

IN THE MATTER OF FACT FINDING PROCEEDINGS

Boardman Township	(	Case No.:	2013-MED-12-1610
	(		
and	(		
	(		
	(	Hearing Date:	August 5, 2014
International Association	(		
of Firefighters, Local 1176	(		
	(		
	(	Findings and	
	(	Recommendations:	September 3, 2014
	(		

Representing the Employer: Robin L. Bell  
Regional Manager  
Clemans, Nelson and Associates

Representing the FOP: Dennis Haines, Esq.  
Green, Haines, Sgambati, Co., L.P.A.

Michelle Miller-Kotula  
Fact-Finder

**SUBMISSION**

This matter concerns the fact-finding proceedings between Boardman Township (hereafter referred to as the "Employer") and the International Association of Firefighters, Local 1176 (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed Michelle Miller-Kotula as fact-finder for this matter.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of SERB, as amended. The Employer and Union previously engaged in the collective bargaining process before the appointment of this fact-finder.

Prior to the hearing, the parties submitted detailed position statements to the fact-finder in accordance with the Ohio Revised Code. These statements have been received and carefully considered. The fact-finding occurred on August 5, 2014. Subsequent to the conclusion of fact-finding, the parties agreed to extend the submission of this report. The following issues were considered during fact-finding:

Issue No. 1

Article 4 - Bargaining Unit Application of Civil Service Law

Employer Position

The Employer proposes a new section that would require negotiations if the Boardman Township Civil Service Commission is abolished. The Employer is one of the only two civil service townships in the state of Ohio. The Employer's proposal includes the ability to utilize the dispute resolution procedures of Chapter 4117.

Union Position

The Union rejects the Employer's proposal related to changes in the civil service language. The Union has concerns with the absence of civil service language in the collective bargaining agreement that the Employer would show favoritism and less qualified individuals would be selected. The Union argues the only way to ensure the proper candidates are selected is to retain the current language contained in the collective bargaining agreement.

Findings and Recommendations

I have carefully considered and reviewed the submissions and supporting documentation provided by the parties related to the Employer's proposal to alter the current civil service language. The Employer is one of two townships in the State that uses the civil service commission for promotions. The Employer is considering to abolish the civil service commission and wants the opportunity to meet to negotiate the matter with the Union.

In my considered opinion if the Employer determines it is in its best interest to abolish its civil service commission and actions are taken, the appropriate safeguards must be in place to continue to ensure the fairness to the candidates who apply for positions. It is my recommendation that the language proposed by the Employer be adopted. However, in order to fast track any disputes regarding the discussions that occur as the parties meet to negotiate any matter effecting the terms and conditions of employment, the arbitration process contained in the collective bargaining agreement must be utilized to resolve such disputes.

Issue No. 2

Article 27 – Overtime

Employer Position

The Employer proposes to retain the current language. The Employer contends it is in its best interest not to increase the number of FLSA reduction days. It is recognized by the Employer adequate staffing must be available at all times and to increase the number of FLSA days may cause less employees to be available as needed which results in safety concerns.

Union Position

The Union seeks to increase the number of FLSA reduction days which employees may take up to ten days. This increase would allow more employees to use these days at the same time. The Union points out the Employer has safety nets already in place in the collective bargaining agreement that serve as protection for personnel staffing. It is noted

by the Union to increase the amount of FLSA days used by the bargaining unit members the monetary costs for FLSA days presently incurred by the Employer would decrease.

### Findings and Recommendations

I have carefully considered the proposal presented by the parties related to payment of FLSA overtime. Currently in the Agreement the bargaining unit employees are permitted to take up to two (2) FLSA reduction days or be paid. The Union proposes to increase the amount of days allowed to be scheduled to ten (10) days per calendar year. The Union explained if an employee takes an FLSA reduction day, it is a decrease in monetary cost to the Employer because the employee would take time off in lieu of payment. The Employer opposes increasing the number of permissible FLSA days that are taken because it could result in staffing shortages.

In my considered opinion, after reviewing the relevant facts, it appears to be permissible to minimally increase the number of permissible FLSA days from two (2) days to three (3) days per calendar year. This change would be beneficial to permit the bargaining unit to take an additional day off in lieu of payment and would not significantly change the necessary staffing pattern.

### Issue No. 3

#### Article 32 - Wages and Salaries

##### Employer Position

The Employer proposes lump sum payments of \$750 for each full-time bargaining unit member for years 2014 and 2016. The Employer's proposal encompasses an across the board annual wage increase in 2015 in the amount of \$689 to be rolled into the wage rates. This amount represents a \$.25/hour raise for fire suppression employees and a \$.33/hour raise for fire protection employees.

The Employer states the Union's proposal of general wage increases of 2% for each year of the Agreement is beyond that which three of its other bargaining units agreed to in negotiations. The Employer is strongly opposed to the Union's proposal to radically restructure the step system that was voluntarily agreed to in the last set of negotiations. The Union has proposed to cut a system consisting of 14 steps, taking 22 years to reach the top step to only 12 steps, after 12 years.

The Employer takes the position when comparing the labor markets, its wage proposal is fair. The Employer states a pattern of wages has been established with three of its other bargaining units and the firefighters union should not be given an exception. The Employer contends the wage tiers negotiated in the last collective bargaining agreement must remain. The Employer acknowledges with these tiers in place turnovers have not been experienced and no need exists to alter what is in place.

The Employer further explains the fire department experienced a 3% funding cut. The financial status of the Employer predicts a carryover to occur. However, such carryover must not only be maintained, but also should be maintained at a higher amount to adequately cover the payroll expenses for the beginning of the next year. The Employer further takes the position the Fire Chief has the discretion to spend up to 10% of his budget. However, such discretionary spending is to be used for training, equipment, repairs, discretionary overtime and is not directed to be spent toward wage increases. The Chief is to use this discretionary money from his budget to operate on a daily basis. If this discretionary money is used for salaries, the Chief would have less money to provide for the daily operating expenses.

### **UNION POSITION**

The Union submits the wages should be paid at 2% for the first year of the collective bargaining agreement, 2% the second year, and 2% the third year. The Union notes in the past its members were willing to take a wage freeze. The health insurance enjoyed by the bargaining unit members was renegotiated which resulted in more out of pocket expenses.

The Union argues the Employer has the ability to pay the Union's wage proposal. It is in the best interest of the parties to adjust the tiers of the wage scales to maintain quality firefighters and improve their wages. The Union has a concern with the two tier system because the Employer must be able to maintain quality firefighters.

The Union states according to the Employer's fiscal authority, the fire department is able to spend 10% of its \$4,400,000 budget as discretionary monies. The Union argues this discretionary money, in the amount of approximately \$400,000 covers the entire wage improvements requested by the bargaining unit for a three year period of time. The Union states if the budget remains constant, close to approximately \$800,000 is left to address the Employer's needs. The Union notes the Employer established its budget, but kept aside 10% of the budget to use for discretionary purposes. Enough money is available to provide these reasonable wage increases as the Union has requested. The Union also contends although the budget has decreased approximately 3% this year, there is no reason to believe it will be decreased 3% next year.

### **FINDINGS AND RECOMMENDATIONS**

I have carefully considered the arguments of the parties related to the wage and salary proposals. Upon reviewing such documentation, it becomes readily apparent the Employer has worked extremely hard to be in its current financial situation. At the same time the Union has endured wage freezes, as well as modified its health insurance to be cost effective for the Employer.

It is evident to this fact-finder the Employer has implemented cost saving measures to help limit its expenditures. The overall budget in the fire department has been decreased by three percent. The Employer pointed out other bargaining units have received the wages and salaries in the same amount as the Employer offered in its proposal to the firefighters and such offer should be applicable to these bargaining unit employees as well.

It appears to this fact-finder both parties strongly refute whether or not the discretionary finding of 10% of the firefighters budget is able to be spent on wage increases. The financial condition of the Employer indicates it was necessary to reduce the firefighter's budget by 3%. The budget in the amount of approximately \$4,400,000 includes 10% of discretionary funding. However, as it was explained by the Employer, the discretionary funds are to be used by the Chief for daily operating type expenses for repairs, new equipment and training but not for wages or wage increases because these amounts are generally included in the budget.

The bargaining unit members have saved the Employer monies over the past several years by taking wage freezes. The salary scales have been restructured. However, since the scales have been restructured, the data is inconclusive to show if the Employer has experienced any trouble attracting or retaining employees. The turnover rate for the Employer since the new salary scale have been implemented has been low. It is therefore my recommendation for the wage scale structure currently contained in the collective bargaining agreement to remain in place.

Related to the appropriate wages, it is my determination after reviewing the proposals of the parties that the following wage increases be adopted:

Year 1	\$1250
Year 2	\$1250
Year 3	\$1250

This particular bargaining unit has taken wage freezes for several years to support the Employer's past financial position. By taking such freezes, the Employer has been able to reduce its expenditures. Furthermore, the evidence proves that the Union has previously changed its salary structure in an effort to save money for the Employer. These savings have not been fully realized since not much turnover has occurred. The Union also changed provisions in its health care to save money for the Employer. It is therefore my recommendation for these wage increases to be adopted based on the foregoing reasons.

Issue No. 4

Article 40 – Vacation

Employer Position

The Employer opposes the Union’s proposal to increase the number of employees who may be on vacation or use FLSA days at the same time. Permitting additional employees off on the same day could result in higher overtime costs or operating with less staff. The Employer urges the fact-finder to reject the Union’s proposal related to this issue.

Union Position

It is the Union’s position Article 40, Vacation, Section 4 – B shall be changed to provide for three (3) employees to be on vacation or FLSA days at the same time. The Union contends adequate safeguards are already in place to protect the Employer from staffing deficiencies. The Union states its proposal will not increase costs.

Findings and Recommendations

This fact-finder has carefully considered the proposals related to the number of employees permitted to take vacation. The Employer has safeguards in place under the current collective bargaining agreement to limit the number of bargaining unit members who are on vacation or take FLSA at a particular time. These safeguards are necessary to ensure adequate staffing is met. It is my considered opinion, although the Union argues a staffing shortage should not occur or overtime costs would not result due to the firefighters working in safety sensitive positions, the Union’s proposal should not be granted. The potential for a personnel shortage or overtime costs may be a likely scenario in the event an emergency situation occurs.

Issue No. 5

Article 46 - Injured on Duty

Employer position

The Employer’s proposed revisions to this Article are intended to help maintain better cost control. The key proposed revisions are that the employee would be required to seek treatment from a health care provider on the list approved by the Employer to encourage the use of vocational works rehabilitation. The Employer notes this provision applies to firefighters who want full duty pay. It is beneficial to the Employer to save money due to financial constraints in funding.

### Union Position

The Union states the current language must remain in the collective bargaining agreement. The Employer has enough protection in the collective bargaining agreement with the right to examine employees with its own doctor of choice. The Union argues there has never been a problem with the injury on duty section of the collective bargaining agreement or its administration. Thus, the Union submits it is appropriate for the language to remain the same.

### Findings and Recommendations

I have carefully considered the arguments of the parties related to the Injured on Duty Pay. The change proposed by the Employer only applies to situations in which the firefighters request full duty pay. The Employer submitted a change in the language to require employees to go to certain doctors to determine whether or not the employee would be eligible for such benefits. In my opinion, the changes to this language would be prudent to ensure cost savings to the Employer. The Employer would be able to determine through the list of providers whether or not the employees would be eligible to receive such benefit.

In my opinion it does not appear that the Employer is attempting to eliminate or reduce benefits to those employees injured on duty. However, due to financial considerations and constraints placed on the Employer, it becomes necessary to be prudent in spending and to restructure the list in order to continue to accomplish its overall financial goals and requirements. Thus, the fact-finder recommends to accept the Employer's language on this matter, based on the foregoing reasons.

### **CONCLUSION**

In conclusion this fact-finder submits the findings and recommendations as set forth herein.

---

Michelle-Miller-Kotula  
Fact-Finder  
September 3, 2014