements and should have a reasonable basis when it is applied to fire- fighters rather than simply being a blanket requirement.

Recommendation: Modify the Current language as follows:

In addition to the agreed upon changes by the parties on 8/12/11, the proposed changes proposed by the Employer to eliminate Section 4 and to modify Section 1, is recommended with the single exception of the last proposed sentence of Section 1. Section 1 as modified shall read as follows:

Section 1. EMT Scheduling Preference/Crew Eligibility. The Township retains the right to give preference to EMT's in scheduling; **however, all part-time personnel hired prior to July 1997 who do not possess EMT certification shall still be permitted to work the crew. If the Employer determines in its discretion that a firefighter's may not be able to successfully perform his/her work on a crew, it**

has, after providing the employee and the Union with a minimum of 7 days-notice, the right to require an employee to pass a performance test in order to remain eligible to work the crew. The performance testing of employees shall not be an arbitrarily or capriciously administered.

Issue 9 Article 12, Rules and Regulations

Current Language (see CBA)

Employer's Position. The Employer is proposing language commonly found in labor agreements in both the private and public sectors.

Union's Position. Maintain current language.

Discussion. What the Employer proposes is reasonable, but it does not include the commonly accepted standard of providing the Union with an opportunity to see proposed new or revised rules or having an opportunity to provide its input to the Employer regarding such rules.

Recommendation: Modify the Current language as follows:

Section 1. The Union recognizes that the Township, in order to carry out the statutory mandates and goals, has the right to promulgate and implement work rules, policies, procedures and directives consistent with statutory authority, to regulate the personal conduct of employees while at work and the conduct of the Township's services and programs.

Section 2. Upon the request of the Union, the Employer shall provide the Union with a copy of the proposed rules and will meet and confer with the Union prior to any imposition of a new or revised rule. Copies of newly established written work rules or amendments of existing work rules will be posted at least five (5) business days prior to their implementation, except in cases of an emergency.

Section 3. No work rules, regulations, policies, or procedures may violate any of the express, written terms of the Agreement. Should the Union believe a work rule, regulation, policy, or procedure violates this Agreement, it may file a grievance.

Issue 10 Article 23 No Strike/No Lockout

Employer's Position. The Employer is proposing new language that reaffirms the same principles contained in the current agreement.

Union's Position. Maintain current language

Discussion. The parties have not had problems in this area, nor has the Employer provided sufficient rationale to sustain a need to change the current language.

Recommendation: Maintain current language

Issue 11 New Article Duration

Employer's Position. The Employer is proposing new language that establishes a three year agreement in addition to providing a total agreement and waiver clause.

Union's Position. No new language needed.

Discussion. The Employer is proposing a three year contract upon execution, the Union is not opposed to three years, but wants the starting date to be retroactive to January 1, 2010. In terms of Sections 2 and 3 what the Employer is proposing is commonly found language in labor agreements. However with regard to Section 1, I find there needs to be a fixed starting and ending date, and for a period of time that strikes a balance between the positions of the parties on duration.

Recommendation: Modify the Current language as follows:

Section 1. This Agreement shall be effective January 1, 2011 and shall continue in full force and effect until December 31, 2013.

Section 2. Total Agreement. As proposed by the Employer

Section 3 Waiver. As proposed by the Employer.

Issue 12 Signing Bonus Side Letter

Employer's Position. The Employer is opposed to granting a signing bonus to the bargaining unit, even though it granted this benefit to the full-time firefighters and the police bargaining unit.

Union's Position. The Union argues it is only fair that it should receive a prorated signing bonus as did the full-time bargaining unit.

Discussion. In difficult economic times equity of sacrifice is key to maintaining morale in a workforce. The other bargaining units in the Township in lieu of a general wage increase received a lump sum bonus with the amount determined by 12 and 6 month increments. In Article 9 of the prior agreement the Township insured the bargaining unit an aggregate amount of 9,000 hours for part-time firefighters and according to the current data supplied by the parties, there are approximately 35 part-time firefighters in the bargaining unit. Dividing the number 9,000 by 35 equates to an average of approximately 257 hours per firefighter (or approximately 12% of a typical full-time 2080 hour employee who received a \$750 bonus). It is clear from the evidence provided by the parties that the range of hours worked by part-time firefighters varies greatly making it difficult to estimate a lump sum payment equivalent to what has been paid to other bargaining unit members, even those who have worked 6 months or less and who have more of a traditional schedule. However, using an average of this nature may be useful in establishing reasonable approximate equity with other bargaining units.

Recommendation: In lieu of general wage increases and contingent upon ratification of the agreement by both parties, current bargaining unit members, who worked a minimum of 96 hours (avg. of 8 hours per month) in 2011, shall receive a one-time lump sum payment of \$75.00. Employees who work 196 hours (avg. of 16 hours per month) or greater in 2011 shall receive a one-time lump sum payment of \$150.00 and bargaining unit members who worked 288 hours (avg. of 24 hours per month) or greater in 2011 shall receive a one-time lump sum payment of \$200.00.

TENTATIVE AGREEMENT

During negotiations and during and following impasse proceedings, the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the determinations contained in this report.

The conciliator respectfully submits the above recommendations to the parties this ____ day of December 2011 in Portage County, Ohio.

Robert G. Stein, Fact finder