

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
JUL 21 10 31 AM '97

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In the Matter of)	
Fact-Finding Between:)	
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INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL NO. 2286)	Case No. 96-MED-12-1161
)	
)	
-and-)	
)	Jonathan I. Klein,
)	Fact-Finder
)	
COVENTRY TOWNSHIP BOARD)	
OF TRUSTEES)	
)	

FACT-FINDING REPORT
and
RECOMMENDATION

Appearances

For Union:

Russell M. Pry, Esq.
 Attorney for IAFF, Local 2286
 Jim Eberly
 President, Local 2286
 Dan Ferguson
 V. Pres., Local 2286

For Employer:

Lisa A. Kainec, Esq.
 Harley M. Kastner, Esq.
 Attorneys for Coventry Twp.
 Joanne M. Murgatroyd
 Township Clerk
 David Calderone
 Fire Chief

Date of Issuance: July 18, 1997

I. PROCEDURAL BACKGROUND

This matter came on for hearing on April 23, 1997, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on January 10, 1997. The hearing was conducted between the Coventry Township Board of Trustees ("Township"), and the International Association of Firefighters, AFL-CIO, Local No. 2286 ("Union"), at 68 Portage Lakes Drive, Akron, Ohio. The bargaining unit consists of the full-time positions of firefighter/EMT, firemedic, lieutenant and captain. There are currently seven full-time firemedics and one lieutenant who are members of the unit.

Prior to the fact-finding hearing, the parties engaged in negotiations to resolve their differences over three sections of the collective bargaining agreement subject to a mid-term reopener: base wages, insurance and call-back. (Article XXVI). The parties resolved all but the issue of base wages as contained in Article XXIII, Section 1 of the collective bargaining agreement prior to the date of the fact-finding hearing.

The fact-finder incorporates by reference into this Report and Recommendation all tentative agreements between the parties relative to the current negotiations on the remaining provisions subject to the reopener. In making this recommendation the fact-finder has considered the arguments and evidence presented by the parties at hearing, in their post-hearing statements and the reply brief filed by the Township.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendation contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATION

Wages

The Township's clerk, Joanne M. Murgatroyd, testified concerning her knowledge of the budget and the Township's financial condition as of the date of the fact-finding hearing. In her view, the Township's expenses continue to exceed revenues. The total

budget for 1996 was \$3,181,000; for 1997 the budget is \$3,026,854 based on line-by-line review of expenses. The Township's revenues are generated through levies and local government distributions, permissive vehicle taxes, gas tax and ambulance fees. There are no income taxes. Generally, the first distribution from Summit County occurs at the end March or April, but as of the date of hearing no first half settlement had been received. Thus, the Township relies on its carryover in the general fund to serve as a source of loans to other funds for such items as payroll, necessary repairs and utilities.

The clerk identified two tax levies on the ballot during the November 1996 elections: a general fund levy which generates a total of \$150,000 in revenues of which \$60,000 was new; and a police levy which failed. The latter generated approximately \$148,000 annually, but the flow of monies from the police levy ceased at the end of 1996. Since the police department has its own budget, the Township's police service provided through a contract with the Summit County Sheriff's Department was reduced to a single car in January 1997. A \$72,000 transfer from the general fund was necessary just to maintain single car service. The levy failure also resulted in the layoff of a road department employee.

The clerk testified that the failure of the police levy also impacted the fire department by reducing monies for training expenses. The Township must plan for the cost of utilities at a flat rate, rather than building in a percentage increase over the prior year's expenses. Moreover, the shortfall in the police department for 1996 caused \$60,000 to be transferred from the general fund into the police fund. Two levies were placed on the May 6,

1997, ballot: a two mill police levy (one mill replacement/one mill increase), and a one mill road renewal levy. According to the township clerk, passage of the police levy in 1997 will not result in any immediate revenue -- there will be no income received from the levy until April 1998. However, the Township plans to immediately reestablish full, twenty-four hour police coverage using two patrol cars as in 1996 due to the significant population increase during the summer months. However, there will be no excess operating funds in the police department if the levy passes in May 1997.

The Township presented evidence of its fire department budget for 1997. This budget showed the fire department's total funds at \$1,243,920.35,¹ including the transfer of \$115,000 from the general fund. This sum for the department represents 41.10 percent of the total Township funds.² When all payroll, including longevity, step increases and benefits are included, the sum total is \$931,000, or 74.84 percent of all fire department funds. In comparison the total police levy funds, after taking into account the failure of the 1.3 mill in

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1. The total Fire department funds consist of monies generated from: a) a 5.9 mill special fire levy - \$744,967.40; b) a 1.5 mill fire operating levy (renewal) - \$244,738.96, which includes \$60,000 generated in dispatch fees for Lakemore and Springfield; c) a five year restricted equipment levy of 1.0 mill - \$62,089.08 (Township Exhibit 4); d) nonresident ambulance transportation fees based on 1996 of \$72,124.91, and debt service fund for a fire truck in the amount of \$120,000. (Township Exhibit 1). The 1.5 mill levy will be up for renewal on the November 1997 ballot. The 5.9 mill levy was passed in 1995 and remains in effect for five years.
 2. The clerk testified that despite the transfer of \$115,000, the fire department will require another \$50,000 to \$40,000 in additional monies from the general fund to operate.

November 1996 and the current 1.0 mill, constitute a budget in the police fund of \$214,189.56, or 7.08 percent of the total Township funds.

Murgatroyd further stated on direct examination that increases in costs will consist of overtime compensation due to the call load experienced by the fire department. Further, based on past increases in health insurance premiums (Township Exhibits 2 and 3), a premium increase of seven percent is projected which has not been calculated in the budget. The shortage of funds is expected to be approximately \$150,000 for the 1997 budget, impacting the general fund and carryover for the next year.

The Township offered evidence of fire department budgets in the neighboring townships of Copley, Franklin and Springfield, and the City of Green. A summary was prepared from data obtained from the Summit County auditor's office, the townships and city. It did not include the cities of Akron and Barberton due to population size and their reliance on income tax. The community comparison reveals that in 1996 the Township had a cash carryover in its fire department funds of \$35,097; Copley - \$223,764; Franklin - \$211,885; Green - \$386,029; and Springfield - \$125,520. As of January 1, 1997, the cash carryover in total fire department funds is \$33,194 for the Township; \$139,210 for Copley; \$332,989 for Franklin; \$474,929 for Green; and Springfield had \$433,169. Moreover, \$30,675 of the 1997 cash carryover represents funds generated by the restricted equipment levy leaving only \$2,519 to work with in operating carry over. The fire department budget represents 37.69

percent of the Township's total budget compared with 26.72 percent for Copley; 33.71 percent for Franklin; 17.25 percent for Green and 26.83 percent for Springfield.

Murgatroyd highlighted various capital improvements and related costs for the Township's fire and road departments, including the cost of vehicle replacements. (Township Exhibit 1). The Township also owes an accrued liability of \$34,000 on an outstanding obligation to the police and firemen's disability and pension fund from 1973 in the amount of \$10,000. (Township Exhibit 5). She also disputed the Union's claim of actual unencumbered carryover balances in the Township's budget as reflected on the Union's pre-hearing position statement. The previous clerk failed to timely encumber those sums when the expenses and contracts were entered into, and failed to pay expenses currently allowing them to carry over. She opined that the 1997 carryover of \$353,274 is not accurate, and that based on the current budget and projections the 1998 carryover is estimated at \$128,000.

On cross-examination, the Union presented the Official Certificate of Estimated Resources dated October 11, 1996, and the Amended Certificate of Estimated Resources dated March 26, 1997. (Union Exhibits H and I). The actual unencumbered balance for January 1, 1997, which the clerk of the township certified to be correct reveals actual unencumbered balances in the general fund of \$239,218 and a total of all funds of \$353,274. The certificate dated October 11, 1996, reflects a total of all funds of \$3,379,030 whereas the amended certificate's total is \$3,165,754. Murgatroyd stated this discrepancy was due to a typographical error and other adjustments.

Union Exhibit F represents the certificate of estimated resources for the budget year 1996 dated November 8, 1995, by the commission. (Union Exhibit F). The certificate reflects a total for all funds of \$2,588,905. On the amended certificate for 1996 certified by the budget commission on October 30, 1996, the total estimated available resources in all funds was \$3,245,789. (Union Exhibit G). The difference of approximately \$700,000 includes, according to Murgatroyd, transfers out of the general fund rather than general funds from outside resources -- the transfer remains in the general fund number so that it is available as a resource to transfer. The differences between the estimated available resources in the general fund reflects the inclusion of the carryover balance.

The official and amended official certificates for the fiscal year beginning January 1, 1995, reflect a total difference of \$107,129 -- the 1995 unencumbered carryover balance was \$102,371. (Union Exhibits D and E). The Union further highlight the inheritance tax for 1995 at \$85,000; \$79,000 for 1996 and \$28,000 for 1997. Murgatroyd could offer no explanation for the significant discrepancy for 1997 other than to state her estimate was based upon the receipts. She further indicated that despite property reappraisals in Summit County in 1996, the new valuations generated only \$20,000 for the general fund. The funds generated by the police 1.30 mill levy which failed in the fall 1996 account for the difference, in part, between the total estimated available resources in 1996 versus 1997. (Union Exhibits G and I).

The Union pointed out that under a Joint Economic Development District agreement with the City of Akron, the Township will be receiving sewer and water line

extensions into the community, and protection against further annexation by Akron. The Township has also entered into a ten year moratorium with the City of Green on further annexation.

It was also pointed out by the Union that the clerk could not state with certainty that the data with respect to the jurisdictions of Copley, Franklin, Green and Springfield contain any percentage wage increases granted those departments. Although copies of their annual budgets were requested by the clerk, none were provided and she compiled the comparison summary using the estimates filed with the county auditor by those jurisdictions. One difference appears to be the Township's use of the 1.0 mill equipment levy as compared with the other jurisdictions use of fire district funds for purchase of tools and equipment. Thus, the cost of such equipment is to be paid out of those fire departments' cash carryovers. (Township Exhibit 1 at 3).

The Township clerk was unable to specify which portion of the payroll paid out of the 4.9 mill fire levy is a cost attributable to the bargaining unit, and the amount for the chief and assistant chief. She also was unable to specify the portion of payroll attributable to part-time employees and dispatchers. The payroll and benefits as a percentage of the total fire department budget, 71.9 percent, includes all employees in the department. (Township Exhibit 1 at 5). Murgatroyd estimated that to provide the nine bargaining unit members with a 3.5 percent raise would cost the Township \$20-25,000 per year.

On redirect, Murgatroyd identified the actual and estimated inheritance taxes contained on the Township's annual budget for January 1, 1997. (Union Exhibit A). The actual inheritance tax for 1994 was \$48,464, \$25,087 in 1995, actual and estimated for 1996 in the amount of \$15,776, and \$28,000 is currently estimated for 1997. She stated operating funds also are used to pay for tools and equipment, and the Township does not rely just on the 1.0 mill equipment levy. Murgatroyd asserted that due to the pending repairs to Township buildings and equipment, the general fund cannot continue to fund the fire department's growth.

Fire Chief David Calderone confirmed the Township's last offer on wages as a wage freeze in years 1997 and 1998. Calderone testified that he prepared a schedule summarizing the 1996 wages for Copley, Green, Springfield and Franklin from their respective collective bargaining agreements. (Township Exhibits 7 and 8). Since there were differences between the jurisdictions as to the number of hours of work required on an annual basis, Calderone calculated the hourly top rate for the positions of firemedic, lieutenant, captain, assistant chief and chief. All of the comparable top wage rates are not achieved within the same period of time. Of the eight firemedics in the department as of the date of hearing, only four have reached top pay. There are seven vacancies in the department.

The top wage rate for firemedics as reflected on Township Exhibit 8 is \$27,000, or \$9.25 per hour for Springfield; \$36,187, or \$13.38 per hour for Franklin; \$36,169.48, or \$14.49 per hour for the Township's firemedics; \$36,059, or \$12.38 per hour for Green; and

\$39,312, or \$15.75 per hour for Copley. He described Copley, which has the same number of annual hours of work as the Township, as an affluent community with a more expensive housing base. According to Calderone, this is evident in Copley's budget which is \$2.4 million more than the Township.

Chief Calderone also described the current manning levels of the fire department as the absolute minimum. Current levels are due, in part, to a firemedic on administrative leave and a recently vacated lieutenant position. The chief testified he planned on hiring additional part-time staff. Rather than the normal complement of three firemedics per shift, often only two firemedics are on duty. When a shift has less than two people, the second position is filled by using voluntary or mandatory overtime. Calderone noted that if required to pay wage increases not contingent on passage of additional levies this fall, ". . . it would be disastrous." He expressed concern over the passage of the 1.5 mill levy in November, and the potential loss of \$200,000 in income if the levy goes down to defeat.

Chief Calderone disputed the percentage wage increases of 3 percent in Springfield, 4 percent in Franklin and 3 percent in Copley for 1997 referenced by the Union in its pre-hearing position statement. He also disputed the fact that the cities of Akron and Barberton were comparable based on their department size, population, and call load. On cross-examination, Calderone admitted that the numbers he used in Township Exhibit 8 did not reflect the fact that effective September 1, 1996, Franklin paid comparable employees

\$37,635.38, or \$13.92 per hour. He further admitted that the current top base wage for firemedics in Springfield is \$27,945, rather than \$27,000 as listed on Township Exhibit 8.

Moreover, the number of alarms experienced by the fire department in 1996 was 1,650, rather than the 1,500 listed on Township Exhibit 8. He also acknowledged that although the ambulance billings are down, a large portion of non-resident billing comes with the influx of summer population at the lakes. Coventry is surrounded by Franklin, Akron, Springfield and Green, and the Township has mutual aid packs with each entity.

The president of the Union, James Eberly, verified the increase in the number of calls answered by the fire department. The bulk of these calls are answered by the full-time employees. Eberly stated employees within the department are looking for better paying jobs. On cross-examination, he acknowledged that his earnings reflected overtime on call backs although he would not call it "substantial." He agreed that in the first year of the contract members of the bargaining unit received a 3 percent increase, as well as other increases in uniform allowance, shift leader pay, and incentives associated with obtaining an associate degree or bachelor's degree (an additional 1 percent and 3 percent of base rate, respectively), tuition reimbursement for "college fire degree courses," and a lump sum bonus of 2 percent of base pay for responding to 15 percent or more of available call-backs in the Township for the preceding calendar year.

The parties presented cogently framed arguments in support of their respective positions: the Union's proposal seeking a 3.5 percent increase in each of the two remaining

years of the agreement, and the Township's request for a wage freeze in both years. Of the statutory criteria addressed by the parties, the relevant and probative evidence was presented primarily on two of the listed criteria: ability to pay and comparable jurisdictions.

The fact-finder determines that by examining only evidence of increases in comparable jurisdictions strong support can be found for the Union's proposal of a 3.5 percent wage increase. The fact-finder must disregard Akron and Barberton on the basis of the size and funding structure of those entities. Taking the two most comparable jurisdictions, Springfield and Franklin, and utilizing the most current data elicited during the fact-finding hearing, the proposal by the Union is within the percentage increases received by comparable bargaining units in those jurisdictions.

Nevertheless, the Township has demonstrated a serious financial condition for the current calendar year which greatly impinges on its ability to finance and pay for the Union's proposal on wages. While the Township has secured economic development and/or annexation suspension agreements with its neighbors, which agreements may have long term positive economic consequences for the Township, there is no credible evidence such agreements have brought any immediate economic relief to the Township. In making the recommendation set forth below, the fact-finder also has considered the bargaining unit's hourly rate and standing relative to the comparable communities.

There is no question that the fire department is the largest and most expensive component of the Township government. The argument of the Union suggests this is simply a

question of a choice the Township's officials made at some point in time. In reality, after due consideration to the number of calls for assistance, it is readily apparent utilization of the department's services by residents (and non-residents) has established the level and scope of service the fire department seeks to deliver. As things stand at present, the department's staffing is at a minimum and call-backs are prevalent. Similarly, it is less than useful for the Township to highlight the large percentage of its budgeted resources directed to the fire department when it contracts out police service and provides fire protection as its central function.

For the current fiscal year, the fact-finder determines that the Township has demonstrated an inability to pay a wage increase to the bargaining unit members. The evidence substantiates a finding that the total funds available to the fire department are insufficient to meet the obligations of the department without a significant infusion of monies from the general fund.³ Unlike the examples offered of comparable communities, there were virtually no monies left in the department's cash carryover as of January 1, 1997. Neither does the fact-finder find fault in the projected revenue to the general fund in the form of inheritance tax for 1997 based upon the actual receipts for the years 1994, 1995 and 1996. The fact-finder concludes there is no credible evidence that the Township has in its preparation of prior budgets materially underestimated its revenue and overestimated its expenses. If anything, the testimony of the present clerk would suggest that there was a failure to properly

3. The fact-finder is not unmindful of the fact that transfers to the fire department from the general fund have occurred in the past and are likely in the future.

account for expenses and accurately report the fact that the general fund's carryover balance was more encumbered than the financial reports would suggest.

To take a snapshot of the current financial condition of the Township does not necessarily lead, however, to a finding that a freeze is appropriate for the third year of the current collective bargaining agreement. The Township asserted in its pre-hearing position statement that its ability to use its general funds was greatly impeded by the rejection of the police levy renewal in November 1996. According to this argument, the Township was not in a position to set aside additional monies for wages in the fire department.

The Union has pointed out in its post-hearing brief to the passage of the police and road department levies in a May 6, 1997, special election. In its reply brief, the Township adroitly reasons that due to a commitment made to the general public to restore full police protection effective June 1, 1997 if the levy passed, the Township will be paying \$60,923.38 for the balance of 1997 from general fund carryover balances. While this reasoning factors into the fact-finder's decision to recommend a freeze in the second year of the agreement, he is not convinced that this circumstance will so impede the funds available in the general fund carryover and monies available in 1998 as to necessitate a wage freeze in the third year of the agreement.

It was apparent to the fact-finder that a commitment had been made to the bargaining unit to place a fire levy on the ballot in the fall of 1996 as part of the negotiations for the current agreement, including the wage reopener. According to the fire chief, the

Township trustees withheld placement of the issue on the ballot. Whether or not the Township would have obtained an increase in revenue had a fire department levy been placed on the ballot in the fall of 1996, the fact remains it declined to place the issue before the electorate. Further, while repairs and capital improvements are outlined in Township Exhibit 1, it remains unclear the extent to which some of these improvements might be amortized over a number of years, rather than approached as if all must be budgeted within the term of the current agreement. The fact-finder is not persuaded by the clerk's suggestion to prioritize the payoff of the Police and Firemen's Disability and Pension Fund liability ahead of a just and reasonable wage increase to the bargaining unit in the final year of the agreement.

Based upon the foregoing findings, including review of all the evidence and statutory criteria, the fact-finder recommends a wage freeze in the second year, and a wage increase of 3.5 percent in the last year of the collective bargaining agreement.

Final Recommendation

It is the fact-finder's final recommendation that the base wage rates effective the first pay cycle in January 1996 shall remain in effect for 1997. Effective with the first pay cycle in January 1998, the existing base wage rates for employees shall be increased by three and one-half percent (3.5%).


JONATHAN I. KLEIN, FACT-FINDER

Dated: July 18, 1997

CERTIFICATE OF SERVICE

Originals of this Fact-Finding Report and Recommendation were served upon Russell M. Pry, Esq., Briggs & Pry, 1655 West Market Street, Suite 400, Akron, Ohio 44313-7024, and upon Lisa A. Kainec, Esq. and Harley M. Kastner, Esq., Millisor & Nobil, 9150 South Hills Boulevard, Suite 300, Cleveland, Ohio 44147-3599, and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by express mail, sufficient postage prepaid, this 18th day of July 1997.



JONATHAN I. KLEIN, FACT-FINDER