

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

In the matter of Fact Finding between:	.	SERB No. 2014-MED-09-1135
	.	
JACKSON TOWNSHIP, STARK	.	Hearing: July 30, 2015
COUNTY, OHIO,	.	
Public Employer,	.	Date of Report: August 18, 2015
	.	
and	.	Before Mitchell B. Goldberg
	.	SERB Appointed Fact Finder
IAFF, LOCAL 2280,	.	
Employee Organization.	.	

FACT FINDING REPORT

Appearances: For the Employer: Mark J. Lucas, Sr.
For the Union: Dennis Haines

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on June 10, 2015. The parties agreed to the issuance date of this Report of August 18, 2015. The hearing in this matter occurred on July 30, 2015. The parties submitted timely pre-hearing statements setting forth their respective positions on the unresolved issues in accordance with SERB Rules and Guidelines. They submitted documentary evidence in support of their positions.

The bargaining unit contains approximately 58 employees of the Township's Fire Department. There are 43 Firefighters and 15 Captains. The department provides fire prevention, detection and suppression of fires, and emergency medical services to the citizens in Jackson Township. The parties engaged in extensive collective bargaining in the past months to replace their CBA that expired on December 31, 2014. They bargained and resolved nearly all of their issues and signed off on tentative agreements. The following 4 issues remained unresolved.

This Report includes the following recommendations on the unresolved issues and all

tentative agreements reached between the parties during their negotiations. The recommendations are made in accordance with the statutory factors and standards set forth in the SERB Rules and Guidelines.

II. Unresolved Issues.

(1) ARTICLE 11

DISCIPLINARY PROCEDURE

The major disagreement between the parties is the language in the expired contract that provides for grievance and arbitration rights for employees who receive suspensions. The Employer proposes that the prior CBA language be changed to permit grievance and arbitration rights for employees suspended for more than 48 hours, the time period previously set forth in the 2009-2011 CBA; the Union wants to delete the 24-hour time period in the expired CBA. The parties proposed other changes in the prior CBA language.

Recommendation:

The following are my recommendations for a newly constructed Article 11:

Section 1. The provisions contained in this Article apply only to the Board of Trustees' suspension without hourly base rate of pay as defined in Article 23 (C), (D), and (E) for more than twenty-four (24) duty hours or the Board of Trustees' discharge of an employee or reduction in pay (demotion). Any other form of employment action including, but not limited to, being relieved of duties with hourly base rate of pay or leaves of absence, or any other form of discipline or suspension other than a suspension without hourly base rate of pay for more than twenty four (24) duty hours or a discharge or a reduction in pay is not contemplated by this Article.

Further, a probationary employee serves at the pleasure of the Township during their probationary period described in Article 10. Newly hired employees shall not have the right to arbitrate a probationary removal, and shall have no right of appeal through the provisions of the Ohio Revised Code.

Section 2. The provisions of this Article are in lieu of and supersede the provisions of ORC Sections 505.38 (A) and 733.35 through 733.37.

Section 3. The Employer may take corrective action against a non-probationary

employee in the bargaining unit for just cause. Except in cases that involve major rule/regulation violations, progressive discipline would normally be applied as follows:

- A. Verbal warning;
- B. Written warning;
- C. Suspension without pay. At the option of the employee and with the concurrence of the Department Head, accrued vacation or personal leave may be forfeited equal to the length of the suspension. (The record of suspension will be maintained);
- D. Reduction in pay;
- E. Discharge.

Section 4.

Whenever the Employer determines that a non-probationary employee may be disciplined for just cause that could result in suspension for more than twenty-four (24) duty hours, reduction in pay (demotion), or discharge, a pre-disciplinary hearing will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. Prior to the hearing, the employee shall be given written specification of the charges (i.e., factual allegations that may result in suspension, reduction in pay, or discharge under this Article). The pre-disciplinary hearing, if any, shall be held in private and shall be completed within thirty (30) calendar days from the date written specification of charges are given to the employee. Any discipline that is administered following the hearing shall be issued within forty-five (45) calendar days from the date of the Employer/designee's report. If the Trustees deliberate whether to issue discipline, the deliberation shall be in executive session, and the public hearing provision of R.C. 121.22 (G) (1) is waived.

The Department Head or his designee will conduct the pre-disciplinary hearing. The employee may choose to:

- A. Appear at the hearing to present oral or written statement in his/her defense.
- B. Appear at the hearing with an employee or non-employee representative and the IAFF to present oral or written statement in his/her defense.
- C. Elect in writing to waive the opportunity to have a pre-disciplinary

hearing.

Failure to elect and pursue one of these options will be deemed a waiver of the employee's right to a pre-disciplinary hearing.

During the hearing, the employee will be asked to respond to allegations of misconduct and may present evidence, testimony or witnesses in his/her defense. The employee shall provide a list of witnesses, and the name of his representative, if any, to the Employer as far in advance as possible, but no later than twenty-four (24) hours prior to the hearing. It is the employee's responsibility to notify witnesses that he desires their attendance at the

hearing.

The Employer shall issue in writing his/her recommendations regarding the allegations against the employee and will provide the employee and the employee representative with a copy.

The hearing is essentially a conference, rather than a quasi-judicial hearing.

Section 5. Disciplinary action of suspension for more than twenty-four (24) duty hours, reduction in pay (demotion), or discharge may be appealed through the grievance and arbitration procedure. The employee must file appealable disciplinary actions at the Formal Step of the grievance procedure within five (5) calendar days from the receipt of the notice of discipline.

Section 6. A suspension of twenty-four (24) hours or less shall no longer be in force and effect after two (2) years unless there is any intervening discipline.

An employee who receives discipline that cannot be arbitrated may submit a written statement into his or her personnel file on his or her behalf.

(2) PROMOTIONS

The Union proposes a new article to be placed in the CBA dealing with promotions. The proposal provides guidelines for selecting officers that are to be considered for promotional opportunities. The Employer objects to any provisions that would infringe upon its discretionary management right to determine and select promotional candidates. The following is a recommendation that requires the parties to abide by a Memorandum of Understanding (“MOU”) that would not be contained within the body of the proposed successor CBA:

Recommendation:

MEMORANDUM OF UNDERSTANDING

Jackson Township (“Township”) and Jackson Professional Firefighters, IAFF Local 2280 are “parties” to a collective bargaining agreement (the “Agreement”), recently negotiated under SERB Case No. 2014-MED-09-1135. The parties to this Agreement agree that during the term of the Agreement, the Township shall use the following guidelines for promotions to the position of Captain:

A. Within sixty (60) days of the establishment of a new Officer in Charge (“OIC”) list, the Chief’s Office shall post a reading list for the next promotional examination. The list will consist of a maximum of two (2) books and any other pertinent material such

as the Department SOG's or Employee Handbook.

B. A Firefighter shall have a minimum of five (5) full-time, consecutive years as a career firefighter with the Jackson Township Fire Department as of the date of the examination to be eligible for promotion.

C. The following criteria will be used to determine the final score for ranking on the Captain's Eligibility List:

1. Written Examination – with a minimum passing score of seventy (70);

2. Extra Credit to be added to the final written test score as follows for a maximum of ten (10) points to be earned:

a. .25 points for each completed year of continuous service, from date of full-time appointment in the bargaining unit, with a maximum of twenty (20) years to be used.

b. Three (3) points to be added for holding an Associate's Degree in Emergency Services, or a related field, from an accredited institution.

c. Five (5) points to be added for holding a Bachelor's Degree in Emergency Services, or a related field, from an accredited institution.

d. Eight (8) points to be added for holding a Master's Degree in Emergency Services, or a related field, from an accredited institution, or an Ohio Fire Executive (OFE) certification, Executive Fire Officer (EFO) certification, or equivalent.

3. Chiefs' Appraisal - A panel of Chief grade officers shall appraise candidates who successfully obtained a minimum composite score of 70 on the written test, not including any extra credit.

4. Assessment Center - The top twelve (12) highest scoring individuals- after combining the written examination, all extra credit, and the Chiefs' Appraisal – shall advance to the Assessment Center evaluation. Each individual's Assessment Center score shall then be added as the final component of his or her total score.

D. Each applicant shall be notified of his or her: total written test score; extra credit score(s); Chiefs' Appraisal score; and Assessment Center score; as applicable.

E. The top twelve (12) Captain Candidates shall be posted.

F. The Jackson Township Board of Trustees shall appoint one of the top nine (9) persons ranked highest on the list to a vacancy the Trustees have determined to fill.

1. In the event there is more than one (1) position being filled, another person shall move up so the Trustees have nine (9) people to select from for each vacancy.
2. The Trustees may determine how many of the top nine (9) applicants to interview when filling a position.

G. The Jackson Township Board of Trustees shall fill vacant position(s) in accordance with the authority granted to them by Section 505.38 of the Ohio Revised Code. The purpose of this Memorandum and these procedures is to provide the Trustees with further information to be used when exercising that authority and not to delegate that authority to any person. The Trustees may conduct interviews for the purpose of filling the Captain positions and set the duration of the Eligibility List. The Trustees' interviews and deliberations on promotions shall be in executive session.

H. The Captain's Eligibility List established shall be active for two (2) years from its official posting date as issued by the Jackson Township Board of Trustees.

This Memorandum shall terminate and be reviewed by the parties at the end of the Collective Bargaining Agreement.

1. ARTICLE 19- COMPENSATION

Recommendation:

A. Effective the first pay period that ends in January, increases in compensation as follows:

January 2015: 3.00%
January 2016: 2.00%
January 2017: 1.00%

B. Pay periods shall be every two (2) weeks.

In each year of the Agreement, the Township shall continue to pay ten (10) of the employee's present required percentage contribution to the Ohio Police and Fire Pension Fund ("OPFPF") with the express understanding between the parties to this Agreement that any increase in the required employee's contribution percentage to the OPFPF shall be paid by the employee and further that the employees shall not make any claims for lost compensation should the employee contribution rate be reduced. Employees hired after December 31, 2008 shall be solely responsible for

payment of the employee's contribution to OPFPF.

C. At the end of each quarter, employees shall receive with their pay check, an attachment showing the most current Sick Leave Balance, Vacation Balance, and Personal Day/Personal Time Balance.

Fire Department Salary Scales

	<u>2014</u>	<u>2015*</u>	<u>2016*</u>	<u>2017*</u>
Base Captain	62,402.43	64,274.50	65,559.99	66,215.59
Base FF/P1	54,263.16	55,891.05	57,008.88	57,578.96
Base FF/P2	48,688.00	50,148.64	51,151.61	51,663.13
Base FF/P3	42,824.46	44,109.19	44,991.38	45,441.29

[Results from increasing the scale by 3% for 2015, 2% for 2016 and 1% for 2017.]

(4) APPENDIX B – INSURANCE

Section 1. The parties agree to establish a Health Care Cost Containment Committee. The committee shall consist of fifteen (15) members. Seven (7) of such members shall be union representatives, one (1) from each of the Township's seven (7) departments that have bargaining units (i.e., police patrol, police sergeants, police lieutenants, fire, fire inspectors, clerical, & public works). These members shall be selected at the sole discretion of the bargaining unit to represent their respective units. Seven (7) other such members shall be township representatives, and these members shall be appointed by the Board of Trustees. The remaining member shall be mutually selected by the other members of the committee, and shall serve at their pleasure.

Section 2. The Health Care Cost Containment Committee shall meet at least four (4) times a year. The Committee shall select a Chairperson from the members. The Committee shall, at its first meeting, establish rules and regulations for its governance. These rules and regulations shall provide that each of the fifteen (15) members shall have one vote, and that a majority vote will be controlling. These rules also must provide the following:

1. that a reasonable time frame for implementation of the findings of the committee;
2. that a quorum (2/3 of each side) must exist in order to vote;
3. that an agenda package is to be provided to Committee members at least five (5) days prior to any meeting;
4. that any presentation of information will be videotaped;
5. that any vote on benefit level changes will be done at the meeting following the meeting at which the change is proposed;
6. that provisions be made for the substitution of an alternate representative for any such member who may be unable to attend, or that provisions be made for the written submission of a proxy vote;

- 7. that each representative have the opportunity to use any advisor or consultant it deems necessary;
- 8. that the Committee will investigate methods to contain the overall cost of health care, including dental, vision and prescription drug costs. The methods investigated may include, but are not limited to, reduction of benefits, scope of coverage, changes in manner of administration (managed care);
- 9. that the final determination as to the method utilized to contain the overall cost of health care shall be vested to and be the sole responsibility of the Committee;
- 10. that any proposed mid-term changes in health care benefits will be done in accordance with Article 27 of the contract.

Section 3 The base for the purpose of determining health care cost economic data shall be as follows:

- Base = \$1050.00 – Effective January 1, 2015
- Base = \$1075.00 – Effective January 1, 2016
- Base = \$1100.00 – Effective January 1, 2017

Section 4 In the event that overall cost of health care increases and related expenses from the initial base year, or any subsequent year, such increase, on a per employee, per month basis shall be shared between the Township and the bargaining unit member on a 50-50% basis, respectively up to One Hundred Twenty Five dollars (\$125.00) per month for the employee with single coverage and One Hundred Seventy Five dollars (\$175.00) per month for the employee with family coverage for calendar year 2015. Beginning January 1, 2016, up to \$175.00 per month for the employee with single coverage and \$275.00 per month for the employee with family coverage.

Section 5 Employee contributions for the group health insurance plan will be eligible for pre-tax treatment under a Section 125 Plan.

Date of Report: August 18, 2015

/s/ _____
Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following persons and agency by electronic mail this 18th day of August, 2015:

SERB Email: med@serb.oh.us

Mark J. Lucas, Sr.: mjlucas@clemansnelson.com

Dennis Haines: dhaines@green-haines.com

/s/ _____
Mitchell B. Goldberg

