

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the matter of:

Xenia Township Professional  
Firefighters IAFF Local 5063 and Xenia  
Township Greene County, Ohio

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Case No. 2015-MED-07-0652

FACT-FINDING REPORT AND RECOMMENDATION

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report:

I. HEARING

The Fact-finding was heard at the offices of Xenia Township, Greene County, Ohio on July 12, 2016 at 9:00 a.m. The IAFF Local 5063 was represented by Jon Harvey, OAPFF, Kelly Hines, Union Member and Jay Leach, Union Member. Xenia Township was represented by Allan Stock, Township Administrator and Stephanie R. Hayden, Asst. Prosecuting Attorney.

II. CRITERIA

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

### III. ISSUES AND RECOMMENDATIONS

Xenia Township, of Greene County, Ohio, has a population of 6,537. The Township Fire Department is largely funded by a fire levy. The Department has 42 employees. Only three of those are full time, comprising the bargaining unit. All of the others are part time employees, including the Chief, or volunteers. The Township has no other bargaining units. The bargaining unit is newly formed, and seeks its first collective bargaining agreement. As of the hearing, all three bargaining unit members are lieutenants.

The fact finder and the parties attempted to mediate the six issues remaining after negotiations, resulting in resolution of the Insurance, Shift Trade, Sick Leave, and Tools and Equipment issues. Left for the fact finder's recommendation are Wages and Compensation and Overtime.

#### Findings of Fact

##### Wages and Compensation

Prior to fact finding, the Township proposed wage increases of 3.25%, 3% in 2017, and 3% in 2018, plus an annual "bonus" of \$1750 for lieutenants and \$20 per day acting officer pay, subject to approval of the chief. The Township wishes the increases to occur on the yearly anniversary of the agreement. The Union proposed a 5% increase for each year of the agreement resulting in a 10% differential between firefighter and lieutenant, and acting officer pay equal to the pay grade of the position being filled. The Union wishes any increases to be applied upon ratification and January 1 of each subsequent year of the agreement.

The comparables offered by the Union are the City of Vandalia (starting rate of \$17.25/hour for a firefighter), Sugarcreek Township (starting pay for lieutenants of \$19.28 per hour), City of Bellbrook, \$26.40 per hour for lieutenants starting in 2014, to \$28.95 per hour with step increases in 2016, Butler Township (\$26.62) per hour plus 2% lump sum payment in January, 2016). The current hourly firefighter pay for the Township is \$14.60 per hour based upon a 53 hour work week, plus a \$1500 'bonus' to lieutenants paid in December of each year. The Township has offered no pay increases for 4 years. Based upon the Union's comparables, the conclusion is inevitable that firefighters and lieutenants should be accorded a substantial increase in wages. However, the Township's health insurance plan is excellent, and the Township pays 100% of the premium which should be considered when determining wages.

The Township argues that the Township's previous fiscal officer is the subject of a \$51,302 finding for recovery by the Auditor of State. Additionally, revenues have decreased in recent years due to changes in state law, and the Township intends to buy new boilers and a new fire truck. The Township did not prove an inability to pay the increases urged by the Union. However, the fact finder concludes that the increases sought by the Union should be considered in conjunction with the health benefits offered by the Township, which are significant. Accordingly, the increases proposed by the Township should be implemented. However, the proposed 'bonus' offered by the Township appears to the fact finder to be in actuality wages which should be subject to pension contributions. Therefore, the fact finder recommends that the 'bonus' or 'stipend' the township proposes be incorporated into the wage scale for lieutenants. Moreover, the increases, except for the initial increase upon ratification, should be timed at the start of each calendar year. The conversion of the bonus offered by the township into the wage scale will

result in slightly lower compensation, as ratification will not occur until at least the end of August, lessening the financial impact to the Township.

The Township also proposes that acting officers may be designated by the chief, with only a nominal increase in compensation. The inequity of such a proposal is evident to this fact finder. If an employee performs the tasks of a superior, he should be paid commensurately with those tasks. Finally, the Union requests that employees be paid \$50 upon completion of any certifications related to their employment to a maximum of \$500 per year. The Township wishes to limit the individual payments to \$25 for fire officer classifications, \$40 for EMS and Fire Instructors and \$20 each for Water Rescue and Ice Rescue, but wishes a \$500 maximum. The Township has an interest in promoting training and certification of its firefighters. A \$50 one-time payment for any of the certifications seems minimal and with the yearly limit will not significantly affect the Township finances.

#### Recommendation

The attached Section XX.1 should be implemented:

#### Overtime

The Township proposes to compute overtime based upon a 212 hour 28 day pay cycle, which complies with the FLSA and which comports with current practice. The Union proposes to have overtime computed upon on the normal 24 hour shift. Also, the Union proposes that the current Township practice of paying overtime not only on hours worked, but also on sick leave, vacation leave or personal or bereavement leave hours be continued. The Union proposes that overtime be paid in 15 minute increments and would require that overtime be offered upon a seniority and rotating basis. The Township opposes the Union's proposal as being too costly, but offered no evidence as to the fiscal impact on the Township as a result. Though it admits the

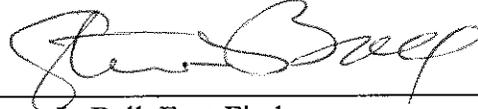
current practice of computing overtime including vacation or sick leave hours, the Township contends that the fiscal officer who has now been replaced instituted the practice without property authority and the Township intends to change the practice in a new handbook. The current "Understanding of Full-Time Fire Position" published by the Township and agreed by all fire department employees provides for overtime pay to be computed on the 28 day cycle, but is silent on the computation of sick leave, vacation, or other hours toward overtime.

On both issues, it appears to the fact finder that past practices should be followed. This will keep the 28 day cycle, but will also require the payment of overtime both on hours actually worked and those paid for vacation, sick leave, or other purposes. The Union's proposals of payment of overtime in 15 minute increments and on a seniority and rotating basis appears reasonable and does not unduly encroach on management prerogatives.

The fact finder has some sympathy for the Union's position as to computing the overtime based upon a 24 hour shift rather than the 28 day cycle. Overtime pay compensates for an employee's sacrifice caused by the disruption of the employee's scheduling of normal non-employment activities of family and recreation, and fatigue. Basing overtime on such a large cycle may lead to disparate treatment when compared to the overtime practices with 40 hour per week employees, especially if vacation, sick leave, etc. hours are not computed toward overtime. In short, a "one size fits all" policy on overtime when applied to road crews, office staff, and firefighters may not be desirable. However, the township intends to change the current practice as to other employees. The fact finder believes that this issue has not been fully explored by the parties. Thus, while the fact finder recommends that current practices be followed, he also recommends that the issues may be reopened by either party in one year.

Recommendation

The fact finder recommends the attached Article XX Overtime be adopted.

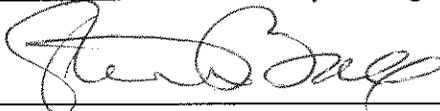


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Steven L. Ball, Fact-Finder  
August 26, 2016

CERTIFICATE OF MAILING

I hereby certify that a copy of the Fact-Finding Report was sent via e-mail to: Jon D. Harvey, [jharvey3@soh.rr.com](mailto:jharvey3@soh.rr.com), Stephanie R. Hayden, [SHayden@co.greene.oh.us](mailto:SHayden@co.greene.oh.us), and Donald M. Collins, General Counsel, SERB, [med@serb.state.oh.us](mailto:med@serb.state.oh.us), on this 26<sup>th</sup> day of August, 2016.



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Steven L. Ball, Fact-Finder

**ARTICLE XX - WAGES AND COMPENSATION**

Section XX.1 Upon ratification of this agreement the wage levels shall be increased for all bargaining unit Employees by 3.25 percent plus \$0.63 (63 cents) per hour for lieutenants for the first year and by 3.00 percent each year thereafter, effective the first day of the first full pay period as follows:

Current \$14.60	(upon ratification)	01/01/2017	01/01/2018
Firefighter	\$15.07/hour	\$15.52/hour	\$15.99/hour
Lieutenant	\$15.70/hour	\$16.17/hour	\$16.66/hour

Section XX.2 The Fire Chief may assign Employees to serve as “Acting” Officer in the next higher rank from which they currently hold. Employees assigned as “acting” will receive pay equitable to the rank of the position they are filling on an hour for hour basis for the time that they are functioning in the capacity of the higher position.

Section XX.3 Eligible Employees of the Xenia Township Fire Department shall participate in the Ohio Police & Fire Pension Fund. The mandatory employee contributions required to be paid under Section 742.31 of the Ohio Revised Code shall be withheld by the Employer through a payroll deduction and forwarded on behalf of the employee to the Ohio Police & Fire Pension Fund.

Section XX.4 Employees, who upon receipt and verification of satisfactory completion of approved and credible certifications, shall be paid \$50 for each of the following certifications: EMS Instructor, Fire Instructor, Fire Officer I, II, III or IV, Water rescue and Ice rescue. These shall be paid out once a year in the first pay in December. The maximum payout shall be \$500 annually.

## Article XX Overtime

**Section XX.1** An employee called into work and who reports to work when he is otherwise not scheduled shall receive a minimum of two (2) hours compensation for work at the appropriate rate, as set forth herein. This provision shall be applicable to the extent that such call-in time does not abut, or overlap, the employee's regular work schedule.

**Section XX.2** Unless the employee is being called for overtime, an employee who is contacted by the department or township management team outside their normal work shift, shall be compensated at time and a half for their time spent attending to department business. The employer shall make every attempt to accomplish all department business while the employee is on duty. Only in the case of a bona fide emergency, should an employee be contacted outside their normal work schedule.

Employees shall earn overtime for all hours paid in excess of 212 hours in the 28 day work cycle, including hours paid for vacation, sick leave, personal or bereavement leave or other paid time off.

Overtime will be earned in fifteen (15) minute minimum increments, and will be paid at one and one-half the times the employee's regular rate.

### **Distribution of Overtime:**

Overtime hours shall be offered to all full time personnel by way of a rotating equalization chart. The chart will be organized by seniority with the most senior employee in the first position and the least senior employee in the last position. Overtime will first be offered to full time bargaining unit employees when there is a gap in coverage or open shifts due to injury or illness of scheduled fulltime employees.

**Section XX.3** Employees may elect to take all or any part of overtime hours in the form of compensatory time or cash payment according to this agreement. Employees may accrue up to a maximum of Two hundred (200) hours of compensatory time. Compensatory time shall accrue

from year to year. Any balance of compensatory time earned in excess of Two hundred (200) hours shall be paid to the employee in the next regular paycheck. At the employees request, any unused comp time shall be paid separately in the first paycheck in December. Utilization of compensatory time off must be scheduled in advanced with the chief or his designee with a 72 hours' notice of their intent to use compensatory time. Compensatory time shall be taken in one (1) hour increments.

**Section XX.4** Either party to this agreement may reopen negotiations on this Article one year from ratification, by giving 60 days written notice.