

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING
BETWEEN**

Case No. 2013-MED-10-1396

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 377,**

“Employee Organization/Union”

and

**BOARDMAN TOWNSHIP BOARD OF
TRUSTEES,**

“Employer”

**REPORT OF FACT-FINDER
AND RECOMMENDATIONS**

DATE OF REPORT AND DATE OF TRANSMISSION: June 16, 2014

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I. INTRODUCTION.

This matter comes before the Fact-Finder as a result of a notification dated March 25, 2014 advising the State Employment Relations Board (“SERB”) and this Fact-Finder of his mutual selection by the parties to serve as Fact-Finder. The fact-finding protocol is between the Boardman Township Board of Trustees and the International Brotherhood of Teamsters, Local 377, which are the respective employer and collective bargaining representative.

On May 22, 2014, the parties met with the Fact-Finder, however, both prior to the Fact-Finder’s appointment and prior to the scheduling of fact-finding, the parties had engaged in negotiations pertaining to the Collective Bargaining Agreement on November 8, November 26, and December 13, 2013, January 8, February 28, March 7 and May 2, 2014.

A fact-finding hearing was held on May 22, 2014 at the Holiday Inn located at 7410 South Avenue, Boardman, Ohio 44512. The facilities originally suggested for fact-finding were either unsuitable or unacceptable and, thus, ultimately, the hotel site was agreed upon by the parties. In that context, Administrative Code 4117-9-05(H) provides in pertinent part: “The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost free location. Costs associated with a meeting room shall be the obligation of the parties.”

The Fact-Finder received and has taken into consideration the numerous exhibits and materials presented by both parties, including the parties’ respective pre-hearing position statements and the current Collective Bargaining Agreement between the parties effective January 1, 2011 through December 31, 2013. In that context, it should be noted that the collective bargaining representative in the prior agreement was a union referred to as “Township Workers’ Association of Boardman,” which the parties also periodically referred to as the “Association.” The present collective bargaining representative, Teamsters Local Union 377, is

the new collective bargaining representative and, thus, was not involved in the prior agreement. Although not every exhibit or document has been enumerated or analyzed in this Report, the Fact-Finder has reviewed each and, in some instances, will be addressing the issues in summary fashion. In that context, the Fact-Finder would be remiss if he did not commend the representatives of both the Union and the Township for their presentation, their efforts and the materials presented.

In addition to the representatives identified on the face sheet of this Report, the following were also present and participated:

On Behalf of Teamster Local 377:

Richard Sandburg, President, Teamsters Local Union 377
Michael Moran, Truck Driver
Keith Mead, Mechanic
Michael J. Hardie, Worker
William Costello, Mechanic

On Behalf of the Township:

Stephanie Landers, Deputy Administrator
Brenda Metzger, Administrative Assistant, Road Department
Larry Wilson, Road Superintendent
Jason Loree, Township Administrator

In addition to the material presented and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f). In particular, Subsection (e) states in pertinent part: "In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section." Subsection (G)(7) identifies the considering factors as:

- “(a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement 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 involved;

- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, 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.”

Consistent with the provisions of Revised Code §4117.14(C)(4)(e) and (G)(7)(a)-(f), SERB has set forth similar standards in Administrative Code 4117-9-05(J) and (K)(1) through (6).

II. **BACKGROUND.**

Boardman Township is a governmental entity of a population of approximately 40,000 located in the northeast portion of Ohio, approximately southeast of Youngstown, Youngstown being the county seat in Mahoning County.

In addition to the instant bargaining unit, the Township also has five other collective bargaining units, to wit:

- (1) OPBA (Ohio Patrolmen’s Benevolent Association), Dispatch;
- (2) OPBA Rank (Officers);
- (3) OPBA Patrol;
- (4) AFSCME; and
- (5) IAFF (International Association of Fire Fighters).

The instant bargaining unit consists of 17 road employees in the Road Department consisting of the following: foreman (2); inspector (1); utility man (1); mechanic (3); operator (4); driver (4); and laborer (2). Article 1 provides that the previous association, now Teamsters

Local 377, is the sole and exclusive bargaining agent “on behalf of all the employees of the Road Department, including mechanics, with respect to wages, hours and other terms and conditions of employment.” Excluded from recognition are the superintendent, assistant superintendent, all management, confidential, supervisory, temporary, seasonal, part-time and employees not certified by SERB as being included within the bargaining unit. (Article 1, Section 2)

III. INCLUSION OF CURRENT CONTRACT.

Except as otherwise set forth in this Report and Recommendations, or as agreed to by the parties in writing, the Fact-Finder recommends retention of current contract language.

IV. UNRESOLVED ISSUES.

Article 10, Section 6 (Discipline). The Union has proposed a modification to Section 6. Under current Section 6, if an employee is charged with a felony and subsequently the charges are reduced to a misdemeanor or the employee is found not guilty of the charges, the employee may still be subject to discipline within the scope of Article 10. The Union has proposed that Section 6 provide that if the reduction or dismissal is made that the employee “may not” be subject to discipline. The Township has argued that notwithstanding a criminal disposition, the employee might still be subject to administrative sanctions. The Fact-Finder notes that if a criminal charge is reduced from a felony to a misdemeanor, there is still the criminal charge involved. If an individual is found “not guilty” then it is treated as if the offense did not occur in the first place. However, it is common knowledge and frequently used throughout the legal system that a disposition in a criminal case is not necessarily a disposition in a civil case. one of the more famous examples of this is the “O.J. Simpson trial” wherein he was acquitted of the criminal case but was found monetarily liable in a subsequent civil action. At a minimum, a criminal matter requires proof of guilt “beyond a reasonable doubt,” whereas a civil action requires a lesser standard of “proof by preponderance.” Rather than providing that if there is

some criminal disposition and that the employee could not be subject to the Township's discipline is overly broad and this Fact-Finder believes that the question of Township discipline should be pursued on an individual fact-driven basis. Accordingly, the Fact-Finder recommends current contract language.

Article 10, Section 7 (Discipline). Section 7 provides a retention time period of the disciplinary action of 12 months where letter of instruction or written reprimand is involved and 12 months for suspensions or demotions and that if there has been no intervening discipline after that period of time, the disciplinary action "shall cease to have force and effect or be considered in future discipline matters." The Union proposes that those 12 month periods be reduced to nine months. The Township counters that all of the other unions in the Township have a 12 month suspension period. Although the Fact-Finder recognizes that a reduction from 12 months to nine months is certain appealing, there is no evidence which overrides the necessity of reducing the present 12 month period to a nine month period. Accordingly, the Fact-Finder recommends that current contract language be retained.

Article 11 (Grievance Procedure). In this article, in what is referred to as new Section 5 (old Section 4), the CBA provides, in essence, for a seven day time period within which a grievance should be submitted at Step 1. The Union has proposed a language change to read: "The aggrieved member will within seven (7) days of knowledge of the violation will schedule a meeting with a steward and himself with the department head to discuss the violation." The Township has proposed a slight modification indicating its willingness to extend the seven days to ten days from "date on which the grievant knew or should have known of the incident giving rise to the grievance, but in no event more than thirty (30) days after the actual incident . . ." In essence, the Township is proposing a sunset time period of 30 days whereas the

Union contends that if the grievant is to file the grievance within seven days of knowledge that there have been instances of non-union supervisors taking out pieces of equipment which suggestively should be union work and that the member does not become aware of the situation for a couple weeks and, thus, could miss the time period to grieve. The Fact-Finder appreciates the suggestion of the Union that a 30 day sunset provision would foreclose a grievance being filed. However, in the matter of harmonious labor relations, it does not behoove a grievance to “be hanging” for a substantial period of time. The Road Department, in this case, is not exceedingly large, and it would seem that if a grievance existed, such issue might well be known or discussed within a sunset time period. It is not reasonable to have a grievance filed months and months after an alleged grievance had occurred when, by that time, memories and recollections may fade. However, the Fact-Finder is also of the view that a 30 day sunset may arguably be too short a time. Accordingly, the Fact-finder recommends that Step 1 of new Section 5 (old Section 4) be amended to read:

“Nothing in this article shall be interpreted as discouraging or prohibiting informal discussions of a dispute by the employee and the employer prior to the filing for starting of a grievance. The following steps are to be followed in the processing of a grievance:

Step 1 within ten (10) calendar days of the date on which the grievant knew or should have known of the incident giving rise to the grievance, but in no event more than sixty (60) days after the actual incident, the aggrieved employee shall submit the written grievance to the department head/designee, who shall indicate the date and time of receipt of the grievance and affix his signature to the grievance form. The department head shall schedule a meeting to discuss the grievance and respond to the grievant/Union within seven (7) calendar days of receipt of the grievance.”

Step 2 of the grievance procedure shall be retained in current language except for the first sentence thereof which is amended to read as follows: “A grievance unresolved at Step 1 may be submitted by the grievant to the Administrator or his designee within ten (10) calendar days of receipt of the Step 1 answer.”

Section 6 (old Section 5) of Article 11 deals with arbitration. In essence, the Fact-Finder recommends retention of current contract language except that Section 6(A) (notice of intent to arbitrate) which presently provides for a ten day period shall be changed to a 14 day period. Likewise, in Section 6(B), the present provision for ten day action is amended to read “fourteen (14) days.”

Article 12 (Seniority) / Article 16 (Part-Time Employees). Current Article 12 provides that seniority is computed by length of accumulated, uninterrupted, full-time Road Department service, with part-time employees receiving seniority credit pro-rated to the amount of hours worked by a regular full-time employee. For example, a part-time employee working 1,040 hours during a year is credited with one-half year’s seniority credit. The Union proposes the addition of a Section 3 to state:

“There will be no use of any part-time employees while there are members on layoff status. Any work that would be deemed ‘part-time work’ will be done by laid off members who will enjoy full-time status in any and all articles of this Agreement.”

This article is related to Article 16 (Part-Time Employees) and, to that extent, will be considered and discussed together. The Union proposes that the last sentence of Article 16, Section 1, be amended to read: “Those members called back from layoff for part-time work shall be considered recalled and receive the same rate of pay equal to their co-workers.” Current contract language provides in part:

“The Employer agrees that it shall not utilize part-time employees for bargaining unit work while members are on lay off until first offering the opportunity for work to bargaining unit members on the recall list. Those members called back from layoff for part-time work will receive the same rate of pay equal to their rate of pay at the time of layoff.”

The Fact-Finder does not feel that the proposed new Section 3 to Article 12 is necessary in that the Township cannot use part-time employees if there are members on layoff because that

issue appears to be addressed in Article 16, which presently provides that the Township will not use part-time employees for bargaining unit work while members are on layoff unless the laid off individuals do not wish a part-time position or to be recalled at that time. The Fact-Finder, however, does have concern with the last sentence of Section 1 of Article 16 that members called back from layoff for part-time work would receive “the same rate of pay equal to their rate of pay at the time of layoff.” The problem here is that it is not known what the period of layoff would be and, possibly, there might be a pay differential arising during the layoff period. If a bargaining unit member is on layoff and then recalled, it seems to be the equitable thing to do that such employee should receive the rate of pay equal to the pay existing at the time of recall from layoff for part-time work. Accordingly, the Fact-Finder recommends that the last sentence of Article 16, Section 1, be amended to read as follows:

“Those members called back from layoff for part-time work shall receive the rate of pay equal to the rate of pay for the part-time work position existing at the time of being called back from layoff for part-time work.”

Article 13 (Reduction in Force and Recall). The issue in this Article pertains to Section 3 dealing with “recall.” Under Section 3 of Article 13, it is provided that an employee who is laid off remains in a layoff status for a period not to exceed five years from date of layoff. The Union raises the issue that when an employee is called back from layoff to do part-time work that such employee should be considered recalled. The essential issue is that if performance of part-time work while on layoff constitutes a recall, then each time such laid off employee is recalled, he would get a new five year recall right. Conceivably, the five year right could then extend to ten years, fifteen years or longer each time the employee is called back to work. The Township rejects that contention and proposes simply current contract language. The Fact-Finder, however, is of a view that the recalled employee for part-time work should have a

right to extend his eligibility on the recall list. Without belaboring this issue, the Fact-Finder recommends that Section 3 of Article 13 be amended to read as follows:

“Employees who are laid off shall remain in layoff status for a period not to extend five (5) years from the date of layoff, however, any work performed by an employee who is on layoff and called back from layoff for part-time work shall have the period of part-time work extend the five (5) year provision contained herein.”

Article 21 (Hours of Work/Overtime/Call-Out). Current Section 2 provides for overtime being paid at one and one-half times the hourly rate, figured on a one-tenth hour increment. The Union had initially proposed that the one-tenth increment be deleted and that the overtime simply be paid at one and one-half times the hourly rate. Discussion on this issue reflected that there may be some timekeeping/administrative difficulties involved and, ultimately, the parties have agreed on current contract language, which the Fact-Finder likewise approves and recommends. Current contract language shall be retained.

There was some brief discussion about Section 5 dealing with road inspector callout, but without belaboring that issue, suffice to indicate that current contract language shall be retained.

As to Section 3 (Holiday Overtime), the current contract provides for time and a half but if the overtime occurs on Christmas Day or New Year’s Day, the employee is paid regular holiday pay plus two times the hourly rate. The Union has proposed that Section 3 be amended to provide for two times hourly pay for a regular holiday and three times hourly rate if overtime falls on Christmas Day or New Year’s Day. The Fact-Finder notes that the holiday rates vary with a number of different governmental entities, which generally are time and a half or two times hourly rate. The Fact-Finder does not find evidence supporting a three times hourly rate although it is recognized that there are some governmental entities which do pay two times hourly rate for holidays. Considering the discussion that ensued during fact-finding, the Fact-Finder recommends that Section 3 be retained as current contract language.

As to Section 4 (Compensatory Time), the current contract provides that the employee is allowed a pay or compensatory time election after earning overtime and before payroll is submitted to the clerk's office. Under current contract language, once that election is made, it cannot be changed, whereas the Union proposes to delete that election provision thus permitting the employee to change his election almost at will. The Fact-Finder appreciates the suggestion of the employee having the right of election and the right to change the election but such actions could arguably cause constant administrative recalculations or additional administrative time administering this compensatory time provision. Accordingly, the Fact-Finder recommends retention of current contract language.

As to Section 7 (Compensatory Time Usage), suffice to indicate that as a result of discussions and negotiations occurring during fact-finding regarding this particular section of Article 21, the Fact-Finder finds that the parties have come to an agreement and considers that Section 7 (Compensatory Time Usage) will not be considered by the Fact-Finder but, rather, will be considered as the parties' tentative agreement ("TA") on this section.

As regards Section 9 (Call Out Pay), the current contract provides that if an employee is called out to work outside of his regular work shift, he is paid a minimum of two hours at the overtime rate. The Union proposes that the two hour minimum be increased to a four hour minimum arguing, in part, that the Collective Bargaining Agreement between Canfield Township and Local 377 provides for three hour minimum call out, the Collective Bargaining Agreement between Green Township and Green Township Maintenance Employees Association provides for time and a half normal rate of pay with a minimum of a three hour call out, and the Collective Bargaining Agreement between the Mahoning County Engineer and Teamsters Local 377 provides that if an employee is called out to work, he receives a minimum of two

hours at overtime rate, but if the employee is called out for ice and snow control purposes, he receives a minimum of four hours pay, however, the call out minimum does not apply to hours immediately preceding or following the scheduled work shift unless the employee has been sent home and recalled. The Township proposes current contract language. In reviewing the various proposals dealing with call out pay, the Fact-Finder is of the view that there is a difference, as relates to this bargaining unit, when an employee is called out to work under regular or normal circumstances versus a call out for snow and ice control purposes. The Fact-Finder believes that the Mahoning County Engineer's proposal attempts to address this differentiation. Accordingly, the Fact-Finder recommends that Article 21, Section 9, be amended to read as follows:

“Any employee called out to work outside of his regular work shift shall be paid a minimum of two hours at the overtime rate. If the employee is called out for snow and ice control, he shall receive pay for a minimum of three hours pay. This call out minimum does not apply to hours immediately preceding or following the scheduled work shift unless the employee has been sent home and recalled.”

Article 22 (Snow/Ice Control Overtime). Section 2 of Article 22 sets forth a snow/ice call out policy, including the assessment of points for a failure to respond to an overtime call out. Current contract language provides, in part, that “no bargaining unit member shall receive more than two (2) points, during each individual call out for snow and ice control.” Subsection B goes on to provide that once an individual accrues eight absence points, he is subject to eight hours loss of pay, with successive accruals of eight absence points resulting in additional loss of time. Subsection C provides that if a bargaining unit member responds to an overtime call out, then any absence points previously assessed can be removed at the rate of one point per response. The Union has proposed that Section 2(A) be amended by providing: “No bargaining union member can be penalized for being ill or fatigued as long as they notify the person calling out the drivers of such a situation.” The Union argues, in part, that no bargaining unit member should be penalized if he is ill or so fatigued that he is unable to perform which the Union contends is

consistent with Ohio Revised Code §4511.79 dealing with commercial drivers which provides that a commercial driver should not drive if ill or fatigued. Certainly, it is difficult to perceive that the Township would require an employee to work under any circumstances if that employee was ill or so fatigued that he is unable to perform his regular work. The Township contends that current contract language should be retained as it would give too much latitude to a union member to simply notify the dispatcher or supervisor that he is will or so fatigued. This condition is undoubtedly that raises concerns and should not be so abused as to obstruct or limit the Township's road and ice clearing activities, particularly at a time when it is most needed. On the other hand, it is not unreasonable for an individual not to be penalized if that individual is so ill or unable to perform his work. In that context, the Fact-Finder is of the view that there are sufficient and reasonable administrative controls to ascertain whether the individual member is so ill or fatigued that he is unable to perform his work. Accordingly, the Fact-Finder recommends that Section 2(A) be amended by adding at the end of that section the following:

“No bargaining unit member can be penalized for being ill or fatigued as long as they notify the person calling out the driver of such a situation, subject to the Township reserving the right to verify the nature and extent of the illness or fatigue.”

Article 22, Section 2(C) of the current contract provides that if a bargaining unit member responds to an overtime call out, any previously assessed absent points are removed at the rate of one point per response. The Union has proposed that the one hour point credit be amended by increasing it to two points per response. The Fact-Finder is of the view that the Union's proposal is not unreasonable, particularly since the bargaining unit member can be assessed two absent points for a failure to respond. It would seem, in equipoise, that if a failure to respond can result in two absence points, then equally so an actual response to an overtime call by one who has had points assessed should be removed at the same rate of two points per response. Accordingly, the

Fact-Finder recommends that Section 2(C) of Article 22 be amended to state as follows: “As any bargaining unit member responds to overtime call outs, absence points shall be removed at the rate of two (2) points per response.”

Article 22, Section 2(E) presently provides for distribution of pagers but that the pagers would not be distributed before October 15th or turned in after April 15th. The Township has proposed that Section 2(E) be deleted in its entirety on the basis that it is proposing to provide mobile telephones to employees which they would be required to carry all year. This is a policy change apparently consistent with more modern technology of mobile telephones having digital capabilities replacing former pager systems. Accordingly, the Fact-Finder recommends that Article 22, Section 2(E) be retained in current contract language until such time as the Township proceeds to initiate and provide mobile telephones, at which time the Fact-Finder recommends that current Section 2(E) be deleted.

Article 22, Section 2(F) presently provides a “pager bonus” of \$400.00 with the provision that it is paid in October to each bargaining unit employee for carrying the pager through April 15th of the following year. The Union has proposed that the \$400.00 pager bonus be increased to \$600.00, whereas the Township proposes current contract language. Reviewing this situation and the fact that under the Township’s proposed cell phone system requiring the employee to carry the cell phone for the entire year rather than for a period of approximately six months, it arguably justifies some adjustment in the pager/cell phone bonus. Accordingly, the Fact-Finder recommends that current contract language in Section 2(F) be retained until such time as the Township initiates and distributes a cell phone system. At such time as a cell phone system is initiated, the Fact-Finder recommends that Section 2(F) be amended to read: “A

\$500.00 bonus will be paid in October to each bargaining unit employee in return for carrying a cell phone throughout the year.”

Article 23 (Meal Tickets). Current Article 23 provides that an employee is reimbursed at the rate of \$10.00 for each meal payable on a quarterly basis, one meal ticket each time an employee is called out to work before normal work hours, one meal ticket each time an employee remains on duty two hours after scheduled workday and one meal ticket for the first four hours when called from off duty and each four hours thereafter regardless of the length of the call out. The Union proposes that the meal ticket allowance of \$10.00 be increased to \$15.00, whereas the Township contends that a meal ticket allowance is not provided in other governmental entities around Boardman, such as Poland, Austintown and Canfield. The Fact-Finder recognizes that this is purely an economic issue and a single increase from \$10.00 to \$15.00 might arguably be insignificant and certainly would not bankrupt the Township. However, there is no indication that a meal ticket allowance is an item uniformly given in the communities surrounding Boardman or that the \$10.00 meal allowance should economically be increased. Accordingly, the Fact-Finder recommends retention of current contract language.

Article 24 (Compensation). Not unlike most CBAs, Article 24, pertaining to compensation, was the one issue discussed most extensively and consumed the most time. On its face, the issue of compensation might seem to be somewhat simplistic compared with the administrative and legal complexities of some of the other issues but the contrary is what actually results. The Union has argued that the last “pay raise” was in 2007, although the employees did receive “signing bonuses.” At the present time, the Union, after having modified some of its previous positions, ultimately proposed, at fact-finding, an 11% increase allocated 4% commencing in 2014, 4% commencing in 2015 and 3% commencing in 2016. The

Township submitted a proposal providing for a lump sum signing bonus of \$650.00 to be paid in 2014, a 1% cross the board pay increase commencing in 2015 and a \$650.00 lump sum bonus to be paid in 2016.

The Union had countered with the argument that some non-Union employees were allegedly receiving increases of 10%, some were receiving 2% increases and that another employee had received a 21% increase. Without going into detail, at fact-finding, the Township had argued that the 21% increase pertained to an employee whose position was being changed and, in effect, had received a promotion. Raises regarding non-Union employees were contended to be consistent with compensation adjustments. The Fact-Finder is not going to dwell on the compensation interrelationships between Union and non-Union employees since such an endeavor would require extensive analysis of virtually every employee.

The Township did present a number of documents addressing compensation or compensation-related matters but no one document is necessarily determinative of this issue. The Township indicated that in comparing it with other governmental entities in the same general geographical area, such as Poland and Austintown, Boardman does rank first with a population of 40,889, ranks first in total revenue of \$22,376,613, ranks third in per capita income of \$28,533, compared to Poland which is second with per capita income of \$32,270 and Canfield which is first with per capita income of \$37,075. As to median family income, again, Canfield ranks first at \$84,800 and Boardman ranks fourth at \$63,108.

The Township also provided comparable wage settlements for the period 2004 to 2013 prepared by the State Employment Relations Board. The statistical data addresses city, county, township, school districts and collective bargaining units. State-wide, however, it notes a wage

increase of 1.47% and also notes that for the first year of the contract commencing in 2013, an average wage increase of 1.46%, 1.48% for a second year and 1.58% for the third year.

The Township also argued that again comparing Boardman with surrounding areas such as Poland, Mahoning County Engineer, Austintown, Canfield and others, it comes up with a maximum at \$21.20, whereas as to Boardman, a maximum at \$22.65, thus, contending that Boardman's present compensation is well within the acceptable range for the general Mahoning County area. The Township also provided a breakdown for each of the major work classifications, i.e., maintenance worker, foreman, supervisor of helpers and laborers and mechanic.

The Township had also argued, again comparing Boardman with some of the surrounding governmental entities, regarding the operator position, indicating, for example, the maximum for an operator with Boardman was \$52,624 compared with a total maximum in Austintown of \$51,674, Canfield of \$48,757 and the Mahoning County Engineer of \$52,392. For the position of mechanic, the Township contends that Boardman's maximum is \$52,853 compared with \$52,232 for the Mahoning County Engineer's office or \$49,707 for Austintown. For the position of foreman, again, the Township argues that total maximum for such position is \$57,314 compared with an overall average of other Mahoning County entities, including the Mahoning County Engineer, of \$53,128.

One document of some significance was the Township's comparable reviews internally, as relates to the other bargaining units within the Township. For example, the Township indicated that the OPBA dispatchers for 2014 received lump sum \$1,250, a 2% increase for 2015 and a lump sum of \$1,250 in 2016. This was likewise the pay increases with AFSCME for its three year contract (2013-2015). No wage information for the other units was presented for the

full three year period projected herein except as to the OPBA dispatchers. The Fact-Finder is not unmindful of the fact that at the beginning of the century in apparently a more affluent or comfortable time, the Township was giving pay increases of 4%/4%/4% but that significantly changed by 2010, arguably as a result in some economic decline of the general Mahoning Valley economic picture and also the national economic downturn in 2008-2009. The Fact-Finder notes that the OPBA rank had received lump sum payments of \$950 in each of the years 2012 to 2014, and the OPBA patrol received lump sum payments of \$750 for each year from 2012 to 2014. A review of the compensation history seems to reflect a posture by the Township to pay compensation in terms of lump sum signing bonuses or similar lump sum type compensation rather than a wage percentage rate which, ultimately, constitutes a wage freeze, although there is an increase in compensation.

Although the Township has not argued a financial inability to pay or financial hardship, it has contended that it has suffered a monetary decline, for example, arguing that because of the elimination of the Ohio estate tax and its allocable distributions to local government, the Township, for example, received \$609,000 in 2013 compared to approximately \$2.5 million in 2012, \$1 million in 2011, \$872,000 in 2010 and \$920,000 in 2009. Also, as to local government funds which has been reduced by the General Assembly, the Township argued that in 2013, it received \$345,000 compared to \$454,000 in 2012, \$650,000 in 2011, \$639,000 in 2010 and \$643,000 in 2009.

Further, the Township argues that although not poverty stricken, its General Fund from property taxes has been relatively stable over the last several years, for example, \$4.6 million in 2013, \$4.6 million in 2012, \$4.7 million in 2011, \$4.7 million in 2010 and \$4.6 million in 2009.

The Township also contended that a \$650 lump sum bonus was equivalent from a range of 1.26% as to the foreman, 1.37% as to a mechanic, 1.47% as to a driver and 1.63% as to a laborer. Further, the Township has argued that a compensation increase of \$650/1%/\$650 would result in a total cost of \$41,520. A wage increase of 2%/2%/2% would result in a total cost of \$118,470, whereas a wage increase of \$1,250/2%/\$1,250 would result in a cost of \$81,350.

The Fact-Finder is not unmindful of the arguments by the Union and its presentation for some compensation increase. However, the Fact-Finder also must take into consideration the other bargaining units within the Township and does not believe that it is healthy, either from a morale viewpoint or from union infighting for one union to be "outbidding" another union when there is some relative proximity among the various unions. The Fact-Finder is of the view that it is unhealthy for effective labor relations for one union to be fighting with or against another union on the basis, as to basic wages, that one union was treated more favorably or less favorably than another.

Looking at the most recent compensation packages, the Fact-Finder is left with a singular conclusion that an appropriate compensation disposition is \$1,250 lump sum/2%/\$1,250 lump sum. Accordingly, the Fact-Finder recommends that Article 24 be amended to read as follows:

"Bargaining unit members' wage rates shall remain unchanged for the year 2014 as set forth in the current Collective Bargaining Agreement.

For the year 2014, each full-time member of the bargaining unit shall receive a lump payment in the amount of \$1,250.00. Said payments shall be in lieu of any wage increase, except as otherwise provided in this Report, and shall be paid no later than the second full pay period after execution of the Agreement.

Commencing with the year 2015, bargaining unit members' wages shall be increased by two percent (2%) computed on the wages as set forth in the present Collective Bargaining Agreement.

Commencing with the year 2016, each full-time member of the bargaining unit shall receive a lump sum payment in the amount of \$1,250.00. Said payment

shall be in lieu of any wage increase and shall be paid no later than the second full pay period after January 1, 2016.”

Article 25 (Insurance). The Union has submitted several proposals regarding insurance coverage, namely, as to Section 2, as to the contribution rate, the Union proposes that employees would pay 5% toward the insurance premium. This provision would thus result in a deletion of current Section 3 which addresses the matter of contributions regarding cost increases or decreases. In part, current Section 3 provides that should the plan cost exceed base contribution as set forth in Section 2, the Township contributes the first \$30.00 of the increase and employees contribute the next \$20.00 and that any amount in excess of the initial \$50.00 is then shared on a 60/40 basis with the Township paying 60% of the cost.

Additionally, the Union proposes an adjustment to Section 6 increasing the current level of life insurance from the present \$25,000 to \$100,000. Although not in dispute, it should be indicated that there is a further provision that if the insurance is available from the insurance carrier, members also have the option to purchase an additional \$15,000 without a physical requirement.

The Township has opposed these changes essentially on the basis that current contract language is the same provision applicable to the other Unions within the Township and, for purposes of consistency and arguable fairness, the instant contract should not be significantly altered as to what presently applies to all the units.

The Township has proposed a new Section 9 addressing the issue of an employee possibly having a right of contribution adjustment because of the employee’s eligibility under the Affordable Care Act (“ACA”), who might believe that his contribution exceeds the applicable percentage of household income so as to be eligible for credit assistance and also having the right

of appeal regarding that issue. After some discussion between the parties, the following new Section 9 is proposed:

“The parties recognize that employee affordability under the Affordable Care Act (ACA) will be measured based upon the cost of the single-only coverage and the employee’s household income (as defined by rules and regulations implementing the ACA). Any employee who believes his contribution exceeds 9.5% of his household income for the lowest level single-only coverage plan offered by the Employer should submit a written request for review to the Fiscal Officer. Should an employee request a review, the employee agrees to provide the employer with financial documentation of the employee’s household income.”

The Fact-Finder recommends that the proposed new Section 9 be included in the next contract and that current Section 9 (Loss of Benefits) be renumbered as new Section 10. As amended and renumbered as recommended herein, the Fact-Finder recommends that, except as otherwise set forth herein, current contract language should be retained.

Article 27 (Longevity). Without belaboring discussion on this Article, suffice to indicate that during the course of fact-finding, the Fact-Finder finds that the parties have come to a mutual agreement regarding this Article, to which the parties have reached a tentative agreement (“TA”) and, thus, the Fact-Finder makes no recommendation pertaining to this Article and defers to the parties’ TA.

Article 28 (Out of Class Compensation). The current contract provides that when a bargaining unit member is assigned to perform work in a higher pay classification, such individual will be paid one hour of overtime at the employee’s normal pay classification. The Township proposes a change to that section essentially providing that when the work is performed in a higher pay classification, the employee would be paid “for all hours worked in the higher classification at the wage rate of the higher classification, provided the employee works a minimum of one hour in the higher classification.” The Union proposes maintaining current contract language. The Fact-Finder recognizes that the current contract and the

Township's proposals are arguably two different ways of measuring how payment is to be computed when a bargaining unit member is performing work in a higher pay classification. The Fact-Finder is of the view, however, that if an employee is assigned to perform work in a higher pay classification, why should that assignment result in overtime pay when the employee who is regularly assigned to perform such work would not be receiving any overtime compensation, but, rather, would be receiving his pay classification. Overtime pay has a justification but the Fact-Finder does not feel that overtime pay should be used as the vehicle for paying an employee who is performing work in a higher classification. The bottom line is that when performing work in a higher pay classification, that employee should be paid at whatever that higher pay classification so provides. The Fact-Finder, however, does not believe that there is a logical or rational basis for requiring the employee to work a minimum of one hour in the higher classification in order to be entitled to the wage rate for that higher classification. Once assigned, no matter what the amount of time may be involved, the Fact-Finder believes that such employee should be entitled to the wage rate of the higher classification as soon as that employee has commenced work, even if it results in 15 minutes of work. Certainly, the usual employee at the higher classification would be receiving compensation immediately and there is no rationale for a one hour delay. Accordingly, the Fact-Finder recommends that Article 28 be amended to read as follows:

“Whenever a bargaining unit member is assigned to perform work by the Road Superintendent or Assistant Road Superintendent in a higher pay classification, he shall be paid for all hours worked in the higher classification at the wage rate of the higher classification.”

Article 29 (Clothing Allowance). Current contract language regarding clothing allowance provides in Section 1 that after six months employment, an employee receives a clothing allowance of \$600.00 during the first year of the CBA, \$500.00 during the second year of the CBA and \$400.00 during the third year of the CBA, said amounts to be paid by the end of

the first pay period in April of each year. In that regard, the Union has proposed that a level amount of \$600.00 be paid in each of the three years of the CBA. The Township proposes that Section 1 be modified to provide that \$400.00 be paid for each year of the CBA. The Fact-Finder believes that it is more consistent from an economic view point for an allowance of the same amount to be used in each of a proposed three year contract rather than using the current contract language of differing amounts in each year of the contract. The Fact-Finder recognizes that although the parties are in agreement as to a clothing allowance, the difference is, perhaps, one of degree, as to the amount of money to be provided. The Fact-Finder also notes that the Township's proposal of \$400.00 for each year is less than what is allowed under the current contract. The Fact-Finder also notes that the uniform allowance of other governmental entities are in varying amounts from no uniform allowance because uniforms are provided up to \$500.00 by Austintown, \$525.00 by Poland and \$675.00 by Howland.

Upon consideration, the Fact-Finder recommends that Article 29, Section 1, be amended to read as follows:

“All full-time employees of the Road Department, after six (6) months employment, shall receive a clothing allowance of \$500.00 per year for each year of a proposed three year agreement, said amount to be paid by the end of the first pay period in April of each year.”

Article 29, Section 2, sets forth “uniform guidelines” wherein the appropriate clothing is set forth. The Union proposes a change to Item 5, which presently states “blue jean shorts when, in the opinion of the Road Superintendent and with his approval, weather and job conditions permit.” The Union does not oppose the possible use of blue jean shorts but, rather, wants that clothing item simply left as part of an acceptable clothing without the necessity of the Superintendent's approval. Obviously, the wearing of shorts is contingent on weather and job conditions, and the Fact-Finder believes that unlike other matters, the wearing of this clothing

should be with supervisory knowledge and, thus, their approval in the event that a member of the general public might inquire as to why employees are wearing shorts in the performance of their work. Accordingly, as to Section 2, the Fact-Finder recommends current contract language.

Article 30 (Vacations). Article 30 sets forth, in some detail, the eligibility and use of vacation time. Without going into detail regarding the parties' negotiations on this Article, suffice to indicate that the parties have agreed to current contract language but as otherwise amended by a "Memorandum of Understanding" (MOU) or a "Letter of Understanding" (LOU) addressing this issue.

Additionally, the Township had proposed a new Section 8 to Article 30 dealing with the matter of an employee selling vacation time. In that context, it should also be noted that the proposed Section 8 would result in the deletion of present Article 46 (Attendance Incentive Program). Accordingly, the Fact-Finder makes no recommendation as to Article 30, except as noted below, and defers to the parties' agreed side letter or memorandum of understanding.

Further, the Fact-Finder recommends that a new Section 8 to Article 30 be added to read as follows:

"Selling One (1) Week Vacation Time. An employee may submit in writing, no later than December 1, of each year, a request to sell one (1) week of vacation time (five (5) days). The vacation sold back to the employer shall be that which is earned during the calendar year and shall be paid to the employee by January 30 of the following year. The maximum amount of converted vacation leave that can be considered earnable salary under OPERS regulations is the amount the employee earns in the calendar year, less any amounts taken during the calendar year, with the maximum being one (1) week of vacation time."

As noted above, in light of the recommendations set forth herein, the Fact-Finder recommends that current Article 46 (Attendance Incentive Program) be deleted and further recommends that except as otherwise set forth herein, current contract language be retained.

Article 33 (Sick Leave). Current contract Article 33 sets forth the provisions of sick leave eligibility, usage and disposition of unused sick leave at the time of retirement under Ohio Public Employees Retirement System (OPERS).

Section 3 of Article 33 presently sets forth the circumstances when sick leave can be granted. Suffice to indicate that, based on discussions occurring during the course of fact-finding, the Fact-Finder finds that the parties are in agreement regarding some language change to Section 3 which the Fact-Finder now recommends be accepted and that the first sentence of Section 3 read as follows:

“**Usage.** Upon approval of the Employer, which shall not be arbitrarily denied, sick leave shall be granted to members for absence from regularly scheduled hours of employment for the following reasons:”

The Union has also proposed a modification to Section 5 which sets forth a provision allowing, at the time of retirement, that an employee is eligible to receive payment for 30% of his unused, accumulated sick leave earned with the Township, up to a maximum of 60 days pay (480 hours). The Union has proposed a modification to that section to increase the payment from 30% to 50% and to increase the maximum of computable days from 60 to 240 days. The Township has contended that the current contract language is that which is applicable to all of the other unions within the Township, although the percentage and eligibilities are different figures with other surrounding governmental entities. The Fact-Finder is of the view that based on the representation that current Section 5 is similarly applicable to the other Unions within the Township, the Fact-Finder does not find a compelling or overriding justification to vary the conversion right for members of the instant bargaining unit. Accordingly, the Fact-Finder recommends that current contract language be retained.

Article 34 (Injury on Duty). The Township has proposed certain procedural changes not currently set forth. Based on discussions occurring during fact-finding, the Fact-Finder recommends that Section 1 be amended to read as follows:

“Purpose. The intent and purpose of the injury leave policy herein is for the Township to assist employees with work-related injuries in obtaining the necessary maintenance and care during the short period of time following the work-related injury.

- A. **Injury on Duty Reporting and Procedures.** When a bargaining unit employee is injured in the scope of employment while actually working for the Township on regular assignment, the injured employee shall immediately comply with the following:
1. Follow the Township’s Incident Reporting Policies.
 2. Submit a completed and signed internal incident report containing the nature of the injury, the date of the occurrence, the identity of all witnesses and persons involved, the facts surrounding the injury and any other information supporting the granting of injured on duty leave.
 3. Furnish the Township with a signed Boardman Township Authorization(s) to Release Medical Information relevant to the claim.
 4. In the event the employee needs immediate medical care, he shall be referred to the Township’s preferred medical provider for work-related injuries, or transported to a hospital as the injury warrants.”

The Fact-Finder further recommends that present Section 3 be deleted in its entirety and, in lieu thereof, the following Section 3 be inserted:

“Eligibility Requirements. To be eligible for injured on duty leave, the employee shall:

- A. Follow the Injury on Duty Reporting Procedures set forth in Section 1.
- B. File for Workers’ Compensation benefits with the Ohio Bureau of Workers’ Compensation and be approved for the receipt of benefits.
- C. Provide a medical certification and seek treatment from a physician on the list of Township approved providers opining that the claimant is disabled from employment in excess of seven (7) consecutive days as a result of the work-related injury and specifying the injury, recommended treatment,

and the employee's inability to return to work as a result of the injury along with an estimated return to work date."

Further the Fact-Finder recommends that Section 5(E) be amended by adding at the end of present subsection, the following language:

"As soon as an employee is released to work, with or without restrictions, at any time after injury or during any period of disability directly related to the work-related injury, the employee shall timely contact his department head or other appropriate personnel to advise of his status and to schedule his return to work. If the employee fails to timely advise his department head or other appropriate personnel of his return to work status, then the employee may be subject to discipline, including but not limited to for being absent without leave."

Except as otherwise recommended for amendment herein, the Fact-Finder recommends current contract language.

Article 37 (Bereavement Leave). Without belaboring discussion on this issue, suffice to indicate that based on discussions occurring during fact-finding, the Fact-Finder recommends retention of current contract language.

Article 45 (Perfect Attendance Incentive). The current contract provides a quarterly incentive award of \$150.00, which, if perfect attendance is maintained for the entire year, would amount to \$600.00. The Union has proposed that this provision be increased to \$250.00 per quarter. The Township has contended that the \$150.00 quarterly incentive award under Article 45 is the same that is granted under the collective bargaining agreements with the other Township unions (AFSCME; patrol dispatch; OPBA patrol and OPBA rank). Further, the Township argues that a number of the surrounding governmental entities, including the Mahoning County Engineers' Office, do not provide any perfect attendance incentive, although the City of Poland grants \$200.00 for each half year period. The Fact-Finder believes that it would be appropriate to maintain the same incentive award applicable to the other unions being

equally applicable to the instant bargaining unit. Accordingly, the Fact-Finder recommends that current contract language be retained.

Article 46 (Attendance Incentive Program). For the reasons discussed in connection with Article 30 (Vacations), and the recommended changes to Article 30, together with the Fact-Finder's comments set forth in that Article, the Fact-Finder recommends that current Article 46 be deleted.

Article 47 (Commercial Driver's License). The issue involved in this Article deals with Section 2 which presently provides that a bargaining unit employee who holds a current commercial driver's license ("CDL") and maintains same in good standing is eligible to receive an annual payment of \$600.00 for a Class A license and \$575.00 for a Class B license. The Union has proposed that the Class A CDL bonus be increased to \$700.00 and the Class B CDL bonus be increased to \$675.00. The Township has requested continuation of current contract language, arguing, in part, that the surrounding governmental entities, such as Austintown, Canfield, Liberty and Poland, do not provide for any bonus but they do reimburse an employee for the costs of the individual's CDL renewal fee. The Union, however, notes that under the CBA with the Mahoning County Engineer, a CDL bonus of \$700.00 for a Class A license and \$600.00 for a Class B license is given. The Township also argues that a CDL bonus should not be provided because it is akin to paying a police officer for being able to fire his or her firearm. The Township contends that it is a job requirement, i.e., maintenance of a CDL license in good standing, and should not receive separate compensation. The Fact-Finder notes, however, that there are governmental entities which do pay a specific firearm qualification bonus or similarly designated provision to police officers. The Fact-Finder recognizes that for the appropriate individuals, the maintenance of a CDL is a job requirement in that without the license, the

employee obviously could not operate the particular Township vehicle or equipment. The Fact-Finder is of the view that a measure of continued training and proficiency is necessary for the maintenance of a CDL and that there is an incentive to maintain a CDL in good standing as there is always the potential risk that the employee may have his CDL suspended by the Bureau of Motor Vehicles for matters not even arising in the course of employment for which the individual could face suspension or revocation of his CDL. The Fact-Finder is of the view that a modest increase in the CDL bonus is appropriate and, accordingly, recommends that Article 47, Section 2 be amended to read as follows:

“CDL Bonus. All employees holding current CDLs and maintaining in good standing shall receive the following annual payment: Class A - \$650.00; Class B - \$625.00.”

Article 48 (Duration). The current contract is presently in effect for the period January 1, 2011 through December 31, 2013. After some discussion during fact-finding, the Fact-Finder finds that the parties are in agreement that a new Collective Bargaining Agreement should be effective for a new three year period, however, there is a disagreement as to when the Agreement should commence. In simple terms, the Union proposes that the contract should be effective January 1, 2014 through December 31, 2016. The Township, on the other hand, proposes that the CBA would be “effective upon execution and shall continue in full force and effect through December 31, 2016.”

Although the Fact-Finder recognizes that very often contracts do not become effective until they are actually executed with no retrospective provision and, further, that SERB has interpreted to the effect that when there is a collective bargaining agreement which has expired and the parties are in negotiations, the contract still continues during the hiatus. The Fact-Finder is of the view that the effective date of the contract should, logically, follow immediately after the termination of the prior contract. Additionally, to the extent that there may be eligible

monetary benefits provided in this Report or under the recommended retained contract language, an employee should not be placed “in the middle” of potentially losing some such benefit simply because his employer and his collective bargaining representative have not concluded a contract immediately upon expiration of the old contract. This Fact-Finder does not wish to engage in analyzing or determining such niceties. Accordingly, the Fact-Finder recommends that Article 48 be amended to read as follows:

“This Agreement shall be effective January 1, 2014 through December 31, 2016 and shall continue in full force and effect unless either party gives timely written notice to the other of their intent to commence negotiations. Notice shall be given no sooner than one hundred twenty (120) days, nor later than sixty (60) days prior to the expiration of this Agreement, unless a different notice requirement period is set forth under provisions of the Ohio Revised Code and/or the regulations of the Ohio State Employment Relations Board as set forth in the Ohio Administrative Code. If such notice is given, negotiations shall commence and the provisions of this Agreement will be maintained until such time as a successor agreement is in effect.”

Appendix A (Reduction and Recall List). The issue in this matter relates to a Union request that “List A” provide for the position of “janitor” which the Union asserts was a Union position and should now be returned as a bargaining unit position and thereafter having the position filled. The Township, on the other hand, opposes the Union proposal on the basis that it contends that the janitor position was “previously negotiated away” and further states in its Position Statement:

“The position no longer exists; nor is any rate of pay stated in Article 24, Compensation. Furthermore, the position was eliminated when the gentleman who previously held the position was promoted. He was laid off from the promoted position, not the janitor position.”

There was no evidence presented that the janitor position is one which is included within the bargaining unit for which the collective bargaining representative is required to address. The Fact-Finder notes that in Article 1, Section 1, of the current contract, it is stated:

“Township agrees to recognize and does hereby recognize the Association [now the International Brotherhood of Teamsters, Local 377] and its designated agents and representatives as the sole and exclusive bargaining agent on behalf of all the employees of the Road Department, including mechanics, with respect to wages, hours and other terms and conditions of employment.”

There was no evidence presented during the fact-finding which substantiates that at the present time the janitor position is a position encompassed within Article 1, Section 1, of the CBA. Also, it is noted that in Article 1, Section 2, it is stated in pertinent part:

“Additionally, as set forth in the Act, all management, confidential, supervisory, temporary, seasonal, part-time, and employees not certified by SERB as being included in the bargaining unit are excluded.”

As noted, there was no evidence presented during fact-finding that the janitor position is one which has been certified by SERB as being included in the bargaining unit. The absence of inclusion constitutes an exclusion. This Fact-Finder does not believe that it is within his jurisdiction or authority to, *sua sponte*, make a determination that a particular position, not otherwise specifically identified, is included in the bargaining unit. For the reasons set forth herein, therefore, the Fact-Finder denies the Union’s request that the janitor position be reinstated and included within Appendix A (Reduction and Recall List).

* * * * *

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 16th day of June, 2014.

Respectfully submitted,



DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via email transmission, this 16th day of June, 2014, on the following:

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