

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
BEFORE GREGORY J. LAVELLE, ESQ., FACTFINDER

IN THE MATTER OF FACT-FINDING BETWEEN:

PERKINS TOWNSHIP FIREFIGHTERS,)	CASE NO. 2016-MED-07-0692
IAFF LOCAL 1953)	
)	
Employee Organization)	
)	
and)	REPORT AND RECOMMENDATION
)	OF THE FACT-FINDER
PERKINS TOWNSHIP)	
)	
Employer)	

APPEARANCES:

EMPLOYEE ORGANIZATION:

Ryan Lemmerbrock	Counsel
Mary Schultz	Forensic Accountant
Bryan Brace	President, IAFF, Local 1953
William LeFene	Negotiating Team Member, IAFF, Local 11953
Scott Hillman	Secretary, IAFF, Local 1953

EMPLOYER:

John Coppeler	Counsel
Keith Wohlever	Fire Chief
Diane Schaeffer	Fiscal Officer
Gary Boyle	Administrator
Ashley Ohlemacher	Payroll
Lynn Hargrave	Administrative Assistant

May 23, 2017

BACKGROUND

Perkins Township Firefighters, IAFF Local 1953 (hereinafter, the IAFF) and Perkins Township, (hereinafter, the Township) were parties to a collective bargaining agreement, effective October 1, 2013 to September 30, 2016, covering all full-time employees in the classifications of Assistant Chief, Captain, Lieutenant, Inspector, Firefighter Class A, Firefighter Class B, Firefighter Class C-1 and Firefighter Class C-2. (Union, Exhibit 1, hereinafter, the 2013 Agreement) There are approximately twenty-two full-time (22) employees covered by the 2013 Agreement and the Township employs approximately an equal number of part-time firefighters who are not members of the bargaining unit.

The 2013 Agreement contained a provision which enabled employees and their spouses to earn wellness credits:

ARTICLE 20

INSURANCE

SECTION 2. Under the policy to be in effect as of January 1, 2014, the Employer will also contribute up to \$120,000 per year (for all Township employees at current employment levels) for wellness credits for employees who qualify for them under the Wellness Program. Each employee (and covered spouses) may earn credits for each of the five (5) segments of the Wellness Program which would effectively reduce the \$2500/5000 deductible to \$200/400 for 2014 and 2015, and \$500/1000 for 2016 for qualifying employees. The Wellness Credits would be \$460 for each of the five segments successfully completed during the first and second years and \$400 during the third year.

Under the Wellness Program, an eligible employee and covered spouse could earn up to four thousand dollars (\$ 4,000.00) during calendar year 2016. Under the 2013 Agreement, changes to insurance coverage could be made by the Township Health Insurance Committee (hereinafter, the Committee) if total premiums for a given year should increase by more than five percent (5%) over the premiums for the prior year:

SECTION 4. Increases or decreases in insurance premiums during the second and third insurance years of this Agreement shall be shared by Employer and employees in the same 85%/15% ratio. However, in any year in which total premiums would increase by more than 5% over the premiums for the prior insurance year, the Employer shall not be required to renew the then current coverage for the next insurance year. Under those circumstances, the Township Health Insurance Committee comprised of one (1) representative from the Fire, Police, Highway, and administrative departments and the three (3) Township Trustees shall negotiate possible actions to be taken. The Health Insurance Committee can also recommend to the Trustees an appropriate distribution of the excess premium costs and amounts to be deducted from employee wages which recommendation will be binding on all Township employees, changes in the level of insurance or conditions of the policy, whether to obtain other insurance bids, the carrier to provide coverage, and oversight of a Wellness Committee and its policies, which shall include at a minimum testing for glucose, BMI or body fat percentage, blood pressure, LDL cholesterol, and smoking. The Employer agrees that it will retain the 85%/15% premium payment ratio in implementing any changes to the health insurance coverage.

The parties negotiated for a successor agreement and a Retroactivity & Extension Agreement was executed on September 22, 2016. The 2013 Agreement expired on September 30, 2016 and the parties continued to negotiate. Agreement was not reached and the Fact-Finder was appointed on February 2, 2017.

During the period of extension of the 2013 Agreement, the Committee had acted to change insurance coverage for 2017. In doing so, the Wellness Program was eliminated, effective January 1, 2017. The IAFF filed a grievance claiming that the elimination of the Wellness Program violated the 2013 Agreement. The parties met concerning the grievance on February 15, 2017. The grievance was denied on February 16, 2017 29) The grievance was not resolved and the IAFF requested arbitration of the grievance on February 21, 2017. The grievance was held in abeyance pending the resolution of collective bargaining through the procedures of Ohio Revised Code Section 4117.14. (See Union Exhibit 29)

There are two (2) other collective bargaining units in the Township; the Highway Department unit which is represented by the United Auto Workers (hereinafter, the UAW) and the Police Unit which is represented by the Fraternal Order of Police (hereinafter, the F.O.P.)

The UAW collective bargaining agreement expired on August 31, 2016 and no agreement has been reached for a new collective bargaining agreement. The F.O.P. collective bargaining agreement expired on October 31, 2016 and agreement for a new collective bargaining agreement was reached voluntarily, without resort to Fact-Finding.

The IAFF and the Township continued to negotiate for a successor collective bargaining agreement, but numerous issues remained unresolved. The parties mutually requested that a mediation session be scheduled for April 13, 2017. Mediation was attempted on that date, but no agreement was reached. A Fact-Finding Hearing was scheduled for May 8, 2017. The parties filed timely Position Statements and a Pre-Hearing Telephone Conference was conducted on May 8, 2017. At the Pre-Hearing Telephone Conference, the parties stated that no tentative agreements were reached changing any provision of the 2013 Agreement and that there were no side letters or memoranda of understanding between the parties which survived the 2013 Agreement.

The Fact-Finding Hearing was conducted on May 8, 2017. The parties were not able to complete the hearing on that date and a second day of hearing was scheduled for May 12, 2017. During the course of the hearing on May 12, 2017 it was discovered that there had been some tentative agreements reached and the parties were directed to discuss such potential tentative agreements and to transmit the same to the Fact-Finder. The hearing was completed on May 12, 2017 and it was stipulated that the report and recommendation was to be delivered to the parties by electronic mail on May 23, 2017. The IAFF forwarded the language of what it believed to be tentative agreements reached and the Township confirmed those agreements. Copies of the same are attached hereto as Appendix A.

RECOMMENDATION

INTRODUCTION

The issues presented herein were reviewed in accordance with the provisions of Ohio Administrative Code 4117-9-05(k), the Fact-Finder considering:

- (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;
- (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.

RECOMMENDATION

DISCUSSION OF DISCIPLINE – ARTICLE 5, SECTION 9

The IAFF proposed to add a new Section 9 to Article 5, restricting the use of polygraphs and other devices designed to measure the truth of responses:

ARTICLE 5 - DISCIPLINE

Section 9. During the course of an investigation, no employee shall be required to submit to a polygraph test. Refusal to submit to such a test shall not result in disciplinary action nor shall such refusal be made part of an employee's record. No employee shall be ordered to submit to any device designed to measure the truth of responses during questioning. However, there is no restriction on the right of any employee to submit to such a device on a voluntary basis.

In the past, under a prior Fire Chief, employees were required to submit to a lie detector test. Present Fire Chief, Keith Wohlever, indicated at hearing that it would be his intent to have any investigations conducted by the Police Department. The Township maintained, therefore, that the requested language change was unnecessary and further pointed out that the Employee Polygraph Protection Act (EPPA) exempts public employers from coverage.

Contract language, however, is designed to suit the parties for the present and the future, no matter who administers the collective bargaining agreement. While the EPPA does not apply to public employers, there are other protections which do apply. Actions of a public employer are actions of the State and, therefore, constitutional rights apply, such as due process. (See **Cleveland Board of Education v. Loudermill**, 470 U.S. 532 (1985)) Likewise, it would seem that the Fifth Amendment rights regarding self-incrimination should apply. Being required to testify at all where a device would provide the “incrimination” would seem to violate the Fifth Amendment. This is a concern especially since the results of lie detector and voice stress analysis devices are considered too unreliable to be admitted into evidence.

In this case, since the Township has indicated that it has no intent to utilize such tests, there is no burden placed upon its operations. The addition of the provision does add to some peace of mind to bargaining unit members who have seen the tests administered in the past.

The proposal of the IAFF is generally recommended. However, potential arguments that such tests could be used where there was no “investigation” and/or no “questioning” should be eliminated. Therefore, the recommended language for Article V, Discipline, Section 5 is as follows:

Section 9. No employee shall be required to submit to a polygraph test. Refusal to submit to such a test shall not result in disciplinary action nor shall such refusal be made part of an employee’s record. No employee shall be ordered to submit to any device designed to measure the truth of responses. However, there is no restriction on the right of any employee to submit to such a device on a voluntary basis.

DISCUSSION OF LAYOFF AND RECALL, ARTICLE 10

The IAFF has proposed a new Section 2 to Article 10 which would require the Township to layoff all seasonal and part-time employees before laying off any full-time employees covered by the collective bargaining agreement:

Section 2. When layoffs are necessitated, any seasonal or part-time employees will be laid off prior to any reduction in force of full-time employees covered by this Agreement.

The Township proposes language that would not permit it use part-time firefighters to fulfill manpower requirements if three (3) full-time firefighters were laid off.

Section 2. No part-time fire fighters shall be used to fill manpower requirements if three (3) full-time fire fighters have been laid off.

The IAFF argues that efficiency is increased by the use of full-time employees since there tends to be more turnover with part-timers. Turnover creates inefficiency economically due to the cost of hiring and training a greater number of employees and creates inefficiency operationally as less experienced employees would be expected to be less efficient in both work procedures and teamwork. Operational efficiency is most important where the result of inefficiency has an effect on human safety and lives.

The IAFF urges the Fact-Finder to refer to Ohio Revised Code Section 124.323 which establishes the layoff order for Civil Service Townships which states:

124.323 Layoff order.

Employees shall be laid off in the order set forth in this section within the primary appointment categories of part-time probationary, part-time permanent, full-time probationary, and full-time permanent. Whenever a reduction in force is necessary within each of the primary appointment categories, first part-time probationary, then part-time permanent, then full-time probationary, and then full-time permanent employees shall be laid off.

The Township counters that Perkins Township is not a civil service township. Under Ohio law, however, the Township falls within the definition of a township which could become a civil service township. Under Ohio Revised Code Section 124.01(G), a Civil Service Township is a township having a population of ten thousand (10,000) or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten (10) or more full-time paid employees and which has chosen to create its own Civil Service Commission:

(G) "Civil service township" means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees and which has a civil service commission established under division (B) of section 124.40 of the Revised Code.

Perkins Township meets both the population and minimal full-time employee requirements of Ohio Revised Code Section 124.01(G), but has not chosen to create its own Civil Service Commission. Since the Township in all respects is like a civil service township, it would be appropriate to look to Ohio Revised Code 124.323 as a guide.

Ohio Revised Code Section 124.323, however, can not be understood without reference to other Sections of Chapter 124. Standing alone, Ohio Revised Code Section 124.323, could be read to require the layoff of all part-time and probationary employees of the appointing authority before the layoff of any full-time employee, requiring, for example, the layoff of a part-time groundskeeper before the layoff of any full time employee of the appointing authority, or in this case, the layoff of the part-time police officer or administrative employee before the layoff of any full-time firefighter.

Looking to Ohio Revised Code Section 124.324, it becomes clear, however, that layoffs are to be effectuated on a classification by classification basis, with displaced employees having layoff displacement rights:

124.324 Layoff displacement rights.

(A) A laid-off employee has the right to displace the employee with the fewest retention points in the following order:

- (1) Within the classification from which the employee was laid off;
- (2) Within the classification series from which the employee was laid off;
- (3) Within the classification the employee held immediately prior to holding the classification from which the employee was laid off, except that the employee may not displace employees in a classification if the employee does not meet the minimum qualifications of the classification or if the employee last held the classification more than three years prior to the date on which the employee was laid off.

If, after exercising displacement rights, an employee is subject to further layoff action, the employee's displacement rights shall be in accordance with the classification from which the employee was first laid off.

The director of administrative services shall verify the calculation of the retention points of all employees in the service of the state in an affected classification in accordance with section **124.325** of the Revised Code.

(B) Following the order of layoff, an employee laid off in the classified civil service shall displace another employee within the same appointing authority or independent institution and layoff jurisdiction in the following manner:

- (1) Each laid-off employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series.
- (2) Any employee displaced by an employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series. This process shall continue, if necessary, until the employee with the fewest retention points in the lowest classification of the classification series of the same appointing authority or independent institution has been reached and, if necessary, laid off.

One might be tempted to incorporate by reference Ohio Revised Code Chapter 124 as a short-cut to creating language specific for the Township. There are procedures and definitions in Chapter 124,

however, which would not be suitable to the Township, such as the definition and role of “retention points” in layoffs and recalls.

It is appropriate to require the layoff of part-time and seasonal employees before full-time employees. It is also appropriate to allow the Township the right to effectuate layoffs by classification and allowing employees laid off from a classification to exercise layoff displacement rights. This issue is being addressed, although not reflected in the proposals of the Township, because comments of Chief Wohlever during the course of the hearing, indicated that he believed that current language permitted him to lay off on a classification by classification basis. The current contract provision could conceivably be read either way, depending on bargaining history and/or past practice. It must be made clear that layoffs are to be effectuated on a classification by classification basis. The definitions of the classifications to be used for the purpose of layoffs, displacement rights and recall must also be made clear.

The following language is therefore recommended for Article 10:

SECTION 1. In the event that reductions in the number of personnel in a classification become necessary, all part-time and seasonal employees within the affected classification will be laid off first. If further layoffs are necessary, the employees with the least seniority within the classification shall be laid off first. The Employer shall notify any employee to be laid off fourteen (14) calendar days in advance of such layoff. No new employee shall be hired into the classification until all laid off employees full-time employees within the classification, have been given the opportunity to return to work. Said call-backs to classification are to be in order of seniority among employees laid off from the classification.

Employees laid off may displace any less senior employee within any equal or lower-rated classification, provided the displacing employee is qualified for and physically able to perform the duties of said classification.

For the purposes of this Article, the classifications are Assistant Chief, Captain, Lieutenant, Inspector and Firefighter, the classifications of Lieutenant and Inspector being considered equally rated and the classifications of Firefighter Class A, Firefighter Class B, Firefighter Class C-1 and Firefighter Class C-2 being considered a single classification which includes part-time and seasonal firefighters.

DISCUSSION OF SICK LEAVE, ARTICLE 11

Changes in the Sick Leave article relate to the conversion from a fifty-six (56) hour system to a fifty-three (53) hour system are recommended. The IAFF proposal for this article is recommended.

DISCUSSION OF PERSONAL DAYS, ARTICLE 13

The recommended collective bargaining agreement will contain a provision for a fifty-three (53) hour, nineteen (19) day schedule with Kelly Days. Members of the bargaining unit now have four (4) Personal Days. With Kelly Days, the IAFF will have seven (7) days off rather than four (4). While firefighters in the Township appear, on the average, to have less time off than those in other jurisdictions, keeping both Personal Days and Kelly Days can lead to scheduling and coverage problems for a small unit and is not recommended.

There is a difference between the manner in which Personal Days are scheduled and the manner in which Kelly Days are scheduled. Employees, to some extent, have control over the scheduling of Personal Days, while the Township has control over the scheduling of Kelly Days. Portions of the IAFF proposal for the scheduling of Kelly Days will be recommended in order to account for this difference and allow employees in some occasions to use Kelly Days in a manner similar to Personal Days.

It would seem unfair for employees to lose Personal Days which have already been earned. Therefore, it is recommended that employees earn Personal Days in 2017, new employees, if any, earning Personal Days only for the first two quarters in 2017. Other clarifications and some adjustments in response to the IAFF proposal have been made as shown in the recommendation for the language of Article 13 contained in Appendix B.

DISCUSSION OF SCHEDULING LEAVE, (NEW ARTICLE)

The Township had proposed to eliminate Personal Days. As discussed above, Personal Days, after 2017 are eliminated. Reference to Personal Days, for this collective bargaining agreement still

have to be referenced in the Scheduling Article. With this exception, the Township Proposal is generally recommended. The IAFF had proposed a new section regarding scheduling which limited the obligation of employees to find replacement employees in certain circumstances. This proposal is not recommended. The existing practice appears to have been in place for some time. The fire department in the Township is rather small and the process of finding replacements could be a burden on limited administrative personnel necessary for more critical functions. The recommended language for Scheduling Leave is attached as Appendix C.

DISCUSSION OF HOLIDAYS, ARTICLE 14 AND VACATIONS, ARTICLE 15

Having moved the scheduling portions of Article 14, Holidays and Article 15, Vacations to the new scheduling article, the proposals of the Township for Holidays and Vacations which make the appropriate adjustments for the fifty-three (53) hour system are recommended.

DISCUSSION OF SCHOOLING, ARTICLE 17, SECTION 2

The 2013 Agreement provided for a four percent (4%) increment to base salary for employees having a bachelor or associate degree in Fire Science, Public Administration, or Medical Science or an Executive Fire Officer degree. The IAFF has proposed that employees with a bachelors degrees in those areas or who had successfully completed an Ohio Fire Executive course (hereinafter, OFE) receive a five percent (5%) increment to base salary and that employees having a masters degree of any kind or an Executive Fire Officer Degree (EFO) receive a five percent (5%) increment to base salary, plus one percent added to base salary per year, meaning that a person with a masters degree would earn six percent (6%) over base in 2017, seven percent (7%) over base in 2018 and eight percent (8%) over base in 2019.

On September 7, 2016, a tentative agreement was reached on this section. (See Union Exhibit 2) The parties, during the Pre-Hearing Telephone Conference, indicated that there were no tentative agreements and were asked to review what items might have been tentatively agreed. The parties

transmitted a list of tentative agreements which did not include Article 17, Section 2 as among the provisions for which a tentative agreement had been reached.

The Township, at fact-finding, indicated that it understood the tentative agreement to mean the additional one percent (1%) to be given to persons with masters or EFO degrees was to be paid as a bonus and provided a proposal to that effect. In further discussions, the Township indicated that it understood that the increment for a masters degree would only be applicable if the degree were in Fire Science, Public administration, or Medical Science.

It is recommended that a flat six percent (6%) be added to the normal monthly salary for persons holding Executive Fire Officer Degrees and persons having masters degrees in Fire Science, Public administration, or Medical Science. There is no value to the Township of having a firefighter who possesses a masters degree in an unrelated subject area such as English literature or history. The collective bargaining agreement should be clear so that there are no questions raised as to entitlements. The recommendation of the fact-finder should resolve all issues and not create a raft of potential arbitrations. The language to be incorporated as Article 17, Section 2, therefore, states as follows:

Section 2. Any employee who is covered under this Agreement and who has a masters, bachelors or associate degree in Fire Science, public administration or Medical Science, or an Ohio Fire Executive (OFE) certification or an Executive Fire Officer degree shall be entitled to the following compensation:

Associates degree	An additional four percent (4%) over and above the normal monthly salary.
Bachelors degree or OFE	An additional five percent (5%) over and above the normal monthly salary.
Masters or Executive Fire Officer degree	An additional six percent (6%) over and above the normal monthly salary.

Notwithstanding the number of degrees earned, any employee qualifying for the educational bonus shall be entitled to payment for only one degree per year added to their base pay.

DISCUSSION OF SCHOOLING AND MANDATORY MEETING COMPENSATION, ARTICLE 17

The Township proposes an increase in the Training Allowance of one hundred dollars (\$ 100.00) and the IAFF proposes an increase in the Training Allowance of two hundred fifty dollars (\$ 250.00). There are differences among the parties in the manner in which various elements of the Training Allowance are paid. The IAFF proposes to delete the portion of Section 6 referring to requiring persons taking training to arrange replacements themselves should they face cancellation of training due to staffing falling below minimum standards. The Township proposed to limit paid Educational Leave to instances where the classes were mandated by the Township or were necessary to retain certification. During discussions at Fact-Finding, the Township indicated that it would also approve Educational Leave which would be beneficial to employees advancing in rank. The proposal of the Township represents an improvement in Educational Leave. The requirement for employees to arrange replacements is not overly burdensome and is something which has been required with respect to other types of leave. The recommended language for Article 17, Sections 3 through 9 is attached as Appendix D.

DISCUSSION OF HOURS OF WORK AND OVERTIME – ARTICLE 19

The parties appear to be in agreement on a fifty-three (53) hour work week over a nineteen (19) day pay period with a 7:00 a.m. to 7:00 p.m. work day with no deduction of meal and sleep time. Questions remain over the hours counted toward overtime, the Township wanting to count only hours actually worked and the IAFF wanting to count all hours in pay status. The Township contends that all “extra work” would qualify for overtime under other provisions of the collective bargaining agreement. In light of the introduction of Kelly Days and the confusion which may result in the consideration of Kelly Days and other time being considered “in pay status”, it is recommended that overtime be based on hours worked with clarifications of how individual overtime provisions are to be interpreted.

The Township proposes to change the overtime rate to the fifty-three (53) hour rate from the forty (40) hour rate. There was no rationale advanced for that change. That proposal is not

recommended. It is recommended that Article 19, Sections 9 remain as in the 2013 Agreement and that Section 2 read as follows:

Section 1. All employees shall work a fifty three (53) hour work week unless otherwise assigned to a forty (40) hour work week by the Chief of the Department.

Section 2. A fifty-three (53) hour work week shall be comprised of an arrangement of non-consecutive shifts. The shift will begin at 07:00 a.m. and end at 07:00 a.m. the next day. The Employer and the employee agree to a nineteen (19) day, one hundred forty-four (144) hour work period. Sleep and meal time shall be considered hours worked. An employee shall receive a "Kelly Day" of leave each work period in which his regularly scheduled hours would exceed the one hundred forty-four (144) hours in a nineteen (19) day work period. Employees may select their "Kelly Day" with approval of the Fire Chief.

Overtime will be paid at the forty (40) hour FLSA rate for hours actually worked by an employee in excess of one hundred forty-four (144) hours over a nineteen (19) day period. No credit for any type of paid or unpaid leave shall be included in the calculation of hours actually worked in determining overtime, nor will holdover or callback overtime, tone outs, or court appearance overtime be included in such calculations.

The Chief or his designee shall assign a Kelly Day to any employee when and as needed to avoid incurring overtime for hours actually worked by an employee. Up to seven (7) Kelly Days per employee per year may be assigned, and no additional payment shall be made to an employee who is assigned fewer than seven (7) Kelly Days in the calendar year. A Kelly Day shall be taken only as a twenty-four (24) hour day.

From discussions at hearing, it should be understood by the parties that Kelly Days are not hours "actually worked" by employees, nor are the hours paid for such overtime as holdover, callback, tone outs and court appearance time. From the discussions at hearing, a "callback" occurs any time an employee is scheduled to work on his day off. In such case, an employee would receive overtime for the call-back, regardless of whether he had reached his fifty-three (53) hours of actual work due to having taken unpaid leave or paid leave such as sick or vacation time.

The IAFF has proposed with respect to Section 3 to re-define the work week for the Fire Inspector to a forty (40) hour work week to reflect what it contends is the current practice:

Section 3. A 40-hour work week for the Fire Inspector shall be comprised of an arrangement of consecutive shifts comprised of five (5), eight (8) hour days.

The Township has formally proposed only to change the work week of the Fire Inspector from a fifty-six (56) hour work week to a fifty-three (53) hour work week:

SECTION 3. A 53 hour work week for the Fire Inspector shall be comprised of an arrangement of non-consecutive shifts comprised of both twenty-four (24) hour days and eight (8) hour days.

It appeared at hearing that the actual desire of the Township was to have the option to return the Fire Inspector to a schedule other than forty (40) hours per week. Section 1 of Article 19, implies that the Township already has that right. The Township has the right to assign an employee to either a fifty-three (53) or forty (40) hour shift. The IAFF proposal for this section is recommended with the understanding that the Township could reassign the Fire Inspector to a fifty-three (53) hour shift.

The Township has proposed with respect to Article 19, Section 5 that it be permitted to unilaterally change the work period for overtime to a two hundred twelve (212) hours worked over a twenty-eight (28) day period if it finds that overtime payments are excessive:

However, the Township reserves the right to change the overtime calculation to 212 hours over a 28 day period if it finds that overtime payments being incurred in the remainder of 2017 or 2018 are excessive.

There is no definition for the word "excessive". In fact, the language would imply that the Township could declare overtime payments to be "excessive" even if lower than what was incurred in 2017. In addition, it would be extremely poor PR and HR to make a unilateral change in the method of overtime calculation after expending so much energy negotiating for a new system. There has been no explanation, much less quantification regarding how much overtime would be incurred with 19/144 system over a 28/212 system. The Township proposal with respect to the power to change the overtime system from a 19/144 to 28/212 is not recommended.

The IAFF has proposed modifications to change fifty-six (56) hour to fifty-three (53) hour to reflect the change in the overtime provision. That proposal is recommended. The Township proposed in Section 7 to change "Overtime" (holdover) to "Holdover Overtime". It appears that there is no suggestion that the interpretation of the provision should change. Since a canon of contract construction is that every word in an agreement and every wording change is not to be interpreted as a nullity, it is recommended that the language of the 2013 Agreement be retained in Section 7 with respect to the term, "Overtime (holdover), the language of Section 6 and Section 7 being recommended to read:

Section 6. It is agreed that there will be no reduction in annual base pay should an employee be transferred from a 53-hour work week to a 40 hour work week.

Section 7. Overtime. Overtime (holdover) shall start after an employee has worked his required twenty-four (24) hour shift if a 53-hour employee, or eight (8) hour shift if a 40 hour employee. Holdover overtime will be figured in fifteen (15) minute intervals (one-quarter of an hour), with a minimum of one-quarter (0.25) hour.

DISCUSSION OF INSURANCE, ARTICLE 20

INTRODUCTION

There are numerous issues regarding Article 20; the elimination of the Wellness Program, the caps on the Employer contribution and the sharing of costs after the cap is reached, the triggers regarding changes in coverage, changes to coverage for spouses and/or the Employer contribution toward coverage for spouses, the power of the Committee to make changes in coverage, the re-opener provision and the wording of the tobacco free policy. These issues will be discussed separately. The text of the entire recommended Article 20 is attached hereto as Appendix E.

DISCUSSION OF ELIMINATION OF WELLNESS PROGRAM

The issue of the elimination of the Wellness Program has been grieved by the IAFF and is subject to being resolved in arbitration. Based solely on a review of the language of the 2013 Agreement, it appears that the parties only left to the discretion of the Committee the **oversight** of the wellness

program, while **mandating** that said program include **as a minimum** testing for glucose, BMI or body fat percentage, blood pressure, LDL cholesterol, and smoking:

The Health Insurance Committee can also recommend to the Trustees an appropriate distribution of the excess premium costs and amounts to be deducted from employee wages which recommendation will be binding on all Township employees, changes in the level of insurance or conditions of the policy, whether to obtain other insurance bids, the carrier to provide coverage, and **oversight of a Wellness Committee and its policies, which shall include at a minimum testing for glucose, BMI or body fat percentage, blood pressure, LDL cholesterol, and smoking.**

If the issue prospectively were only whether the wellness program should continue, there would be little question. Statistics show that there is a three to one return in terms of savings to the employer for every dollar spent on wellness programs. (See Article at <http://infinitehealthcoach.com/benefits-of-corporate-wellness-programs>)

The problem with Wellness Programs, like all other provisions of the insurance article, is that efficiency with such a small employer dictates that the same insurance coverage be afforded to all employees. The fact that the same insurance coverage should be provided, however, does not mean that the other compensation afforded to employees and the amounts paid by the employees for their insurance coverage must be the same. While the F.O.P. unit will not be provided with a Wellness Program, it is appropriate that some provision be made in the IAFF bargaining agreement for Wellness Credits for a number of reasons. The affording of wellness credits, or their equivalent, in the new collective bargaining agreement may obviate the need for the issue to be arbitrated and the costs of such a proceeding to both parties. Accounting for the loss of Wellness Program is also necessary to evaluate the proposed increase in overall compensation and the savings to the City by not bearing the costs of the program administration. If an alternative to the wellness program is afforded and this Report is accepted, the Township will save forty two thousand dollars (\$ 42,000) (fourteen thousand dollars (\$ 14,000.00) for the cost of the Wellness Program in each of three (3) years), as well as the cost of the arbitration and conciliation.

Under the Wellness Program, an employee who had a covered spouse could have earned up to four thousand dollars (\$ 4,000.00) a year in Wellness Credits. Not all employees, however, have covered spouses. Historically, not all credits have been earned by each employee and spouse. In addition, not all credits had been spent, some portions being returned to the Township. There is no way reliably reconstruct who would have earned the credits and what amount of the credits would have been spent by the employees. Therefore, it is appropriate that the amount paid in lieu of the Wellness Credit be discounted and paid to everyone. The recommended language for Wellness Credits in Article 20, Section 2 is as follows:

Each employee (and covered spouse) may earn credits for each of the five (5) segments of the Wellness Program. The Wellness Credits would be \$ 400.00 for each of the five segments successfully completed each year.

The Township, however, may determine not to offer a Wellness Program. For each year a Wellness Program, substantially equivalent in terms of services provided and potential credits earned, is not offered, the Township shall pay on the first pay period which commences in said calendar year the sum of one thousand dollars (\$ 1,000) to each employee and covered spouse as of the end of said pay period.

Eligibility for the Wellness Program alternative is to be determined on a “snapshot” basis. For example, if the first pay period commencing in 2017 ended on January 21st, an employee, who was not eligible for insurance as of that date would not be entitled to the payment on that date or at any time later in the year when he would become eligible for insurance. If the married employee was eligible for insurance on that date, and had no covered spouse, he would receive one thousand dollars (\$ 1,000), but would not receive an additional one thousand dollars (\$ 1,000.00) should he become married or should his spouse become eligible for coverage within the year.

DISCUSSION OF THE CAPS ON EMPLOYER CONTRIBUTIONS

The Township has proposed a cap of \$ 650,000 on its contribution for 2018, plus savings if any, from 2017, and a cap of \$ 660,000 for 2019, plus savings from 2017 and 2018, if any. For the sake of

ease of administration, these dollar figures are recommended. The units system for determining the division of excess premiums based on type of coverage held is accepted. It is recommended, however, the Township share in any excess over the cap on a 50/50 basis, the Township being considered to comprise as many units as the total of employee units.

There is very little doubt that employees will be making contributions toward premiums in 2018. The cap is \$ 650,000. It appears that the actual amount upon which a premium increase will be based is \$ 677,000 (\$ 621,000 + \$ 56,000) A ten percent (10%) increase would bring total premiums to \$ 744,700 or \$ 94,000 over the cap.

The proposed trigger for the re-opener for insurance year 2019, as discussed below, is projected premium total of \$ 780,000.00. (120% of \$ 650,000). The parties should recognize that, for all practical purposes, the 50/50 split in 2019 would only come into effect in instances when the re-opener trigger is reached. This gives the parties the option not to have to re-open the contract nine (9) months early, the cost of negotiating an additional agreement far exceeding the incremental cost of the 50/50 split to both parties. If the Township does not want the 50/50 split to occur in 2019, it can exercise its option by invoking the re-opener. The same applies to the IAFF.

DISCUSSION OF THE "TRIGGERS"

There are three (3) triggers permitting changes in health care coverage under the Township proposal. Under Section 4, the Township would not be required to maintain coverage if premiums would increase by more than five percent (5%). There is no reasonable possibility that the five percent (5%) trigger would not be reached. It makes no sense to make an agreement that will be certain to be undone in a few months. A more reasonable trigger of ten percent (10%) is recommended. In addition, leeway is granted to the Committee to change carriers if savings could be realized.

A second trigger is found in Section 8, where changes in coverage could occur if there were to be any repeal, replacement of the Affordable Care Act which might adversely affect the current health insurance coverages. There is no quantification of the term "adversely affect". Some change which

might adversely affect the Affordable Care Act is almost certain to occur even before a vote can be taken on this recommendation. Again, it makes no sense to make an agreement that will be certain to be undone in a few months if not days. The recommended language for the insurance provision also deletes that trigger.

The final trigger is also found in Section 4. Under the Township proposal, an increase in projected premiums for 2019 of more than 20 percent (20%) over the premiums paid in 2018 would trigger a reopener. The problem with the proposal of the Township is that it would produce absurd results. If 2018 were a good year, the Township paying \$ 600,000 for health insurance premiums, the trigger would be lower than if the Township had a bad year, paying \$ 700,000 for health insurance premiums. In the case of the good year, the trigger would be \$ 720,000 ($\$ 600,000 \times 1.20$) while in the case of the bad year, the trigger would be \$ 840,000. ($\$ 700,000 \times 1.20$) To avoid absurd results and to avoid possible confusion and controversy regarding the calculation of the appropriate trigger for the re-opened, a trigger of \$ 780,000 is proposed, which is twenty-percent (20%) more than the Township proposed cap of \$ 650,000 for 2018.

DISCUSSION OF CHANGES IN CONTRIBUTIONS FOR SPOUSES

The Township has proposed that it be granted the unilateral right to cease to make contributions for insurance for spouses:

The Employer may but shall not be obligated to pay any portion of insurance coverage premiums for spouses of employees in 2018 or 2019 if premiums exceed the amounts specified in Section 5.

It appears that the Township is considering reducing the percentage of premium payment for spouses. That would explain the otherwise superfluous language proposed to be added to the first sentence of this section, which states, "for which the employer pays any portion". While the language of the proposal of the Township only contemplates taking such action upon a twenty-percent (20%)

increase in premium costs for 2019 over 2018 as opposed to at any time under the F.O.P. Agreement, it would still allow a spouse to be cancelled from coverage if the trigger is met. The annual cost of single coverage for the spouse under the current proposed modifications of the Affordable Care Act could be upwards of twenty thousand dollars (\$ 20,000) if the spouse is over the age of fifty-five (55). Coverage could be unobtainable if the spouse were to have a pre-existing condition resulting in a veritable death sentence.

There is a choice to be made as to who should bear the risk of increases in health insurance Costs and risks of non-coverage. The risk can be spread upon all employees of the Township and the Township budget or can fall on a household where a spouse could lose coverage. There is enough protection for the Township from increases in insurance costs. It can not be recommended that such changes in coverage and/or contributions for spouses be allowed.

DISCUSSION OF THE POWER OF THE COMMITTEE TO MAKE CHANGES IN COVERAGE

The Township has proposed to give power to the Committee to make changes in insurance coverage. The Committee is a “committee” for the purpose of meeting, but is the “Employer” for the purposes of voting, the four (4) employer representative votes trumping any opposition votes by the bargaining units. This fact would make the “agreement” with respect to the most vital issue of health insurance somewhat illusory. Therefore restrictions are recommended with respect to the power of the committee to alter deductibles and spousal coverage.

DISCUSSION OF THE RE-OPENER PROVISION

The proposal of the Township also would allow changes to be made in insurance coverage through the re-opener provision based on a ratification process which would require the F.O.P. and the other bargaining units to vote as a group with non-represented administrative employees. This could result in a situation where the proposed modification would be approved by the group although rejected by a majority of the IAFF unit. If a Conciliator were to award the Township this provision, there

could be a question as to whether the Conciliator exceeded his jurisdiction. It is an interesting and unsettled question as to what constitutes an “issue” in Conciliation. If “insurance” is the issue, rather than each aspect of the insurance article being an issue, the provision requiring the IAFF to vote collectively with the other units and unrepresented administrative employees may represent the “poison pill” in the Township proposal which might force a Conciliator to rule in favor of the IAFF on the entire “insurance issue”. The proposed language relative to the ratification process is not recommended.

The recommended re-opener provision is based on projected premiums exceeding \$ 780,000.00 and is a mutual re-opener on all issues. Essentially, if the re-opener is invoked, the collective bargaining agreement would be treated as if expiring on December 31, 2018.

DISCUSSION OF THE WORDING OF THE TOBACCO FREE POLICY

The parties were in general agreement as to the application of the proposed tobacco-free policy. Discussion at hearing, however, made clear that the wording of the proposed policy might create some confusion as to its intent. The Township indicated that the policy was to forbid the use of not only all tobacco products, but also of smoking devices involving nicotine. The Township also indicated that it intended to apply the policy to part-timers who might later be hired into the bargaining unit. A collective bargaining agreement is not only a contract between the parties, but is notice to employees of the expectations of the employer. Therefore, changes to the Township proposal have been made to make more clear what conduct is prohibited and to whom the policy would apply.

DISCUSSION OF UNIFORM ALLOWANCE – ARTICLE 21

The IAFF proposes that the uniform allowance be increased from four hundred fifty dollars (\$ 450.00) per year to six hundred dollars (\$ 600.00) per year. The Township proposes to increase the Uniform Allowance to five hundred dollars (\$ 500.00) per year and to limit the cost of the initial issue to six hundred fifty dollars (\$ 650.00). In light of the other increases granted to the IAFF and the

fact that new hires would be paid approximately \$ 2,750.00 more under the IAFF wage proposal, the Township proposal is recommended.

DISCUSSION OF WAGES

There are three (3) bargaining units represented in the Township; the F.O.P. unit, the UAW unit and the IAFF unit. The F.O.P. unit reached agreement with the Township without resort to fact-finding, receiving a two thousand dollar (\$ 2,000.00) increase and then a two percent (2%) adjustment in wages in the first year of the collective bargaining agreement, a two and one half percent (2 ½%) increase in the second year of the collective bargaining agreement and a three percent (3%) increase in the third year of the collective bargaining agreement. The Township has not reached agreement with the U.A.W. unit for a new collective bargaining agreement.

The IAFF seeks a two thousand dollar (\$ 2,000.00) increase and then a five percent (5%) increase in the first year of the collective bargaining agreement and five percent (5%) increases in the second and third years of the collective bargaining agreement. The IAFF maintains that the firefighters of the Township are seriously underpaid compared to firefighters in comparable jurisdictions while bearing a heavier workload in terms of annual average of calls per firefighter and argues that the Township has a one hundred ninety percent (190%) carryover and can clearly afford a dramatic increase in wages.

The Township proposes a seven hundred fifty dollar (\$ 750.00) increase in base compensation then a two percent (2%) adjustment in wages in the first year of the collective bargaining agreement, a two and one half percent (2 ½%) increase in the second year of the collective bargaining agreements and a three percent (3%) increase in the third year of the collective bargaining agreement. The Township contends that there has been parity/equity between the F.O.P. and the IAFF units In the past. The Township appears to be correct. IAFF Exhibit 28 shows that since at least 2008, the total compensation afforded to members of the IAFF and F.O.P. units have been very similar. It is worthy of note, however, that employees in the IAFF unit work significantly more hours than the employees in the F.O.P. unit. The Township implies that the same wage increases should be afforded to the IAFF and the

F.O.P., urging that the settlement reached in the negotiations with the F.O.P. should establish the pattern of wage increases in the Township. The Township further contends that comparables with cities are not applicable since cities are funded differently than townships having revenue from income tax rather than property tax.

The Township also expresses concerns that the fire levy which expires in 2018 might not pass since a new school levy recently did pass. There is no correlation proven between the passage of a new school levy and the potential failure of the renewal of a fire levy. The passage of the school levy might even be taken as a good indication of the likelihood of the passage of the fire levy. In any event, the impact of a potential failure of the renewal of the fire levy would only be felt when only a few months remain to the collective bargaining agreement. The current carryover should be sufficient for the Township to weather the storm until a new collective bargaining agreement can be negotiated between the parties.

Having determined the issue of a potential inability to pay, the next issue to be reviewed is whether the settlement with the F.O.P. should be considered to have established a "pattern" for wages to be recommended in this proceeding. As in geometry, where one point does not define a line, in collective bargaining, one contract does not establish a pattern, especially where there is no evidence of what considerations went into the voluntary settlement. In many voluntary agreements, other factors go into the resolution of the wage issue, such as seniority, scheduling and job protection. In this case, there is no evidence of the actual considerations of the F.O.P. in reaching its voluntary settlement. The F.O.P. agreement can not be considered to have established a pattern for wages in the Township.

The next issue to address is the issue of whether the members of the IAFF are underpaid compared to employees performing similar work in other jurisdictions. A fact-finder is required to consider the compensation paid to bargaining unit employees for the services provided by the employee compared to that paid employees performing similar work:

(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;

It does not appear that the firefighters in the Township have a substantially greater workload in terms of calls per employee when calls are divided by FTE, rather than by bargaining unit employees. Testimony at hearing was that the average part-time employees work about one-quarter (1/4) of the hours of a full-time employee. The approximately twenty-four (24) part time employees would equal six (6) FTE so that the complement would be a total of twenty-eight FTE, or an average of approximately one hundred seven (107) runs per FTE which would represent a median amount of runs per FTE as shown on Union Exhibit 7. The proper comparison of appropriate compensation for the bargaining unit firefighters of the Township should be based on compensation, rather than on workload.

The best comparison would be of total compensation; wages less insurance expenses, this measure being a better comparable than wages to wages. Using this comparable, the compensation of IAFF unit in the Township is over five percent (5%) less than the compensation afforded to firefighters of the lowest paying comparable jurisdiction, Sheffield Lake, over six percent (6%) less than the lowest comparable township, Margaretta, and over eighteen percent (18%) lower than the average comparable jurisdiction. (See IAFF Exhibit 26)

The Township argues that Cities are not comparable to townships since their source of funding is different. The source of the funding, however, it not relevant as long as the sources of funding are continuing in nature.

Having dismissed the wage settlement with the F.O.P. as establishing a pattern, per se and having concluded that the Perkins Township firefighters are underpaid compared to firefighters in similar

jurisdictions, the wage component of the package offered to the F.O.P. must still be recommended. It is important that bargaining units have a perception of parity. Without departing from the stated wage increases, the recommendation for increases in compensation for the IAFF considering the Wellness Credit Alternative is between two percent (2%) and four percent (4%) higher than that of the F.O.P., depending on whether the firefighter is carrying coverage including a spouse. The recommendation also includes other increases in compensation not offered to the F.O.P. The actual first year increase recommended for the IAFF would be substantially higher than the increases expected in other jurisdictions, considering the first year wage adjustment and increase, the contribution to the HSA, the elimination of premium contributions, the increase in the educational increments, training allowance and uniform allowance.

The recommendation herein will go a long way to narrow the compensation gap between the Township firefighters and those of other jurisdictions. The IAFF proposal for the language of Article 22, Wages is recommended. Appendix A of the collective bargaining agreement is recommended to be as shown below:

APPENDIX A

(Includes Immediate \$2,000 Base Rate Increase for All Classifications Shown)

	Year #1	Year #2	Year #3
	10/1/16-9/30/17	10/1/17-9/30/18	10/1/18-9/30/19
	2.00%	2.50%	3.00%
Assistant Chief			
Annual Rate	\$67,687.79	\$69,379.99	\$71,461.39
40-Hour Rate	\$32.54	\$33.36	\$34.36

Captain

Annual Rate	\$61,719.81	\$63,262.81	\$65,160.69
40-Hour Rate	\$29.67	\$30.41	\$31.33
53-Hour Rate	\$22.39	\$22.95	\$23.64

Lieutenant/Inspector

Annual Rate	\$56,294.39	\$57,701.75	\$59,432.80
40-Hour Rate	\$27.06	\$27.74	\$28.57
53-Hour Rate	\$20.43	\$20.94	\$21.56

Class A

Annual Rate	\$51,362.16	\$52,646.22	\$54,225.60
40-Hour Rate	\$24.69	\$25.31	\$26.07
53-Hour Rate	\$18.64	\$19.10	\$19.68

Class B

Annual Rate	\$46,429.96	\$47,590.71	\$49,018.43
40-Hour Rate	\$22.32	\$22.88	\$23.57
53-Hour Rate	\$16.85	\$17.27	\$17.79

Class C-1

Annual Rate	\$41,990.94	\$43,040.72	\$44,331.94
40-Hour Rate	\$20.19	\$20.69	\$21.31
53-Hour Rate	\$15.24	\$15.62	\$16.09

Class C-2

Annual Rate	\$37,995.85	\$38,945.74	\$40,114.12
40-Hour Rate	\$18.27	\$18.72	\$19.29
53-Hour Rate	\$13.79	\$14.13	\$14.56
Paramedic Bonus	\$1,000.00	\$1,000.00	\$1,000.00

DISCUSSION OF DURATION

The IAFF has proposed a change in the Duration Clause to provide that notice to modify, amend or terminate the collective bargaining agreement, be given to the State Employment Relations Board in accordance with its regulations, instead of by certified mail. While the Township verbally expressed its agreement to the proposal, no formal confirmation of tentative Agreement has been received. The proposal of the IAFF is recommended.

POSTSCRIPT

This Report and Recommendation is intended to address all outstanding issues. However, if either party feels that an issue has not been addressed, it is suggested that a conference call be arranged to discuss that issue. Under Ohio Administrative Code 4117-9-05(k)(5), a Fact-Finder is required to consider any stipulations of the parties. The Fact-Finder will consider a joint motion to re-open the hearing for the presentation and consideration of any further stipulated matters.

Respectfully submitted,

/s/ GREGORY J. LAVELLE
27346 Edgepark Boulevard
North Olmsted, Ohio 44070
(440) 724-4538
lavellearb@aim.com

Tue, 05/23/2017 06:30:20 PM SERB

CERTIFICATE OF SERVICE

A true copy hereof was sent by electronic mail to Perkins Township Firefighters, IAFF Local 1953 c/o Ryan Lemmerbrock, Esq. at lemmerbrock@millabor.com, by electronic mail to Perkins Township c/o John Coppeler, Esq. at JCoppeler@flynnpykruse.com and by electronic mail to the State Employment Relations Board this 23rd day of May, 2017.

GREGORY J. LAVELLE

APPENDIX A

Article 9

SECTION 2. PROMOTION. When any vacancy to a rank of Lieutenant or above is to be filled by the Employer, the Employer shall post an internal notice for a period of fourteen (14) days. Any eligible employee may make written application for the position. The successful candidate will be determined by the results of a written examination, which shall count for ~~30%~~ 25% of the final score, by a practical assessment center evaluation, which shall count for 50% of the final score, and by an oral interview by a panel selected by the Employer, which shall count for ~~20%~~ 25% of the final score. The highest scorer from the combined sections shall be appointed if otherwise qualified and able to serve. An employee who has served as a Class A fire fighter with Perkins Township for a period of five (5) years is eligible to apply for the position of Lieutenant. An employee who has served as a Lieutenant for a period of two (2) years is eligible to apply for the position of Captain. An employee who has served as a Captain for a period of two (2) years is eligible to apply for the position of Assistant Chief. If there are not two or more candidates for the position for which a vacancy exists who have had the requisite years of experience at the lower rank, the years of service requirement with Perkins Township at the lower rank shall not apply. Assignment to the position of Fire Marshal requires an employee to have served as a Class A fire fighter with Perkins Township for a period of five (5) years and be in the possession of a State of Ohio Fire Safety Inspector's Certification. (See counter offer)

Counter offer

- (1) Change percentages to 50% for assessment center, 25% for written and 25% for interview. (Tentative agreement)
- (2) Add language that "next promotable" lieutenant test will be offered every two years and the results will be valid for the next two years that follow without any further retesting unless only one name is left on the list, in which retesting will be done. (Tentative agreement)
- (3) To be eligible for the lieutenant test, applicants must be certified as Safety Officer, Fire Safety Inspector, and Fire Officer I. The same requirements apply to promotion to captain and assistant chief. (Tentative agreement)
- (4) To be eligible to test for captain, applicants must have Fire Officer II, a Fire Service or EMS instructor, and must have completed at least 12 hours toward and associates or bachelors degree in fire science, public administration, medical sciences, emergency management or fire administration. and must have completed at least 6 hours toward and associates or bachelors degree in fire science, public administration, medical sciences, emergency management or fire administration. An additional 6 hours will be added in the next contract. (Tentative agreement)
- (5) To be eligible to test for the position of assistant chief, in addition to the foregoing captain requirements, the applicant must have completed a minimum associates degree in fire science, public administration, medical sciences, emergency management or fire administration. (Tentative agreement)

SS
mc TA 9/17/12

Service requirements for testing for a promotion must be met by the day the test is given. ~~or by the test expiration date.~~ (Tentative agreement)-

ISSUE 3: SICK LEAVE – ARTICLE 11

Section 1. Each employee shall be entitled for each completed **pay period (two [2] weeks)** ~~eighty~~
~~(80) hours~~ of active pay status to sick leave of 4.6 hours with pay.

Sections 2 – 4. [CCL]

Section 5.

A. An employee upon resignation from the Department shall receive payment for thirty percent (30%) of unused sick leave up to a maximum of 288 hours for 40 hour employees and **410** ~~432~~ hours for **53** ~~56~~ hour employees, together with full payment for all accumulated or unused personal days, holidays, vacation leave, and overtime, but such payment shall in no event exceed ten thousand dollars (\$10,000.00). Payment shall be based on the employee's base wage rate at the time of resignation or retirement. An employee must have a minimum of ten (10) years services with Perkins Township in order to be eligible for payment of unused sick leave upon resignation.

B. An employee, upon retirement or death, shall receive payment for fifty percent (50%) of his/her unused sick leave up to 480 hours for 40 hour employees and **682** ~~720~~ hours for **53** ~~56~~ hour employees. Employees who retire under normal service retirement, as defined below, shall have completed at least ten (10) years service with Perkins Township to qualify. In case of death the employee's spouse or estates shall receive payment.

C. [CCL]

Section 6. Evidence Required for Sick Leave Usage. The Employer may require an employee to furnish a written, signed statement explaining the nature of the illness, to justify the use of sick leave. When the **53** ~~56~~ hour employee is absent for three (3) or more of his consecutive work days or the 40 hour employee is absent for five (5) of more of his consecutive work days due to illness, the employee shall be required to furnish a statement from a licensed physician notifying the Employer that the employee was unable to perform his duties. Falsification of any statement furnished in conjunction with sick leave benefits shall be grounds for disciplinary action, up to and including dismissal.

Sections 7 – 9. [CCL]

Section 10. Documentation Upon Sick Leave Usage. Any employee who is on sick leave for at least three (3) consecutive duty days for a **53** ~~56~~ hour employee or five (5) consecutive duty days for a 40 hour employee must provide the proper documentation prior to return to work. This documentation shall consist of a completed leave slip, and a doctor's slip as required by this Article. The proper documentation must be turned in to the employee's supervisor prior to the start of the shift. Failure to turn in the proper documentation will result in the absence being unapproved, with loss of pay by the employee for the days in question.

Section 11. [CCL]

Article 21

Section 9. It is hereby agreed that each employee may wear shorts in lieu of duty pants from the first day of May to the first day of October. The type and style of shorts shall be mutually agreed on between the employer and employees. It is also agreed that t-shirts may be worn with shorts without the standard polo shirts. It is the responsibility of the employee to maintain t-shirts that are not faded and have silk-screening that is not cracked or peeling. It is also agreed that any tattoos that can be seen as a result of wearing shorts, must be covered with an appropriate cover.

Tentatively agreed upon.

TA 9-7-16
BS

TA 9-7-16
JCC

Article 22

SECTION 7. PARAMEDIC PAY DIFFERENTIAL. All full-time paramedics shall be paid a bonus each year in October in the amount of \$1,000.00 in year one, \$1,000.00 in year two and \$1,000 in year three.

Tentatively agreed upon.

RB 9-7-16 TA TA 9-7-16 JAC

SECTION 3. TEMPORARY APPOINTMENTS. When a fire fighter is appointed to act as Lieutenant, the Class A Fire fighter who is the highest promotable fire fighter based on the most recent promotion list shall receive Lieutenant's pay on an hour for hour basis for the time they serve in that position at the rate of pay equal to the difference between the ~~56~~ hour base rate for those two classifications. When a Lieutenant is appointed to act as Captain, that Lieutenant shall receive Captain's pay on an hour for hour basis for the time they serve in that position at the rate of pay equal to the difference between the ~~56~~ hour base rate for those two classifications.

Township Offer – A firefighter paid as the acting lieutenant will be the highest promotable on the shift where a vacancy is occurring. If the shift does not have a next promotable, the most senior member on duty will be the acting lieutenant.

Tentatively agreed upon.

RB 9-7-16 TA TA 9-7-16 JAC

APPENDIX B

ARTICLE 13

PERSONAL DAYS

SECTION 1. Each employee shall be granted four (4) days off duty with pay on January 1, 2017, except for newly hired employees, who shall be entitled to one (1) day off each quarter through June 30, 2017. No personal days will be granted in 2018 or thereafter. A personal day shall be either twenty-four (24) hours or eight (8) hours depending on the employee's regular classification. The personal days may be used for personal reasons of the employee.

SECTION 2. Personal days other than for emergency-use will be scheduled only in a minimum of half day increments (12 hours/4 hours) and with the approval of the Chief.

SECTION 3. If scheduling allows, the Chief may permit more than one employee at a time to be on a personal day, but he shall not be required to do so. However, except for emergency use as referred to in Section 1, no more than two (2) employees per shift will be allowed to be on scheduled paid leave at any time, including personal days, comp time, educational leave or vacation time. Personal days may be taken back-to-back by an employee when scheduling allows.

SECTION 4. Personal days will be approved on a first come, first serve basis. When approved in writing, personal days shall not thereafter be canceled except in emergency situations or when minimum manpower levels cannot otherwise be met, but only after the Chief and/or Captains have first called all paid-on-call and full-time fire fighters in an attempt to meet minimum manpower levels or otherwise avoid cancellation of the personal days which were approved in writing.

SECTION 5. Request for personal days must be made a week in advance. However, in the case of emergencies, as referred to in Section 1, when advance notice is not possible, a phone call to the officer on duty is required as soon as possible.

SECTION 6. The Employer shall grant bereavement leave of two consecutive calendar days with pay in the event of the death of a member of the immediate family of an employee. The immediate family is defined as spouse, parent, parent-in-law, step-parent, child, step-child, brother or sister or their spouses

(for purposes of Section 1 emergencies as well as under this Section 6), aunt, uncle, niece, nephew, grandparent, or relative living in the same household with the employee. Employees may use two days of accumulated sick leave for bereavement leaves in excess of two days. Written notice from a funeral home of the death for which an employee seeks bereavement leave or a published obituary identifying the employee as a relative shall be provided to the Employer. For the purposes of this Article, for fifty-three (53) hour employees, payment for a day shall mean a a twenty-four (24) hour day and for forty (40) hour employees, it shall mean an eight (8) hour day.

SECTION 7. Upon retirement or resignation from the department, employees shall be paid for unused accrued personal days in the year in which they retire. The employee will receive this check within thirty (30) days of their last date of service.

SECTION 8. Personal days do not accrue from calendar year to calendar year. However, an employee who was unable to take all personal days during a calendar year through no fault of that employee shall be paid for one (1) unused personal day, upon presentation of appropriate documentation to the Perkins Township Clerk to establish this.

APPENDIX C

NEW ARTICLE

SCHEDULING LEAVE

SECTION 1. Seniority shall govern in the scheduling of all paid leave for those requests filed between January 1 and March 31. Applications for leave filed after March 31 will be approved on a first come basis.

SECTION 2. Vacation requests will take precedence over any other scheduled paid leaves. Kelly Days will take precedence over any other scheduled paid leaves except for vacations.

SECTION 3. If scheduling allows, the Chief may permit more than one employee at a time to be on a personal day, but he shall not be required to do so. No more than two (2) employees per shift will be allowed to be on scheduled paid leave at any time, including vacations, Kelly Days, personal days comp time, approved educational leave or sick time.

SECTION 4. Vacations will be scheduled three (3) weeks in advance and with the approval of the Chief. If scheduling allows, the Chief may permit more than one employee at a time to be on vacation, but he shall not be required to do so.

SECTION 5. The Employer shall grant bereavement leave of two (2) consecutive calendar days with pay in the event of the death of a member of the immediate family of an employee. The immediate family is defined as spouse, parent, parent-in-law, step-parent, child, step-child, brother or sister or their spouses, aunt, uncle, niece, nephew, grandparent, or relative living in the same household with the employee. Employees may use two days of accumulated sick leave for bereavement leaves in excess of two days. Written notice from a funeral home of the death for which an employee seeks bereavement leave or a published obituary identifying the employee as a relative shall be provided to the Employer. For fifty-three (53) hour employees, payment for a day shall mean a twenty-four (24) hour day and for forty (40) hour employees, it shall mean an eight (8) hour day.

APPENDIX D

SECTION 3. It is hereby agreed that a training allowance of six hundred fifty dollars (\$650.00) per employee who is covered under this Agreement will be established. The allowance will be an annual amount beginning January 1st of each year of this contract. Monies from this allowance are to be used towards fire related or EMT related schooling or training, with a minimum of two hundred fifty dollars (\$250.00) of the annual allowance to be used exclusively for fire training. All schooling will be scheduled with the approval of the Fire Chief. Employees shall be permitted to pool their training allowances for training with outside instructors in which event a pro-rata share of the expenses for the training will be charged against the training allowance for all those employees attending. In addition to pooling allowances for training as set forth in the preceding sentence, the training allowance shall be used for the following: tuition, tests, books, meals up to \$40.00 per day, and lodging up to \$25.00 per day while attending the approved schooling. Lodging expenses in excess of \$25.00 per day per employee will be paid from the training allowance funds for the entire department as long as the lodging accommodations were approved in advance by the Chief. Reimbursement for approved expenses will be made by separate check within 21 days of receipt by the Township Clerk's Office. The Township will continue to provide a fire department vehicle for the transportation to and from approved sessions when possible. When not possible, the employee will be reimbursed for mileage at the rate permitted under the then current IRS regulations per mile. Mileage reimbursement is not to be deducted from the employee's training allowance.

SECTION 4. Any training allowance monies remaining from the prior year will be pooled and divided equally between all members covered by this Agreement and available to members for use between March 1 and October 1. On November 1st of each calendar year, any money from the schooling pool not applied for will then be distributed on a pro rata basis among all who applied for the extra schooling money before November 1st. On December 31st any monies remaining in the pool will be used by the Fire Chief to purchase educational aids for the department. All requests for use of pooling funds shall be submitted on a form approved by the Township Clerk.

SECTION 5. The training allowance may be used toward tuition and/or books for courses toward a degree in Fire Science or Medical Science. Reimbursement for tuition and/or books will be made upon submission of proof of successful completion of the course. Expenses for meals, lodging, and mileage incurred for courses taken which lead to a degree in Fire Science or Medical Science will not be reimbursed.

SECTION 6. At the discretion of the Chief, more than one (1) man from an on-duty shift may be allowed off-duty to attend schooling at a time. If manning levels drop below minimum standards, any man authorized to attend schooling will be permitted to do so only if he replaces himself with another full-time fire fighter at no expense to the Township.

SECTION 7. A full-time employee who attends non-mandatory schooling on his off-duty time will be reimbursed for mileage expenses only.

SECTION 8. A full-time employee who is required to attend mandatory schools outside of Erie County shall be reimbursed for meals if not included in the fees of the school. Meals shall be reimbursed in the amount of \$40.00 per day. Reimbursement under this section shall be deducted from the training allowance.

SECTION 9. Paid educational leave shall be granted only for classes mandated by the department, or where necessary to maintain certifications listed in Article 9, Section 1 or where beneficial to advancement in rank. All other educational leave will be scheduled on employees' personal time and not compensated by the Township.

APPENDIX E

ARTICLE 20

INSURANCE

SECTION 1. The Employer will maintain health and hospitalization insurance for each employee electing coverage. Premiums shall be borne as set forth in this Article.

SECTION 2. Under the policy to be in effect as of January 1, 2017, the Employer will pay 100% of the premiums for 2017, including \$56,000.00 paid to obtain lower premiums for 2017, and will establish health savings accounts for any employees who wish to contribute to such accounts at no cost to employees. For 2017 only, the Employer will contribute \$500.00 into an HSA account per employee for those employees electing to have an HSA account and having single coverage and an additional \$500.00 for employees who also have coverage for a spouse, dependents or family coverage. The deductible for each employee will be \$2,500/\$5,000.

Each employee (and covered spouse) may earn credits for each of the five (5) segments of the Wellness Program. The Wellness Credits would be \$ 400.00 for each of the five segments successfully completed each year.

The Township, however, may determine not to offer a Wellness Program. For each year a Wellness Program substantially equivalent in terms of services provided and potential credits earned is not offered, the Township shall pay on the first pay period which commences in said calendar year the sum of one thousand dollars (\$ 1,000) to each employee and covered spouse as of the end of said pay period

SECTION 3. "Insurance years" hereunder shall run from January 1st to December 31st. The Employer's contributions to healthcare expenses will be capped at \$650,000.00 in 2018, and \$660,000.00 in 2019. If the premiums paid by the Employer in 2017 are less than \$621,000, the 2017 savings from that amount will be added to the \$650,000 cap for 2018. If the premiums paid by the Employer in 2018 are less than \$650,000, plus the savings added to the cap for 2017, the 2018 savings will be added to the \$660,000 cap for 2019. For example, if the amount paid for premiums in 2017 is \$ 611,000 not counting the

\$ 56,000 and the amount spent in 2018 is \$ 640,000, the cap for 2019 would be \$ 680,000. (\$ 10,000 + \$ 10,000 + \$ 660,000)

SECTION 4. If the cap amount for 2018 or 2019, plus any savings referred to in Section 3, is insufficient to pay 100% of the projected total of premiums for the year, any premium owed after deducting the cap from the annual premium amount will be divided among participating employees and the Employer based upon the following formula: a single employee participant will be considered as representing a unit of 1.0, an employee and spouse participant will constitute 2.5 units, an employee and child(ren) participant will equal 2.0 units, and an employee with family coverage will equal 3.0 units and the Employer will be considered to be equal to the total number of units of the employees, spouses and children. The excess premium over the amount of the Employer's cap will then be allocated among participating employees and the Employer on the applicable per unit basis with deductions made from each employee's paycheck for his or her share of the premium. If projected premiums for 2019 would exceed \$ 780,000, either party may re-open the collective bargaining agreement. If either party re-opens this Agreement under this provision, this Agreement, unless otherwise agreed, would be deemed to expire on December 31, 2018.

SECTION 6. During the second and third insurance years of this Agreement, each covered employee's contribution per pay, if any, will be determined and provided to them as early as reasonably possible by the Employer.

SECTION 7. Coverage for an employee's spouse shall be provided only where the spouse has no coverage available through the spouse's own employment. If an employee and the employee's spouse each have separate health insurance coverage and they also have dependent children, their dependent children shall be covered under the health insurance policy of the spouse whose birth date occurs first in the calendar year. Coverage for an employee's dependent children shall otherwise be provided only where there is no coverage for such children under a spouse's health insurance policy or where there is an order for the employee to provide such coverage made by a court of competent jurisdiction.

SECTION 8. Insurance coverage shall not be effective until the first day of the first month after the first thirty (30) days of employment.

SECTION 9. In any year in which total premiums would increase by more than ten percent (10%) over the premiums for the prior insurance year, the Employer shall not be required to renew the then current coverage for the next insurance year. Under those circumstances, the Township Health Insurance

Committee comprised of one (1) representative from the Fire, Police, Highway, and administrative departments and the three (3) Township Trustees shall negotiate possible actions to be taken to change the carrier and/or coverage, except that there shall be no increase in the deductibles, no change with respect to the persons covered and no change in the Employer percentage of contribution towards said persons. The determination of the Committee, acting within its jurisdiction, shall be binding on the employees. Nothing herein shall prevent the Employer from changing carriers if satisfactory coverage is available at a lower price.

SECTION 10. All employees hired into the bargaining unit after the signing of this Agreement shall be required to be tobacco-free as a condition of employment and continued employment with the Employer. For the purposes hereof, an employee, to be tobacco-free must also refrain from all tobacco products and smoking devices involving nicotine.

SECTION 11. Fifty thousand dollars (\$50,000.00) of double indemnity life insurance will be provided for each full-time employee.