

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

SPRINGFIELD TOWNSHIP
(SUMMIT COUNTY)

AND

SPRINGFIELD TOWNSHIP PART-TIME
FIREFIGHTERS ORGANIZATION

Case Number:
11-MED-11-1671

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

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Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on August 23, 2012 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

The collective bargaining agreement between the parties expired on December 31, 2011. This was the first Agreement between the parties. The parties commenced negotiations for a successor Agreement in January 2012 and engaged in six bargaining sessions. There are numerous tentative agreements and a number of issues at impasse.

Hearing was held on October 29, 2012 at the Springfield Township Administration Building. The parties attempted to mediate a number of the issues at impasse but failed to reach agreement. Evidentiary hearing commenced just prior to noon. The parties agreed that the Report and Recommendation of the Fact Finder would be issued on November 30, 2012.

The Union represents approximately nineteen part-time employees at the Springfield Township Fire Department in the following classifications, Part-time Firefighter/EMTs and Part-time Firefighter/Paramedics.

Springfield Township is a suburban community located south of Akron, Ohio with a population of approximately 17,000. The Township has one fire station which is staffed by both full and part-time Firefighters. The Township responds to approximately 2100 calls annually of which 85% are EMS emergency runs.

OUTSTANDING ISSUES:

Article 4, Acknowledgement

Article 16, Sections 1 and 3, Seniority, Layoff, and Recall

Article 16, Section 2, Seniority, Layoff, and Recall

Article 17, Section 1, Management Rights
Article 17, Section 2 & 3, Management Rights
Article 23, Wages
Article 24, Callback (Overtime)
Article 26, Scheduling
Article 28, Uniform Allowance
New Article, Longevity
New Article, Full Time Employment
New Article, Sick Leave
New Article, Impasse Arbitration

Those participating for the Employer at hearing included the following:
Michael D. Esposito, Esq., Clemans, Nelson & Associates
Kevin Shebesta, Clemans, Nelson & Associates
Victor Wincik, Fire Chief

Those participating for the Union at hearing included the following:
Ryan Lemmerbrock, Esq., Muskovitz & Lemmerbrock
Andrew Hoch, Part-time Firefighter
Todd M. Hurd, Part-time Firefighter
Doug Householder, Part-time Firefighter
Mary Schultz, Financial Expert

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder is guided by the principles that are outlined in ORC Section 4117.14 (G) (7) (a-f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification.

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party. The Fact Finder will transmit, by way of electronic mail, the Report and Recommendation on November 30, 2012 by agreement of the parties.

The Employer states that members of the public are demanding that government do more with less and not continue to meet unreasonable demands of public sector organized labor. This is especially true among Ohio townships which have suffered through a recession, decreased property values and shrinking funding from state government. Springfield Township has found it necessary to reduce expenditures and live within available funding streams. Expenditures in the Fire Department exceed its dedicated tax levy, and, as a result, it has been necessary to tap the general fund. The Employer states that it has successfully made adjustments

to its labor agreements with full time employees, and it must utilize part-time employees in a more efficient manner. The effectiveness in utilizing part-time employees is diminished when costs to do so increase beyond efficient budgeting. The Employer states that its part-time work force is well paid. It is important that the Employer maintain control of the number of hours worked by part-time Firefighters especially in light of the potential of future health care costs. The goal of the Employer is to provide quality and efficient fire protection for township residents.

The Union argues that the Township is in a financial position to meet its economic proposals. Median household income and property values have increased over the past ten years. Median income exceeds the state average. The Township's General Fund and various levies are in outstanding condition. The Union states that year-end carry over balances are in excellent condition, and the Township increased General Fund expenditures 42% above the previous year. The 2012 year-end carryover is projected at \$1.5 million. Levies devoted to the Fire Department are financially healthy. Although the demands on the Fire Department have not decreased, the Employer has reduced staffing levels over the past several years. When full-time Firefighters are not available for work, part-timers fill the absences. In 2011, the average number of hours worked among part-time Firefighters was approximately 800. Through September, 2012, part-time Firefighters are already averaging 730 hours of work. The Union states that the Employer has projected a decrease of \$65,000 in revenues for 2013, and the Fire Department was required to repay \$150,000 to the General Fund, but the Union argues that these numbers are

contrary to the actual budget of the Township. The Union states that the Fire Department is supported by three levies which have recently either been renewed or increased. In light of this, the Township's 2012 Fire Department budget includes an increase of expenditures of \$290,164. This budget includes a 14.1% increase for full-time Firefighter salaries and a 2.8% increase for part-time Firefighter salaries. Through September 30, 2012 actual expenditures are substantially less than projections, and, based on Township estimates, there will be a significant carry-over at the end of the year. The Employer has the ability to fund the proposals of the Union.

A brief discussion of each issue at impasse and recommendation of the Fact Finder follows.

1. Article 4, Acknowledgement

The Employer proposes to change the title of this article to "Mid-Term Bargaining." The proposal would delete the last sentence of Section 4.1 and add Section 4.3 which allows the Employer to implement a change to the Agreement regarding a mandatory subject of bargaining, which is not included in a specific provision, following discussion with the Union. The Union may grieve the reasonableness.

EMPLOYER POSITION: The Employer argues that changes in circumstances during the term of the Agreement must be addressed. At hearing the Employer stated that this proposal encompasses the "reasonable person" standard. The proposal is a

reasonable process for making changes regarding mandatory subjects of bargaining. Following a discussion between the parties, the Union may grieve and arbitrate the reasonableness of the provision if no agreement is achieved. Finally, the Township points out that the collective bargaining agreement with the IAFF, representing full time Firefighters, includes the exact language being proposed here.

UNION POSITION: The Union argues that the proposal on mid-term bargaining undermines the bargaining rights of union members and waives rights guaranteed by ORC Section 4117. The Union states that the parties should engage in mid-term bargaining only by mutual agreement. This proposal has the potential to increase the number of grievances and arbitration cases which would be time consuming and costly. The Union speculates that the full time Firefighters may have agreed to this proposal as part of a larger package proposal. The Union argues that the current provision remain unchanged.

RECOMMENDATION: The Employer's proposal involves issues which are mandatory subjects of bargaining and which are not already contained in the collective bargaining agreement. Subjects contained in the Agreement are not subject to this provision in proposed Section 3. It is compelling that the IAFF Agreement has contained this provision since January 1, 2011. There is no evidence that it has had a negative impact on the bargaining relationship between the parties, that the Employer has imposed bargaining in an arbitrary manner or that it has caused a significant number of grievances and arbitration cases. The

recommendation does not include title change of Article 4 as the subject of mid-term bargaining is contained in only one of the three sections of the provision. Additionally, because the subject matter contained in new Section 3 involves mandatory subjects of bargaining and the sub-title of the section is mid-term bargaining, the word bargain is substituted for the Employer's proposed "discuss." The proposal of the Township is recommended as follows with modifications.

Article 4, Acknowledgement

Section 4.1 Total Agreement. The Organization and Township acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining. The understanding and agreements arrived at by the parties after exercise of those rights and opportunity are set forth in this Agreement. For the life of this Agreement, the Township and the Organization, except as otherwise noted in Section 3, each voluntarily and unqualifiedly waives the right, and agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement.

Section 4.2 Waiver. By written mutual consent of the Township and the Organization, the covenants of this Agreement may be waived for negotiations on any article or subject stated in the written request.

Section 4.3 Mid-Term Bargaining. Neither party is obligated to bargain over any matter already covered by the Agreement. Where a proposed action involves a mandatory subject of bargaining and is not already provided for by the Agreement,

then the Employer, prior to making such change, shall inform the Union of said proposed change prior to the date of implementation and meet to bargain the matter with the Union. If the parties are unable to reach agreement, the Employer may implement such change, and the Union may grieve the reasonableness of the Employer's action.

2. Article 16, Seniority, Layoff, and Recall. Sections 1 and 3

The Employer has proposed modifications to Section 1 to include specific language regarding reduction in force, job abolishment and reduction of hours. The Employer also proposes a one year recall in Section 3 and a revised recall procedure in a new Section 4. The Union countered with its proposal in response to those of the Employer. The Union's counter includes a four year recall period.

EMPLOYER POSITION: The Township states that its proposals are similar to language contained in the full time Firefighter's Agreement. Language addressing reduction of hours is necessary as there are only so many work hours available to part time Firefighters. In addition, the Employer is faced with the prospect of providing health care benefits in the future for part time employees based on hours worked. The Township must have the ability to reduce hours and manage its work force. The new language would reduce grievances and potential arbitration cases. The Employer's proposal for one year recall rights is reasonable as bargaining unit members are part time employees and have other employment. The Employer

argues that its proposal, which allows for one refused recall, is reasonable in light of the part time nature of employment with the Department.

UNION POSITION: The Union attempts to address some of the concerns of the Employer by proposing a four year recall right and agreeing to one refused recall opportunity. The Union argues that part time hours are being reduced currently. There is no need to include a reduction of hours in the layoff section of the Agreement. And, the Union argues, the reduction of hours proposal was placed on the table by the Employer at fact finding and had not been bargained prior to this time. The Union states that there have been no concerns during the term of the current Agreement regarding layoff and recall procedures, and current language does not infringe on the Township's management rights. Nevertheless, the Union's proposal addresses most of the Employer's concerns.

RECOMMENDATION: The Union makes a strong case that language regarding reduction of hours is not necessary in the layoff procedure, and it is problematic if this proposal was not placed on the table until fact finding. The Management Rights provision of the Agreement allows the Employer to schedule part time Firefighters based on need. There is no guarantee of hours, and a minimum manning proposal was rejected by the fact finder during the previous negotiations between the parties. The IAFF Agreement provides guidance in structuring Section 1. The Union's counter proposal is accepted as new Section 3. It contains a three year recall right

as found in the IAFF Agreement and the requirement to remain qualified. The recommended language for Sections 1 and 3 is as follows.

Article 16, Seniority, Layoff, and Recall

Section 16.1 Should the Township Trustees deem it necessary, through their governmental powers, to make layoffs or reductions-in-force (i.e., job abolishment, furlough, etc.) in the number of personnel employed by the Township Fire Department, the layoff or reductions-in-force will be made in accordance with the below guidelines.

Section 16.3. Layoffs and recalls from layoffs shall be conducted under the following guidelines.

- A. The Bargaining Unit Member(s) with the least amount of seniority with the Springfield Township Fire Department will be the first member to be laid off.
- B. The members who are recalled from the layoff to return to their part-time status shall be recalled in reverse order of the layoff. The last member who was laid off shall be the first member recalled to return to work. Members on the recall list shall first be used to fill positions subject to layoff. Members subject to layoff are eligible for recall for up to three (3) years from the date of layoff. Bargaining Unit Members are to keep the Township advised of their current address at all times.
- C. Seniority will be determined according to the date of hiring as a part-time member of the Springfield Township Fire Department. An employee on the recall list may refuse recall and allow the members below him/her on the list to accept the opportunity until such time as all members have refused or the time for recall has expired, whichever is sooner. Employees who refuse recall a second time during an

offered recall shall lose all seniority and recall rights. Employees who fail to remain qualified to perform the duties of their position or who do not have the proper certification at the time of recall shall be bypassed on the recall list.

3. Article 16, Seniority, Layoff, and Recall. Section 2

The Employer proposes a clear definition of seniority, that being length of part-time service with the Fire Department. Employer also proposes a one year recall right following layoff. The Union countered this proposal and addressed the concerns of the Employer with the exception of its proposal for a four year recall right.

EMPLOYER POSITION: The Employer's proposal regarding the definition of seniority is reasonable as is the one year right of recall.

UNION POSITION: The Union has agreed to the definition of seniority as proposed by the Township but proposes a four year recall.

RECOMMENDATION: The existing provision of the Agreement was vague. The work of the parties will eliminate any lack of clarity. The recommendation for a recall right of three years is derived from the collective bargaining agreement of the full time Firefighters. The recommendation for Section 2 is as follows.

Article 16, Seniority, Layoff, and Recall

Section 16.2. A seniority list of Bargaining Unit Members shall be maintained as Appendix A of this Agreement. Members shall be listed in seniority order from the hire date. Members with equal amounts of seniority shall be listed in the order their names appeared on the hiring motion. The list will be updated periodically to reflect changes in staffing. "Seniority" shall be defined as the length of part-time service with the Springfield Township Fire Department. Seniority is interrupted by voluntary resignation, termination of employment for just cause, or layoff in excess of three (3) years.

4. Article 17, Management Rights, Section 1

The Employer proposes the deletion of Paragraph I, although retaining the first sentence.

EMPLOYER POSITION: The proposed deletion is language which describes bargaining obligations which are contained in ORC Section 4117. The language does not address management rights and is not typically found in collective bargaining agreements. Although this language appeared in other collective bargaining agreements at the Township in the past, it has been removed from all contracts through negotiations.

UNION POSITION: The Union is opposed to the deletion of this section of the Article. This language is important to the Union, and the parties agreed to it during the

previous negotiations. It gives the Union the ability to grieve over an obligation to bargain. This proposal will waive the Union's bargaining rights pursuant to 4117.

RECOMMENDATION: Neither the Teamsters nor IAFF collective bargaining agreements contain the language which is being proposed for deletion by the Employer. The Union's bargaining rights under 4117 are not waived or eroded by the removal of this language from the Article. The right to grieve a violation of the Agreement is not eroded by the deletion of the language, and the Union's right to bring unfair labor practice charges is not impeded. The Employer's proposal is reasonable and consistent with other Agreements at the Township and is recommended. Paragraph I would therefore read as follows.

Section 17.1.

I. Take action to carry out the mission of the public employer as a governmental unit.

5. Article 17, Management Rights, Sections 2 & 3

The Employer wishes to amend existing sections of the Management Rights provision of the Agreement regarding its right to promulgate, amend and revise work rules and to then create a new Article of the Agreement specific to work rules.

EMPLOYER POSITION: The Employer states that its proposal is reasonable as it maintains the thirty day period for review and comment by the Union, and the language allows for a requested meeting. The Employer's language does not permit

violation of the Agreement in the promulgation of policies, but it does waive the thirty day posting requirement in the case of an emergency.

UNION POSITION: The Union opposes the changes proposed by the Employer and the creation of a new work rules article. The Union argues that the waiver of the thirty day posting period in the case of an emergency is unfair to bargaining unit members and eliminates the possibility of discussion or negotiations over new rules or revisions.

RECOMMENDATION: There is very little difference between the Employer's proposal and current language with the exception of the waiver of the thirty day posting period. The Teamster Agreement was negotiated this year, and it does not contain the revisions being sought by the Employer in these negotiations. The Union's assertion that there is no need to modify these sections of the Management Rights provision is meritorious. The recommendation is to maintain status quo. Article 17, Management Rights, Sections 17.2, 17.3 and 17.4 should be maintained in the new Agreement without modification.

6. Article 23, Wages

The Union has proposed across the board wage increases for each year of a three year Agreement as follows: effective January 1, 2012, 3%; effective January 1, 2013, 4%; and effective January 1, 2014, 3%. In addition, the Union has proposed an

additional wage adjustment of \$1.00 per hour when a part-time Firefighter replaces or fills in for a full-time Firefighter.

The Employer has proposed a wage freeze, no increase in wages for the duration of the three year Agreement and rejects the proposal for a \$1.00 per hour wage adjustment.

UNION POSITION: At hearing, the Union's primary witness regarding Township finances was Mary Schultz, a member of the firm of Sargent & Associates and a CPA. Ms. Schultz has served as a school treasurer and has worked in other public sector jurisdictions. She conducts budget analysis for safety forces which are engaged in collective bargaining in various public sector jurisdictions in Ohio. Ms. Schultz has conducted a budget analysis relative to the instant negotiations.

Ms. Schultz states that the Township is able to finance the wage proposal of the Union. The Fire Department is supported by three funds, Fire District Fund, EMS Special Levy Fund and the Ambulance & EMS Fund. In addition, the Fire Department is supported by the Township General Fund. The General Fund carry-over was \$2,098,000 at the end of 2010 and \$2,224,000 at the end of 2011. Ms. Schultz states that these are very healthy carryover amounts based on overall annual budgets. The projected carry-over for 2012 is estimated at \$1,489,000. This reflects losses in state local government funding and, more importantly, repayment of temporary loans to other Township funds. Ms. Schultz stated that a carry-over of 16% of the general budget is considered a healthy amount. Springfield Township has a carry-over of 68%. She stated that the Township's finances are particularly

healthy, and revenues for 2012 are higher than estimated in a recovering economy. The carry-over for 2012 will be greater than estimated. In addition, actual expenditures for 2012 are less than budgeted. Although revenues in 2013 for property taxes are less than 2012 due to devaluation, the Township continues to enjoy favorable finances. Ms. Schultz stated that the cost of a 1% wage increase for the part-time Firefighter bargaining unit is \$3,386 which includes all roll-up costs. She stated, and the Union argues, that the wage proposal is easily afforded by the Employer. Ms. Schultz stated it is accurate that reduced property taxes and the loss of the estate tax in 2013 are factors the Township must consider, but a one mill increase in levy funds assists in offsetting these losses. The total cost of the three year wage proposal is \$69,247. The Township has the financial resources to grant the Union's proposal.

The Union argues further that the job description of part-time Firefighters is the same as full-time staff. There has been an upward trend of hours worked over the past few years. The top six part-timers have worked most of the available hours and average approximately forty hours per week. The Township relies heavily on the part-time work force which saves the Employer significant funds. Because part-time Firefighters fill full time Firefighter absences, there are many shifts in which there are more part-time than full-time employees. It is clear that the Union's wage proposal is justified.

The Union states that in a comparison of part-time Firefighters in eleven Fire Departments bordering Springfield Township, the average starting hourly wage is \$18.77. The starting wage for Springfield Township is \$12.48. Average top pay is

\$18.85 compared to \$17.35 at Springfield Township. All but one of these part-time jurisdictions is unionized. Arbitrator Gregory Van Pelt served as fact finder during the last negotiations, and, after analyzing the finances of the Township, he recommended wage increases for each year of a three year Agreement.

The Union states that the use of part-time Firefighters saves the Employer significantly. Top pay for a part-time employee is \$17.35 per hour compared to the top pay of a full-time Firefighter of \$20.13 per hour. Part-time employees earn no benefits. When the cost of benefits are added to the hourly rate, full-time Firefighters earn \$30.14 per hour. In order to gain some parity, the Union's wage proposal is necessary. Part-time employees perform exactly the same duties as full-time Firefighters. The Union's proposal of a \$1.00 per hour adjustment when filling-in for a full-time Firefighter is clearly justified.

EMPLOYER POSITION: The Employer states that its proposal of a three year wage freeze is justified. Revenue streams have been either stagnant or have decreased. The estate tax will be eliminated in 2013 and funding from these sources has declined by more than \$250,000. In a sample of eleven comparable public sector jurisdictions in the region, Springfield Township places in the middle for percentage of residents who are below the poverty line; ranks ninth for per capita income; is ninth in median family income; and ranks ninth for median home value. Property tax revenues have continued to decline since 2007. The Township has seen a loss of over \$600,000 in revenue during the past three years. In 2011, combined revenue was approximately \$215,000 below 2008 levels. The main source of funding for the

Fire Department declined from 2006 to 2010 and only saw an increase in 2011. Nevertheless, Fire Department expenditures have consistently exceeded revenue streams. Despite the recession and downturn in the economy, the Township has operated in a conservative manner which has allowed for a reasonable wage structure. The Employer states that from 2006 to 2011 Fire Department revenues were a combined \$898,000 above 2005 levels, but during the same period expenditures were a combined \$1,830,000 above 2005 levels.

In a comparison to eleven unionized part-time bargaining units in the region, Springfield Township generally falls in the middle although maximum hourly rates are higher than the average in Springfield Township.

The Employer argues that comparable jurisdictions used by the Union generally represent more affluent communities. 40.4% of Springfield Township residents are non-working; 81.8% of Township families have incomes less than \$75,000 annually and 53.2% of families have incomes less than \$50,000. Many members of the public are out of work, and the region continues to experience higher levels of unemployment than other areas of the state.

The Employer argues that it cannot increase wages in the current economic climate and asks the Fact Finder to support its proposal for a three year wage freeze.

RECOMMENDATION: Springfield Township utilizes the services of its part-time Firefighters to supplement its full-time staff in a cost saving and efficient manner. The duties and expectations of part-time and full-time Firefighters are the same. Part-time employees are essential in maintaining a well staffed and efficient Fire

Department. The Township has budgeted in a conservative manner which is commendable in an economic climate of stagnant revenue streams and loss of state funding. It is understandable that the Employer strives to contain costs. It is also true that the Township has the ability to fund wage increases for part-time Firefighters during a new three year collective bargaining agreement, and a three year wage freeze is not reasonable. The parties, with the assistance of a fact finder, established collectively bargained wage rates for part-time Firefighters during the previous negotiations for the first collective bargaining agreement between the parties, and this established a differential between the two groups of employees at the Fire Department. The recommendation of the Fact Finder is to maintain this differential by implementing the same percentage wage increases for the part-time bargaining unit that were negotiated for full-time Firefighters in 2012 and 2013 and an additional increase in the third year of the Agreement. The three year IAFF Agreement expires at the end of 2013. The recommended increases are affordable and should not have a negative impact on Township budgets. The recommendation is as follows.

Effective January 1, 2012, bargaining unit members shall receive an increase of one and one-half percent (1.5%).

Effective January 1, 2013, bargaining unit members shall receive an increase of two percent (2%).

Effective January 1, 2014, bargaining unit members shall receive an increase of two percent (2%).

This recommendation does not include the Union's proposal for a \$1.00 per hour increase for hours worked when filling-in for a full-time Firefighter as this is a regular responsibility of part-time employees.

7. Article 24, Callback (Overtime)

Currently part-time Firefighters, who are called back to work, receive a minimum of one hour at the rate of double time. Additional hours worked are paid at the regular straight time rate. The Union proposes that hours worked beyond the first hour be paid at the rate of time and one-half (1 1/2x).

UNION POSITION: The Union states that a part-time Firefighter, who is required to work multiple hours outside of a scheduled shift, should continue to receive payment at the rate of time and one-half after the first hour on the clock. Full-time Firefighters earn double time for the first hour of a callback and then earn time and one-half for additional hours worked. There is an inequity when part-time Firefighters are earning at a rate less than full-timers, and they are working side by side during a callback.

EMPLOYER POSITION: The Employer proposes to maintain status quo. Callback payment for part-time employees at Springfield Township compares favorably with other political sub-divisions.

RECOMMENDATION: The Union's argument is meritorious that an inequity exists when both groups of Firefighters are working side by side on a callback, and part-timers are earning at a rate less than full-time staff after the first hour. The Union's proposal is recommended as follows.

Article 24, Callback (Overtime)

Section 24.2 An employee answering a callback for an emergency alarm shall receive a minimum of one (1) hour for the callback. Thereafter, the time will be rounded up to the next one-quarter (1/4) hour. The first hour of callback time will be paid at double time of the member's regular base hourly rate. Callback time after the first hour will be paid at time and one-half (1 1/2x) the member's regular rate.

8. Article 26, Scheduling

The Employer proposes to modify the existing provision to include its right to establish a minimum hourly commitment and the right to establish a maximum number of hours to be worked by any one part-time Firefighter. In addition, the Employer proposes that an employee who fails to meet the minimum may be removed from the roster.

The Union submitted a counter proposal which establishes a minimum of twenty-four hours each twenty-eight day cycle and a maximum of 212 hours per twenty-eight day cycle.

EMPLOYER POSITION: The Employer argues that it should have the right to establish minimum and maximum hours in order to comply with operational needs.

The Employer also expresses a concern based on the Patient Protection and Affordable Healthcare Act in that it does not wish to be forced to provide paid health care for a part-time bargaining unit which currently does not receive such benefits. Nevertheless, the Employer states that its proposal is nothing more than a restatement of rights it already possesses based on the management rights provisions of the Agreement. The Employer argues that 80% of the bargaining unit does not now work substantial hours as this is not the primary employment for many members. The Employer's proposal would impact only three or four employees in the bargaining unit. The Employer states that this is one of its core proposals.

UNION POSITION: The Union opposes the Employer's proposal. It disagrees that the national health care act should play a role regarding this issue. Over one-fifth of bargaining unit members work an average of more than thirty hours per week, and this is their primary employment. Nevertheless, the Union is willing to establish a minimum and maximum number of hours for part-time Firefighters. The Union states that a number of regional political sub-divisions have negotiated a minimum number of hours to be worked by part-time Firefighters, but these same collective bargaining agreements have no set maximums. In addition, the Union opposes the Employer's proposal which potentially terminates the employment of bargaining unit members who do not work an established number of hours.

RECOMMENDATION: The Employer retains the right to determine the number of part-time employees to be utilized in a given month and the number of hours to be assigned based on the Management Rights provision of the Agreement. A minimum manning proposal was not included following negotiations for the previous Agreement between the parties and is not now an issue. It seems unnecessary to include minimum and maximum hours in this provision which originally was intended to illustrate the manner in which shift-fill scheduling is accomplished (by seniority). The Union's argument is meritorious, that the potential termination of an employee who does not work a minimum number of hours during a specific cycle is arbitrary. The recommendation is to maintain current language with the exception of clarifying language regarding the definition of seniority. As issues arise regarding the national health care act or other matters which may impact the number of hours part-time employees work, the parties have the ability to submit such matters to the labor management committee pursuant to Article 10. The recommendation is as follows.

Article 26, Scheduling

Section 26.1 Monthly shift fill scheduling will be done based upon the seniority of the part-time Firefighters as defined under Article 16, unless otherwise agreed upon by the Fire Chief and the Organization.

9. Article 28, Uniform Allowance

The current Agreement provides that the Township will purchase uniforms for part-time Firefighters on an as needed basis in conformance with its uniform

policy. The Union proposes, effective January 1, 2013, a \$700.00 annual uniform allowance to be paid to each member of the bargaining unit by April 1 of each year.

UNION POSITION: The Union states that its proposal conforms to the benefit received by full-time Firefighters. The annual cost to the Employer for the entire bargaining unit is \$13,300.00 which is an affordable figure and which would replace the system which is currently in place.

EMPLOYER POSITION: The Employer proposes to maintain current language in the Agreement. The current method of providing uniforms is reasonable, and a lump sum payment is not necessary. In a comparison to eleven regional jurisdictions, seven provide uniforms in the same manner which the current collective bargaining agreement allows without a lump sum payment.

RECOMMENDATION: There was no evidence at hearing to indicate that members of the bargaining unit did not receive clothing and uniforms necessary to perform their duties or that employees were required to pay for necessary items. While a fixed uniform allowance makes sense for full-time Firefighters, many part-time staff work a minimum number of hours during the course of a year. Providing a cash clothing allowance for part-time workers is not the most efficient use of Township funds.

Article 28 satisfies the needs and requirements for both parties. The recommendation is to maintain status quo regarding Article 28.

10. New Article, Longevity

Part-time Firefighters do not receive a longevity benefit. The Union proposes longevity pay at a per hour rate to be paid based on years of service as follows.

<u>Years of Service</u>	<u>Hourly Rate Increase</u>
5 years to 9 years	\$.10 per hour
10 years to 14 years	\$.20 per hour
15 years or more	\$.30 per hour

UNION POSITION: This benefit will act as an incentive for existing part-time Firefighters to maintain employment with the Township which is a stabilizing factor for the Employer. The Union states that a number of bargaining unit members work long hours, comparable to full-time Firefighters, without comparable benefits including longevity. Township policy allows for longevity pay, and full-time Firefighters receive \$7.00 per month for each year of service in excess of five years seniority with a cap of \$100 per month. Based on the part-time status of the bargaining unit, the Union modified its proposal to a cents per hour benefit. The Union argues that its proposal is easily affordable by the Employer. At hearing, the Union pointed out that the collective bargaining agreement between the City of Tallmadge and the Part-time Firefighters Association provides for a longevity benefit.

EMPLOYER POSITION: The Employer rejects the proposal for additional compensation. The Employer states that seven of the eleven comparable political sub-divisions do not provide longevity pay for part-time Firefighters, and the jurisdiction, which provides the greatest longevity benefit, also provides for the lowest hourly rate of pay.

RECOMMENDATION: In recommending an across the board pay increase for the bargaining unit, despite the Employer's proposed three year wage freeze, it is not prudent during these negotiations to include a new longevity pay plan. A majority of political sub-divisions do not provide for a longevity pay benefit for part-time Firefighters, and Arbitrator Van Pelt, in his 2010 Fact Finding Recommendation for this bargaining unit, recommended against this benefit for part-time employees. The recommendation is to maintain status quo and not include a longevity benefit in the new Agreement between the parties.

11. New Article, Full-Time Employment Opportunity

The current agreement does not address the possibility of a part-time Firefighter filling the vacancy of full-time Firefighter. The Union originally proposed that part-time Firefighters, who apply for full-time positions, be awarded 20% additional points in any competitive examination process. At hearing, the parties engaged in mediation over this proposal but were unable to resolve the issue. The Union modified its proposal to require the Township to post notice of a full-time Firefighter vacancy internally only for the first ten days of the posting period.

UNION POSITION: The Union argues that many new Firefighters use part-time employment to obtain a full-time position, and it is in the interests of both parties to hire part-time staff who have proven themselves. Part-time Firefighters know the rules and regulations and are familiar with the Department and community. This also saves the Township training costs and time. The Union argues that its proposal is not an infringement on management rights.

EMPLOYER POSITION: The Employer rejects the proposal. It states that part-time Firefighters should have the same opportunities to fill a full-time position as the general public. The Employer argues that only two of the eleven jurisdictions in its list of comparables, provide any contractual language regarding preference for full-time opportunities. In addition, the Employer states that the collective bargaining agreement with the IAFF requires the Employer to fill a full-time vacancy within sixty days. Therefore the Union's modified proposal of a ten day internal posting is impractical. Such a provision would only cause grievances and arbitration cases.

RECOMMENDATION: The Union's counter offer of a ten day internal posting period is reasonable. The Fire Chief's concern regarding the requirement to fill full-time vacancies in a timely manner must also be considered. The Union's proposal allows the Township to give consideration to part-time Firefighters who have provided excellent service to the community, and the Union's arguments regarding training costs and time make complete sense. It is also recognized that full-time positions

are in a separate bargaining unit which is governed by a collective bargaining agreement. The recommendation is for an eight day internal posting period as follows.

New Article Number, Full-Time Opportunities

Section 1. The Township will post notice of a full-time Firefighter vacancy exclusively for Springfield Township part-time Firefighters during the first eight calendar days of any required posting period. In addition, the Township will send by electronic mail, to those part-time Firefighters who have notified the Employer of their email addresses, notice of the vacancy within the first two calendar days of the eight day internal posting period. The Employer retains the right to select the applicant, internal or external, who, in its opinion, is most qualified to fill the vacant full-time Firefighter position based on its testing and/or selection process.

12. New Article, Sick Leave

The collective bargaining agreement does not provide sick leave benefits for part-time Firefighters. The Union has proposed a sick leave benefit which allows for an accumulation of eight hours of sick leave for every one hundred hours worked to be used for illness or injury of an employee or member of the immediate family and for exposure to a contagious disease. The proposal includes a payout of sick leave upon separation from employment of 50% of all accumulated sick leave with a maximum of 720 hours.

UNION POSITION: The Union states that one-third of the bargaining unit works over twenty-five hours per week, and one-fifth of the bargaining unit works thirty or more hours per week. These employees rely heavily on their part-time positions for a substantial portion of their income. The Union argues, therefore, that it is important that part-time employees are afforded sick leave benefits. Much of the proposal mirrors the IAFF sick leave provision for full-time employees with a smaller accumulation rate.

EMPLOYER POSITION: The Employer states that sick leave benefits should not be available for part-time employees. This is a new benefit proposal. The Employer argues that it is not traditional for public sector jurisdictions to provide sick leave benefits for part-time Firefighters. The Employer states that none of the eleven comparable jurisdictions pay sick leave benefits to part-time Firefighters although one, City of Tallmadge, allows for sick leave credits to be calculated for longevity and uniform benefits. The Township opposes the inclusion of paid sick leave into the collective bargaining agreement.

RECOMMENDATION: The issue of paid sick leave benefits and payout of sick leave accumulation upon separation from employment for part-time Firefighters is unique. The Fact Finder must therefore consider the practices of other political subdivisions as directed by ORC 4117.14 (G) (7). The Employer's argument and research are compelling. It utilizes a list of eleven regional jurisdictions, which employ part-time Firefighters, including Austintown, Brimfield, Cardinal JFD,

Fairlawn, Mentor, Norton, Ravenna, Saybrook, Tallmadge, Willoughby and Willowick. None of these jurisdictions pay sick leave benefits to part-time Firefighters. Tallmadge allows for sick leave credits to be utilized for calculation of hours for other benefits. The recommendation therefore does not include a new article which would provide for sick leave benefits for the bargaining unit.

13. New Article, Impasse Arbitration

Bargaining units representing part-time Firefighters are not defined as non-strike units pursuant to ORC 4117, and therefore issues at impasse are not subject to the conciliation process contained in the statute. Following fact finding, part-time firefighter bargaining units have the right to strike. The Union proposes a new article in the Agreement which would require issues at impasse during negotiations to be submitted to final offer interest arbitration (conciliation) following a declaration of impasse by one or the other party.

UNION POSITION: In the event of impasse during negotiations, the parties proceed to fact finding. If one of the parties rejects the report and recommendations of the fact finder, part-time Firefighters ultimately have no alternative other than a strike. The Union argues that, based on the Township's heavy reliance on the services of part-time Firefighters to staff the Department, impasse arbitration is the reasonable method of resolving an impasse in bargaining as opposed to a work stoppage. The Union states that at least one collective bargaining agreement in the region provides for impasse arbitration for part-time Firefighters.

EMPLOYER POSITION: The Employer rejects the proposal for impasse arbitration. The Employer argues that a dispute settlement procedure of this nature requires mutuality, and the Employer in this case is not in agreement. A number of fact finders have recommended against similar proposals in other jurisdictions. The Employer goes on to state that the Township Trustees would reject a fact finder's report if this Union proposal was included in the recommendation. The Employer states further that, in its list of eleven regional comparable collective bargaining agreements, none provide for impasse arbitration.

RECOMMENDATION: ORC Section 4117 provides for specific statutory dispute settlement procedures, and it also allows for the development of alternative dispute settlement options based on the mutual agreement of the parties (MAD). The Employer's argument has merit, that impasse arbitration requires mutual agreement of the parties, and the statute contemplates mutual agreement. Therefore, it would be, as Arbitrator Van Pelt stated in the 2010 fact finding recommendation, imprudent to recommend the Union's proposal on impasse arbitration. The recommendation does not include the Union's proposal in the new collective bargaining agreement.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties, all facts presented at hearing and the exhibits presented during the evidentiary hearing. In addition, the Fact Finder has given consideration to the positions and arguments presented by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the specific recommendations contained in this Report and Recommendation, all tentative agreements, which were reached by the parties during negotiations and prior to the fact finding hearing, are hereby incorporated in this Fact Finding Report and Recommendation. Any issues or sub-issues not addressed during negotiations are also intended to remain current language for the purposes of this Report and Recommendation.

Respectfully submitted and issued at Cleveland, Ohio this 30th Day of November,
2012



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 30th Day of November, 2012, a copy of the foregoing Report and Recommendation of the Fact Finder was served upon Michael D. Esposito, representing Springfield Township; Ryan J. Lemmerbrock, representing the Springfield Township Part-Time Firefighters Organization; and Donald M. Collins, General Counsel, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Fact Finder

