

**Before the State Employment Relations Board
State of Ohio**

In the matter of

Liberty Township Board of Trustees. Ohio
Employer

Case No. 2016-MED-03-0375

And

Sandra Mendel Furman, Fact
Finder

Liberty Township Professional Firefighters
IAFF Local 4394
Union

FACTFINDER'S REPORT

Procedural Matters

The Fact finder was appointed by SERB in a notification dated September 16, 2016. The matter was scheduled for hearing on November 18, 2016 by agreement of the parties. Pre-hearing statements were received by the Fact finder and served by each party upon the opposing party prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The parties had engaged in seven (7) bargaining sessions for a successor agreement prior to selection of the Fact finder. This includes two (2) mediation sessions held with a FMCS mediator.

At the date of hearing there were eight (8) issues left for determination by the Fact finder: Wages and Compensation; Hours of Work; Holiday Pay; Insurance; Vacation; Training; Drug Testing and Duration. The parties also raised issues regarding the Overtime MOU and the Minimum Manning MOU.¹

The hearing was held at the Township Meeting hall. The Fact finder offered to mediate any/all of the issues. The parties engaged in substantial

¹ Drug testing language, the Minimum Manning MOU and the Duration clause were resolved in mediation. The Township took the position that the Fact finder had no jurisdiction to consider the MOUs, in particular the Minimum Manning MOU. This issue self-resolved in the mediation session.

efforts in mediation at the hearing which were both successful and unsuccessful. The parties proceeded with their proofs on all issues not previously settled in negotiations or in mediation.

A full hearing was had. The parties presented witnesses and exhibits in support of their respective positions.

Representing the Employer Township was Attorney Alexander L. Ewing and Beth Reburn attorney/observer. Also present and/or testifying on behalf of the Township were Chief Paul Stumpf, Kristen Bitonte, Township Administrator, Melanie Hermes, Assistant Township Administrator and Michelle Greis, Finance Director.

The Union was represented by Attorney Terrell B. Snyder. Various members of the bargaining committee and Local officers were also present and testified as needed: James Watkins, President, Jeff Heintz, Local Vice President, Matthew Knollman, Treasurer and Scot McCoy, Secretary.

The parties timely and mutually executed the G-11 waiver.

The report is submitted at the date stipulated by the parties.

Findings of Fact

1. The Township located in Butler County. It is located between Dayton and Cincinnati and north of I-275.
2. The Township has approximately 40,000 residents.
3. It encompasses twenty-nine (29) square miles.
4. The Township has residential, commercial, industrial developments along with parks.
5. The Township's primary revenue source is property taxes.
6. Current land use availability could allow for almost doubling the population.
7. Liberty Center is a major retail development which opened in 2015; its value was stated as \$350,000,000. Projected tax revenue from that development is \$500-800 thousand/year. This project is located within a Butler County TIF which generates no revenue to the Township until 2032.
8. Additional commercial development is scheduled to occur at the I-75 interchange known as Liberty Way. This is also in a Butler County TIF which generates no Township revenue until 2032.
9. An ambulatory care center is set to be built within Liberty Township by Tri-Health further enhancing growth and payroll taxes. As stated above for Liberty Way, this

project is also in a Butler County TIF which generates no Township revenue until 2032.

10. A senior living facility is scheduled to open in 2017.
11. Christ Hospital is set to open a local medical center facility in 2018. This project is located within a Butler County TIF which generates no revenue to the Township until 2032.
12. The Township created a Joint Economic Development District (JEDD) which assesses a 1.5% payroll tax. This has generated in 2016 to date over 100% of the Township's budget revenue. Numbers of employees working in the JEDD increased significantly in past years. Since inception the JEDD has produced over \$6.8 million in revenue for the Township through September 30, 2016.
13. A 3% lodging tax is in effect for the recently opened Marriott hotel generating over \$84,000 for the first three quarters of 2016.
14. Another hotel-Home2Suites (a Hilton property) very recently opened. It is an extended stay hotel-a prototype for Ohio.
15. The Township's website indicates that the lodging tax will be used in part to support Police and Fire Services. The use of hotel taxes for Fire is supported by statute.
16. The Township had the highest number of home building permits (183) issued in 2016 in southwest Ohio as of August 2016.
17. An area golf course is slated to be repurposed to become a community of homes priced between \$300-400,000.
18. Cincinnati Children's Hospital is increasing its presence by an expansion in Liberty Township adding to the employment/payroll taxes.
19. A Residential Incentive District (RID) recently dissolved resulted in nearly \$3,000,000 added to the Township's General Fund.
20. As of July 2016 Liberty Township showed reserves of \$22.5 million; with spending planned at \$24 million and revenue planned at \$23.5 million.
21. Wage increases were granted effective August 12, 2016 for almost all of the non-represented township employees and management level staff. (Wage increases were in the 2.5-3.5% range in most instances, although certain employees received 0% and others 4%. The wages granted were merit increases based on performance and credentials. The average of all increases was 2.67%. Non Union employees received an average 2.92 % increase in 2015.
22. The IAFF unit represented received a 0% increase in 2015.
23. The Township has the ability to pay for wage increases during the term of the successor agreement. Sufficient operating funds for the Fire Department exist through 2018 although reserves may be exhausted completely at that point.
24. There is no dispute that the Township general revenue fund has seen a rapid increase in income due to economic growth.

25. Although the Township also receives income from JEDD development, lodging taxes, payroll and property taxes the primary and traditional source of financial support for the Department is by and through voter approved levies and fees for EMS runs. There has been no prior practice of borrowing or transferring funds from the general fund to the Fire fund.
26. The last fire levy dates from 2010.
27. Historically from 2013-2015 the Department budgets have projected greater expenses than actual costs. The sole exception was in 2015 where the shortfall was approximately \$10,000.
28. For the three-year period of 2013-2015, there was a surplus of \$1.7 million left from the budget for Fire and EMS.
29. Fire levies have a history of successful passage in the Township.
30. School levies for the Lakota School District failed three times in the recent past.
31. During the last round of cba negotiations, there was a strong indication that a Fire levy would be placed on the ballot in 2016. This did not occur. Reasons were not discussed at the hearing but the failure to promote and place the levy as previously stated by the Township created issues regarding trust between the Union and the Township administration.
32. No levy was proposed for inclusion on the 2016 ballot despite press and internal announcements to the contrary further adversely affecting the Union's confidence in the Township's bargaining stance regarding wages and other economics.
33. The Township's stated reason for not putting the fire levy on the November 2016 ballot was to give staff more time to gauge the impact of expected growth on the tax base and needs for expanded service calls based upon population growth. [I got this from news articles and prefer to leave as is.]
34. The Township intends to place a levy on the ballot for 2017 as it will be in deficit posture by 2018. Specifics about the millage and ballot date were not part of the record except as reported in news releases.
35. State funding through the local government fund has decreased in 2016 from 2015 levels, and is nearly \$100,000 less than average levels from 2008-2013.
36. IAFF Local 4394 is the certified bargaining representative for the following: all full-time, Firefighter/Paramedics and Lieutenants. Excluded are Captains, Assistant Chiefs, Fire Chiefs, part-time employees, and all other Township employees.
37. The bargaining unit has thirty-two (32) members.
38. The Fire Department has two administrative employees and unstated numbers of part-time employees.
39. The Fire Chief is Paul Stumpf.
40. The parties have had a collective bargaining relationship for eleven (11) years.
41. IAFF has been the certified bargaining representative since February, 2005.

42. The current contract's expiration date was May 31, 2016.
43. It was a three (3) year agreement.
44. There is no dispute that any wage increase will be retroactive.
45. External comparables presented by the Union for other like employees employed in the Southwest Ohio Super Townships reflect the following: Liberty's firefighters earn the lowest per hour rate for the top ranged firefighters and top ranged lieutenants of all other externals. The current wages are \$3500 below the average of all comparables.
46. Granting the sought for 4% increase will still not bring the Township firefighters to parity with the average of Union provided comparables.
47. The Township's external comparables demonstrate that a 2% wage increase puts its workforce at the average of top level firefighter wages.
48. In many instances the parties' comparables are not the same.
49. There are no current forty (40) hours per week bargaining unit employees.
50. In the prior cba the Union percentage wage increase was 2% in 2013 and 2% in 2014.
51. The Township currently has three open and fully staffed fire stations.
52. There was no evidence presented on planned future capital expenditures for the Fire Department.
53. There was no evidence presented on projected new full-time hires.
54. The health insurance language changed significantly in the predecessor (2013-16) cba. Employees were asked to assume a greater cost of health care costs. Costs were significantly lower in each year of the cba except in 2016, when costs increased approximately .02%. Savings overall were over \$118,000 compared to 2013 expenditures. This occurred even though the number of employees increased.
Employees who participated on a voluntary basis in the wellness program were rewarded with a decreased employee contribution to the premium cost. This was a non-cba benefit allowed by the Township.
55. The parties jointly request that matters previously agreed to in tentative agreements be incorporated in the report.

Issues to be determined

1. Hours of Work and Overtime Article 10

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-

9-05(J) and (K).² Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union seeks no change in existing language. It indicates that there are no apparent issues with scheduling that would necessitate or support a change. Although it acknowledges that its sought for wage increase would be implicated in the current hours of work to cause greater payroll costs it indicates the proposed solution of changing a working system well known to its managers and employees will be inappropriate, inefficient and counter to the public interest. The present system of hours of work conforms to FLSA and comparable jurisdictions. The Union notes that if the present language is unchanged, the current MOU likewise should be unchanged.

Although there was an increase in overtime this year the Union states that this past year was anomalous as three unit employees had catastrophic illnesses. The Union further argues that overtime costs are solely within the control of management. It claimed that use of overtime is sporadic and is not counted on by employees as part of expected wages earned.

The Township seeks for cost reasons to remove the current language which would end the current ability of employees to earn overtime in a workweek even if s/he had sick leave, holiday, vacation or Earned Days Off in the same workweek. It argues that its proposals result in conformity to the intent of the FLSA. There was no federal statutory intent to include premium pay for hours not worked. Maintaining current language provides a substantial pay benefit for employees with no added value whatsoever for the Township which bears unnecessary expenses not sanctioned by statute or usual payroll practices.

The Fact finder believes that no compelling reason was offered to change current language. There was insufficient evidence of manipulation or abuse by the employees to maximize payments based on the current language. The

² The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

current language is not outside the range of comparables presented by either side. If it isn't broken, it does not need to be fixed at this time.

RECOMMENDATION

Article 10 Hours of Work shall be unchanged from current language. ³

2. Holiday Pay Article 11

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).⁴ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union seeks an adjustment in Section 2 for holiday allotment. The Union seeks to increase the level to 115.5 hours per year equating to 10.5 hours of pay for each of the eleven holidays listed in section 1. The comparables listed by the Union are the South West Ohio Super Townships (West Chester, Green, Deerfield and Springfield Townships) The Union also presented evidence that internal comparables rate of holiday compensation results in a significant cash benefit to non Fire employees due to the hours of work disparity. (The Union example calculates the disparity as nearly \$600 in favor of the non-unit employee's holiday compensation.)

There was insufficient testimony presented on the need for this adjustment to be applied. Although the cost difference was demonstrated by the Township the Union failed to point out that overtime availability adds to the take home pay of the firefighters. While this is not exactly a leveling of the disparity the economic realities must be weighted. There being insufficient rationale presented for the holiday premium, the Union proposal regarding same is not recommended.

Current language for Section 2 is recommended.

³ The parties have in place a MOU regarding Overtime. In the absence of recommended changes to Hours of Work, the Overtime MOU is unaffected, It is therefore recommended that the MOU language remain unchanged. Both sides concede that only if the Township language is adopted will language changes to the MOU follow as a matter of necessity.

⁴ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

As a second part of its Holiday proposals, the Union proposes a time and one half premium adjustment for all employees working on an official holiday. External comparables cited by the Union show this employer as the only employer not paying at least time and one half.

The Township counters that the Union proposed an increase from 88 to 115.5 holiday time hours. This is not justified as there is no demonstrated need for more time off.

Regarding the Union proposal to raise the rate of pay for employees actually working a holiday, it is simply an ask for more money according to the Township. Employees already receive eight (8) hours holiday pay. Premium pay is available to those called into work on a holiday so additional pay for those normally assigned to work a holiday due to the 24/7 schedule do not need additional compensation.

The Union position is one which is in line with comparables both internal and external. It provides an increase which is supported by prevailing practices statewide as well. The cost to the Township is not overly burdensome. By providing an additional cash incentive to working on a holiday it likely will alleviate any staffing concerns which tend to exist around holiday scheduling.

RECOMMENDATION

Article 11 sections 1, 2, 3, 4, 5 shall not be amended. Current language remains.

Article 11 section 6 shall be amended as follows:

Official Holidays Worked. Any Employee regardless of whether a 24/48 hour Employee or a 40 hour Employee shall be compensated at one and one-half (1.5) times their hourly rate for work on their routinely scheduled work day. Holidays will begin at 0700 (for 24/48 hour employees) and end at 0700 the following morning, except that Christmas Eve and New Year's Eve will begin at 1900 and end at 0700 the following morning.⁵

3. Drug Testing-Article 12

The parties through mediation agreed to clean-up and clarification language in Appendix C (which relates to Article 12).

⁵ This clarifies the particular schedule followed currently in the fire department.

Recommendation:

Appendix C shall be amended as follows:

Drug Test – A urinalysis (urine) test (or when necessary, a blood test) that includes specimen collection and testing by the federal Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. Both a screening test and a confirmation test must be used to establish a positive test result. The test will analyze (search) for a pre-determined set of drugs in the body in quantities which are at or greater than certain levels (cut-off levels).

The DoT requires testing for five drugs referred to as the “NIDA Five”: Amphetamines, Cannabinoids (THC), Cocaine (including crack), Opiates, and Phencyclidine (PCP). To create a selection of ten drugs, we have added: Barbiturates, Methaqualone, Benzodiazepines (Valium, Librium, etc.), Methadone, and Propoxyphene (Darvon).

Cut-Off Levels shall be established in accordance with the standards set forth by the Substance Abuse and Mental Health Services Administration (SAMHSA), as amended from time to time.

NOTE: Liberty Township reserves the right to require testing for another illicit drug that is not on this list if there is reasonable suspicion that the Employee may be under its influence and therefore safety and productivity may be compromised or if the Township needs to comply with a contract or regulatory authority. [Italics by the parties]

4. Vacation Article 13

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).⁶ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposes adding additional vacation entitlement based upon years of service. The changes proposed are modest increments in line with external comparables. The current vacation accrual schedule tops out at twenty (20) years of service. Several employees have or will soon surpass that benchmark and should receive recognition for that longevity and loyal service. External comparables support adding more levels of years of service as well as adding hours available at the higher levels of seniority.

⁶ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

The Union also seeks an increase in the amount of hours an employee may carry-over each year for both the 48 and 40 hour employees. It argues that this should not cause undue hardship to the Township and represents a real benefit to employees who often have difficulty scheduling all available time. No one should be in a use it or lose it posture. The economic costs to the Township are more theoretical and actual for this desired change.

The Township argues that there is no demonstrated need to change the rate of accrual or add an additional layer of entitlement. It states that employees have sufficient vacation levels currently and some employees do not even use the levels currently earned. The Township points out that this is a cost item both directly and indirectly as increased benefits result in the possibility of more overtime and increased costs for cash-out with an increase in benefits. The current level of benefits is out of line with internal comparables (firefighters receive greater benefits) and is not justified by external comparables.

The Township further argues that any carry-over increase creates administrative burdens and record keeping and could in certain circumstances result in large pay-outs which affect budget and cash flow. There is no need to affect levels for the non-existent forty-hour employees.

Although the Fact finder readily acknowledges that increasing vacation benefits has an economic impact on the Township and its budget, the parties by not producing evidence on the costs tacitly conceded it was not a significant cost item. The Fact finder believes that rewarding employees for continuous loyal service by increasing vacation benefits when service milestones are reached is in the public interest and conforms to usual and ordinary labor practices. The increases recommended by the Fact finder are modest and consistent with the graduated steps available in the existing language. The recommended levels set forth below are below a modification of those proposed by the Union and as such the cost impact of the change has been moderated. This enhanced benefit will support retention of senior, experienced employees- an unarguable benefit to the public.

As mentioned earlier although the Union did not achieve anywhere near the level it sought for wage increases, this recommended increased vacation allowance will ease the perceived shortfall in part. Even the recommended adjustments in accrual do not significantly affect the Township's relative lower than mid-range standing vis a vis the Super Township comparables. Even many of the Township's external comparables support an upward adjustment both in the level of benefits and the years of service. Many are above the Liberty Township levels.

The Fact finder also recommends allowing the carryover increase sought by the Union. This is a low/minimal cost benefit and the claimed administrative burden with adjusted record keeping is a minor inconvenience and not a factor supporting denying this change. It ends the end of year rush to use it or lose it and lessens scheduling issues at the peak holiday season.

RECOMMENDATION

Article 13 shall be amended as follows:

Section 1.

Notwithstanding Section 9.44 of the Ohio Revised Code, Employees shall be entitled to vacation time with pay each year as follows. Vacation hours are given on the Employee's anniversary date. 24/48 Employees shall take vacation in no less than twelve (12) hour increments. Forty (40) hour Employees shall take vacation in no less than four (4) hour increments.

Years of Completed Service	40 Hour Employee	24/48 Employee
0 < 1	40 hours	72 hours
1 - 5	80 hours	120 hours
6 - 10	100 hours	144 hours
11 - 15	120 hours	180 hours
16 - 20	160 hours	216 hours
21+	200 hours	240 hours

Section 2. Current language

Section 3. Accrued vacation time of no more than ninety-six (96) hours for 24/48 Employees and forty (40) hours for the forty (40) hour Employee may be carried forward to the following year. Any carryover vacation hours not used during the year into which they were carried-over will be eliminated.

Section 4: Current language

Section 5: Current language

4. Wages and Compensation Article 15⁷

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).⁸ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposes a 4% increase each year for the unit for the three-year term of the cba. It states that the Township can afford the increases; that same are justified by economic considerations and external comparables. It argues that even if the desired 4% increase is granted, its employees will remain at the bottom third of all neighboring jurisdictions of like size and similar composition. It points out that it accepted a freeze in the last year of the expired cba based upon representations that a levy would be placed on the 2016 ballot. It was not. Further arguments in favor of the increase are the generous wage adjustments made for the clear majority of non-bargaining unit employees in 2016.

The Union points to evidence of increasing economic health for the Township. There is new hotel construction which adds payroll and lodging taxes.

⁷ The Union had at one point indicated an intention to add "acting" pay as a topic for fact finding. This proposal was not part of the hearing held. Although the Township presented arguments against its adoption, the Fact finder absent currently proposed Union language does not need to rule on this matter.

⁸ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

One hotel –the Marriott- is already generating Township income. There is residential development supporting new growth in population and household income-a combined reason to grant the desired increases. The commercial development along the I-75 Liberty Interchange points to continued growth and taxes.

The Union also proposes to eliminate language regarding pay steps as such criteria are no longer applicable to the present configuration of the bargaining unit. The Union deems the language as obsolete and proposes a clean-up to eliminate such unnecessary provisions.

The Union proposes new language relating to service credit for time held in part-time positions both here at the Township and other jurisdictions. The Department employs part-timers which fill-in for holiday and vacation coverage and as otherwise needed. The Union believes the service as part-timers should be valued and this language would provide an incentive for recruitment as well as a reward for prior service to this and other fire departments.

No changes are proposed in the longevity paragraphs by the Union. The Union resists attempts by the Township to link sick leave usage to amounts earned in longevity. It indicates it is bad policy to link longevity and sick leave as the end result is sick employees coming to work resulting in risks of further illness, spread to other employees and the public.

The Township claims that increases given to other personnel were done for retention purposes and to ameliorate past wage freezes. The Township claims no other surrounding like jurisdictions have bargained a 4% wage increase. It cites to SERB wage reports which in no manner support a 4% three-year adjustment. The Township points out that wage increases also directly impact overtime, vacation leave, personal leave, sick leave cash out and other benefits. It states that its decision to withdraw the levy from ballot consideration and placement in 2015 and again in 2016 was dictated by prudent and appropriate public interest. It further argues that various other claimed resources for funding a 4% increase do not exist as the Department is solely funded by levy and fees from fire runs. The Township claims that expenses will exceed

revenues beginning in 2016 in the amount of \$321,000. Expenses outpaced revenues in the amount of \$1 million in 2015. It is fiscally irresponsible to continue down this road of spending more than revenues.

It points to declining revenues from the State caused by elimination of the estate tax and dramatically decreased State supplied revenue from the last biennial budget. The Local Government Fund was halved, and revenues projected for 2016 are 5% less than those received for 2015. There is no more kilowatt tax. Only a very small (unstated) amount of state funding is available for fire operations.

It represents its offer of 2-2-2% as a bottom line offer without any room for negotiation due to finances and public sentiment. It states the Union cannot use a 4-4-4% proposal to catch up as the factors extant in the predecessor cba mandated that the total wage increase could not exceed 4%. The Union made its own calculations in how the 4% total increase was to be allocated. The 2%-2%-2% proposal is in line with market conditions, is reasonable, financially prudent and will not cause the employees to lose any financial ground. SERB reports indicate that Liberty is ahead of others for the period between 2009-2015.

The Township wants to be market competitive not the market leader for wages. The proposed increase puts this unit in the average for externals for the top level employees-and all but seven in the unit are at the top wage level. Other comparable jurisdictions took wage freezes of much longer duration than did its bargaining unit. Granting an increase in excess of 2% damages the potential support for a future levy.

The Department itself has acted prudently in limiting capital expenditures and delaying new hires. This prudence is mandated by the public interest in fiscal responsibility yet balanced with public safety needs.

The Township is unwilling to eliminate the step language as new hires will inevitably progress through a step system. The Union presented no rationale other than the current employment scenario for elimination of the Section 2 language. Furthermore, the merit aspects of the progression as defined by the

language in Article 15 Section 2 are a useful management tool for assessing and rewarding performance and accomplishments in the training period.

The Township indicates it had no problem with recruitment and it does not wish to provide in the parties' cba benefits and language supporting non-bargaining unit employees. It points out that if the Union proposal regarding lateral transfer and part time service credit were adopted it could result in new hires receiving greater wages than full time employees-an inequitable result. Another undesirable result from the Township's perspective is that the Union proposal accelerates the step progression-resulting in more employees at top step- a greater economic cost to the Township.

The Fact finder believes that a 4% across the board increase is unreasonable under extant, known circumstances.

The Fact finder recommends a 2% increase across the board for each of the three (3) years of the cba. Those employees who are not at top step will actually receive a greater increase. The recommended 2-2-2% increase is in line with SERB averages over the past three years. It is affordable and prudent. It recognizes the increased costs that may occur in inflation⁹ and health care and the economic uncertainties of a new political climate. There will be as set forth herein certain other economic advantages obtained by the unit in other language before the fact finder. These represent a cost to the Township and a bigger paycheck for the employee. There are also certain other language improvements sought by the Union. In lieu of granting the sought for percentage increases, the Fact finder deems certain language changes are appropriate under the evidence and applicable guidelines. These changes represent a benefit despite the non-economic nature of same.

SERB's available wage settlement report indicates that 2.05% is the average for units in the Cincinnati Ohio area; Townships statewide averaged 1.95%. For firefighter units, the average increase was 1.93% in 2015. This is the most recent and available annual information, and the recommended 2-2-2% fits

⁹ Significantly inflation has been very low and even negative in the region in the recent past.

the prevailing trend.¹⁰ Although the Union over the past five years did not keep pace with increases granted to the unit employees, its step increases when factored in result in a more favorable historical experience. Since steps are still in the competing proposals, the ultimate outcome should be equitable vis a vis internal comparables.¹¹

This recommended increase does not result in adverse impact on the budget so as to cause deficits. Although the financial condition represented by the Township projects deficits it seems clear that competing evidence presented by the Union shows a sustainable result if the 2 -2-2% increases are approved. The claim that the Township will spend out its reserves presumes no levy will be introduced. Nor was it definitively established that fire levy and EMS fees must be the exclusive methods of funding.

There are or will be sufficient resources to fund the recommendation.¹²

A further wage benefit that is recommended by the Fact finder is a signing bonus: a one-time payment of \$750 for all current members of the bargaining unit payable on/before the last payroll cut for 2016. The signing bonus will partially compensate for the lengthy time the employees were without a cba, without negotiated increases and soften perhaps somewhat the failure to achieve the desired 4% increases. There is a need to move forward from the poor feelings left by the levy twice not being introduced. By making a year-end incentive bonus, to hasten and promote the acceptance of the report and recommendation it is hoped that the bonus will achieve an improved working relationship.

¹⁰ The first quarter of 2016 shows 1.97% wage settlement recommended, and conciliators at a slightly higher 2.18%. The jurisdictions involved for conciliation were not stated.

¹¹ The internal comparables do not include any like occupations due to the unique nature of fire-fighting. However, with such a small workforce the disparities are easily known and discussed as a practical matter. Regardless, the Fact finder's recommendations follow the statutory and OAC guidelines.

¹² There was no real concern evidenced that the 2% increase recommended by the Fact-finder would cause the Township any economic hardship. The Township is experiencing growth and development in both its residential and commercial sectors. New shopping centers and new housing developments are in process. A RID for at least one development will expire during the term of this successor cba resulting in increased tax income. Although as the Township points out in its case and exhibits much of this money is unavailable for the Fire Department, the general sense of economic growth, upscale development and population expansion all signal a need for increased fire services and a well-trained, fairly compensated work force.

The Fact finder finds there was insufficient reason to permanently eliminate the step increase language in current Section 2 (a.) and (b.) It is inevitable that there will be new hires and new promotions to Lieutenant. The current language provides a modicum of Township oversight in determining the progress of new or promoted employees. It is not strictly a merit based system but there was no evidence presented by the Union of any unfairness or discriminatory application of its provisions. Step increases are not unusual for public employees and there were insufficient reasons presented that would mandate elimination of the current language.

Regarding the Union's proposals for lateral transfer service credit the Fact finder finds that this benefit inures to non-bargaining unit personnel. There was no evidence presented on the numbers of employees who might currently benefit from this; there was no evidence this benefit was needed as a recruitment tool. The Township has a legitimate interest in ensuring its employees follow a uniform progression in training and eligibility. There was no showing that recruitment was an issue nor was retention of newer hires. There is an insufficient basis to add new language on lateral service credit.

RECOMMENDATION

Article 15 Wages and Compensation Section 1 should be amended as follows¹³:

The wage rates for all bargaining unit Employees shall be indicated in Appendix A to this Agreement to reflect a 2% increase in the base wage rate for each currently-existing rank for the first pay period in June 2016; a 2% increase in the base wage rate for each currently-existing rank for the first pay period in June 2017; and a 2% increase in the base wage rate for each currently-existing rank for the first pay period in June 2018.

Upon execution of this Agreement, all bargaining unit Employees shall receive a one-time lump sum signing bonus of \$750 during a pay period in December 2016.

All other language in current Article 15 should be unchanged.

¹³ The parties' Appendix A-Wage Chart must be revised to reflect the 2% increase each year of the cba term approved by the parties.

5. Health Insurance-Article 17

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).¹⁴ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposes no change in the current language for health insurance except to change the effective date to June 1, 2016. It indicates that it experienced a significant increase in costs for the benefit at the last round of negotiations. It began to pay 15% costs (pre-tax) and that was a significant increase directly affecting take home pay. The Union urges that no further changes occur at this time, due to great uncertainties about federal changes to health insurance and the desire for stability in plans and physicians currently established. The Union points out that in comparison with SERB reports for like jurisdictions in the area, the Union currently pays about \$40 single/\$90 family per month more than similarly situated employees. Similarly co-pays are higher here than others statewide by \$5/5/10.

The Union is willing to accept the provisions of any wellness program launched by the Township. The wellness program is currently available to non-unit employees. Participation allows employees to receive a credit towards employee premium costs. The Union seeks me-too language for parity with other Township employees.

The Township seeks to implement an entirely new program for health insurance. It seeks to eliminate plan design. (e.g. prescription drug costs and out-of-pocket costs.) It is seeking to prudently manage rising costs and uncertain changes in the availability and coverage of insurance. It has implemented cost-saving and market aware changes for the balance of its employees beginning in 2017. It proposes a 20% compared to the current 15% cap on employee premium cost participation. In its external comparables it points to jurisdictions

¹⁴ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

requiring a 17 or 20% employee participation rate for insurance. It also points out that many jurisdictions do not provide a buy-out for electing out of the employer's plan. ^(15.)

The Township seeks to have parity among all its employees for health insurance, for ease of administration and predictability of budget. It pointed to a very high usage rate in the firefighter group this calendar year which resulted in a quoted 23% increase for CY 2017. The Township indicated that me too language for health insurance is in the Union's self-interest-as all other employees involved are likewise motivated to have the greatest coverage at the lowest costs. It noted that the Union should be trusting on this issue: it allowed the Union absent cba language to get premium discounts due to wellness participation. The Union also sits on the Wellness committee further ensuring its input and stakeholder status.

The Fact finder finds that the Township failed to make a compelling argument for change in the current insurance plan. Although the quoted premium increase is considerable it appeared that the prior two years' experience of the group was very low usage and the current year's experience was anomalous. With great uncertainty surrounding the insurance marketplace making a change at this time creates undue uncertainty for both parties. The desire of the Township for parity between all of its employees is both understandable and perhaps economically prudent-although the financial evidence in the record was minimal on this aspect. Furthermore the most recent SERB report reflects that Union (employee) costs already exceed those posted for the Cincinnati region. Liberty Township's co-pays and premiums are currently in range of those paid by others within the Super Townships. Its deductibles are generally more favorable than other comparables presented by the Union. Although other plans have more favorable features other costs are greater in other aspects. On balance the current plan is within all normal ranges presented by the evidence.

¹⁵ Other jurisdictions listed provide a similar or even higher buy out option. Sycamore Township only requires 12% employee participation. Others in the Employer comparable table provide dental and/or vision insurance which is not available to Liberty Township employees currently. Nor was same proposed. The majority of externals sampled by the Employer do, like Liberty, provide a no cost life insurance benefit at a comparable amount. There was no separate discussion on the topics of life, dental or vision insurance. Current language would support its availability on a me too basis.

Regarding the desire of the Union to participate in any wellness program offered to other Township employees, the Fact finder recommends that this become a “me too” provision. The informal consensual practice of “me too” for this program should become a concrete cba term to provide recognition and security of a mutually desirable benefit. A wellness participant benefits everyone: employee, employer and the public interest. The benefits of a wellness program are well-known and have no detrimental aspects. Should the Township continue to sponsor or provide access to such a program its safety forces would be well served to participate as well. The public interest in a healthy, fit firefighter is obvious. Costs were not a factor discussed at the hearing so it is assumed that the Township is willing to pay for the program as its benefits are clear.

Recommendation

Article 16

Section 1_Current Language

Section 2

Employees who wish to participate in either Township health insurance program are required to pay for such coverage via a pre-tax reduction plan through contributions as set forth below:

Effective June 1, 2016: An amount equal to fifteen-percent (15%) of the premiums and premium equivalents owed by the Township to participate in the program, rounded to the nearest tenth of a dollar.

Section 3

The total sum of each individual bargaining unit member’s out-of-pocket cost shall not exceed \$1,500 single or \$3,000 family for in network services. The total sum of each individual bargaining unit member’s out-of-pocket cost shall not exceed \$5,000 single or \$10,000 family for out-of-network services. The term “out-of-pocket cost” includes only the deductibles and co-insurance to be paid by an individual Employee under the plan selected by the Township. The term “out-of-pocket cost” does not include co-payments for prescriptions or physician visits or any other incidental payment made by an individual Employee towards health care expenses that are not covered under the health insurance plan. Whether services are “in network services” or “out-of-network service” shall be determined in accordance with the insurance plan selected by the Township. Furthermore, the tier designation of hospital facilities shall be determined in accordance with the insurance plan selected by the Township. The Employees shall be permitted to participate in any wellness plan, associated discount, and/or any other

wellness incentive-offered by the Township on the same basis as other Township employees.

Sections 4-10 Current Language

6. Training- Article 20

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).¹⁶ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposal seeks to enhance the amount budgeted to \$20,000 for the first two (2) calendar years of the successor cba and up the budgeted amount to \$25,000 for the year 2018 and thereafter. Thus the minimum commitment training budget the Township has after CY 2018 is \$25,000 until bargained differently.

The Union proposes some clarifying language regarding the Special Response Team which was unopposed by the Township. The Union also proposes increasing the annual budgeted amount for training to a threshold minimum of \$20,000/year and beginning in January 2018, a higher maximum amount of \$25,000/year.

The Township argues that this is a cost item which is adequately funded and there is no need for an increase to the level proposed by the Union. However, the Township was not opposed to some enhancement in the training budget, just not to the extent sought by the Union.

In order to have a state of the art, fully credentialed, modern and skilled fire safety force, annual training is a necessity. Both parties agreed that it is in the parties' best interests as public safety personnel to be fully trained and prepared. The increase in budget recommended assumes increased participation by additional firefighters and assumes an increase in expected training costs.

¹⁶ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

This is a win-win item from the Fact finders perspective; the money is merely allocated and is not required to be spent. It will be there as needs arise.

Recommendation:

Article 20-Training should be amended as follows:

Section 1.

The Employer and the Employees recognize the benefits of continued education and training for professional growth and development. The Employer will pay for all courses required by the Employer and / or the State of Ohio as a requisite to maintain a professional license / certificate or to maintain or advance in employment. The Employer will endeavor to conduct these courses throughout the year while on-duty or off-duty allowing ample opportunity for continuing in-service training.

- (a) Effective January 1, 2015, the Employer shall provide a minimum of eighteen (18) hours of training for each bargaining unit Employee from an outside source, either on-site or at a non-Employer location. Additionally, all Lieutenants shall be provided an additional eight (8) hours of outside officer development related training, and all bargaining unit members of any Butler County Special Response Teams (i.e. Technical Rescue, SWAT, IMAT, Haz-Mat, Task Force One, Fire Investigator) will receive straight time compensation for attending the minimum number of hours of training needed to maintain deployable status for the specific team which they are a member. The annual cost of these obligations, in terms of expenditures for courses, travel, and speakers shall not exceed twenty thousand dollars (\$20,000) annually, and beginning January 1, 2018, shall not exceed twenty-five thousand dollars (\$25,000) annually.
- (b) All outside training courses must be approved by the Fire Chief or his / her designee to ensure the training meets the operational needs of the organization. All outside training courses will be compensated at the Employee's straight time wage rate established by the Agreement.
- (c) These outside training courses are either prepaid or reimbursed one hundred percent (100%) including necessary meals, lodging, and travel.

7. Duration-Article 29

The Fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).¹⁷ Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

¹⁷ The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public

The parties have historically had a three-year agreement. The parties recognize that the dispute resolution procedure caused the parties to not finalize the negotiations prior to the expiration of the predecessor agreement. There is no evidence concerning bad faith bargaining or dilatory actions by either party. There is no evidence in the record supporting a different time frame for the duration clause. It is the recommendation of the Fact finder that the parties shall make all changes recommended in this report and by and through previously made tentative agreements retroactive to the expiration date of the predecessor agreement.

Recommendation

Article 29-Duration shall read as follows:

This Agreement shall become a three year contract effective June 1, 2016 after it has been mutually approved by the Membership and the Township Trustees and through May 31, 2019, and shall thereafter be automatically renewed for successive periods of one (1) year unless written notice is served at least sixty (60) days prior to that date by either party of its desire to modify or terminate the Agreement.

Notwithstanding anything else in this Agreement, no act, omission, or event occurring after the termination of this Agreement shall give rise to any rights or liabilities under this Agreement nor shall it be subject to arbitration. Nothing in this paragraph affects the automatic renewal provision of the first paragraph of this Article, nor does it affect the parties' right to agree to extend the Agreement.

8. MOU on Minimum Manning

After discussion in mediation held prior to the hearing, it was agreed that there was no need to revisit current language on Minimum Manning Levels. Therefore, no change is required.

Recommendation: MOU Minimum Manning Levels

Current Language

9. Tentative Agreements:

services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

a. Union Business Article 5-

NO CHANGE CURRENT LANGUAGE

b. Sick leave and Injury Leave-Article 14

CHANGES AS NOTED; all other language unchanged.

Section 4:

Sick leave may accrue to a maximum of two-thousand eighty (2080) hours. When an Employee reaches the maximum number of accrued hours, he / she will receive payment for twenty-five percent (25%) of the hours over the maximum (i.e., 1 hour of pay for every 4 hours of accrued but unused sick leave). This amount will be paid at the end of each calendar year.

Section 10:

Employees transferring from other Township departments or leaving the employment of another Ohio public employer under the provisions of the Ohio Police and Fire Pension Fund may transfer unused sick time credit to the Township. This transfer will be limited by the two-thousand eighty (2080) maximum hours, and there must not be more than thirty (30) days of separation between employment with the former public employer and the Township. The Employee must provide a satisfactory written and signed statement from the previous employer stating the number of accumulated sick hours eligible for transfer.

c. Uniforms and Equipment -Article 17

Changes as noted: All other language unchanged

Section 7:

The Employer will provide a premium of up to two hundred dollars (\$200.00) for the purchase of duty footwear satisfactory to the standards set by the Fire Chief. The Employer will establish a list of preferred vendors to pay up to two hundred dollars (\$200.00) per Employee per year. An Employee may carryover the two hundred dollars (\$200.00) from the current year; if the Employee chooses to carryover the entire premium from the current year into the following year, he / she will submit a request to the Fire Chief by October 1st.

d. Military Leave- Article 18

The Township will grant a military leave of absence to Employees who are absent from work because they are serving in the uniformed services in accordance with state and federal law.

Respectfully submitted,

s/Sandra Mendel Furman

Sandra Mendel Furman, Esq. 0010057
1119 South Cassingham Road
Columbus, Ohio 43209
(614) 638-2828

Certificate of Service

An electronic copy of the fact finder report was sent by electronic mail to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; to the Liberty Township Butler County Board of Township Trustees c/o Alex Ewing and to IAFF Local 4394 c/o Terrell Snyder on December 13, 2016.

s/ Sandra Mendel Furman
Sandra Mendel Furman, Esq.