

STATE EMPLOYMENT  
RELATIONS BOARD  
May 27 10 54 AM '99

**IN THE MATTER OF FACT-FINDING PROCEEDING**

**BETWEEN**

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**CHAMPION TOWNSHIP  
TRUSTEES**

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**Case No.: 99-MED-01-0035**

**and**

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**Hearing Date: May 6, 1999**

**CHAMPION CAREER  
FIREFIGHTERS  
IAFF LOCAL 2948**

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**Findings and Recommendations:  
May 26, 1999**

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**Representing the Trustees:**

**Daniel B. Letson, Esquire  
Advocate**

**Representing the Union:**

**Matthew Balut  
President**

**Kevin Kennedy  
Local 2948**

**William J. Miller, Jr.  
Fact Finder**

## **SUBMISSION**

This matter concerns fact finding proceedings between the Champion Township Trustees (hereafter referred to as the "Township") and Champion Career Firefighters, IAFF Local 2948 (hereafter referred to as the "Union"). The State Employment Relations Board (SERB) duly appointed William J. Miller, Jr. as Fact Finder in this matter. The parties agreed to extend the submission of this report until May 30, 1999.

The Fact Finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. Consideration was given to criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. The Township and the Union previously engaged in the collective bargaining process for an extensive period of time before the appointment of a Fact Finder. This Fact Finder had several discussions with the parties prior to May 6, 1999, and on May 6, 1999 attempted to mediate the unresolved issues. Mediation was unsuccessful, and the following issues were considered during Fact Finding:

1. Eligibility
2. Accrued Sick Leave
3. Vacations
4. In Charge Pay
5. Temporary Loss of Orders
6. Pension Pick Up
7. Longevity
8. Manpower

### **1. ELIGIBILITY**

It is the position of the Union that the language found in Article 11 of the Agreement be amended to provide that there be three full time Captains and two full time Lieutenant positions. It is also contended by the Union that whenever a vacancy occurs in one of these promoted ranks within the Fire Department that the Board of Township Trustees shall, within 120 days after such vacancy exists, provide for a competitive promotional examination.

It is the position of the Trustees that it is the entity to decide whether a vacancy exists and whether such vacancy should be filled. The Township contends it is the manager of the political subdivision, and it should have the right to determine how many officers and non-officers are suitable for the operation of the Fire Department.

## **FINDINGS AND RECOMMENDATIONS**

Upon carefully considering the positions of the parties, it becomes clear that for a considerable period of time the established rank was three full time Captains and two full time Lieutenant positions. It is also my understanding that the parties are not in dispute that during the term of the Agreement, lacking some highly unusual event, that the existing rank will continue in effect. While I recognize the need of the Township to be able to make determinations regarding the size of the workforce, and the positions to be utilized, it is my belief that in this specific circumstance, based on the way that this issue has been handled in the past, that paragraph 3 of Article 11 of the Agreement should be amended to read as follows:

The promotional positions shall be Lieutenant, Captain and Assistant Chief. The Employer shall utilize Three (3) Full Time Captain and Two (2) full time Lieutenant positions during the term of this Agreement. In the event that a permanent vacancy becomes available then such permanent vacancy shall be competitively bid by the Township within 120 days of such vacancy becoming permanent. Should the Township determine during the term of the Agreement that it has legitimate basis for altering the established rank, then it shall meet and discuss the issue with the Union for the purpose of obtaining agreement for necessary changes to the established rank.

## **2. ACCRUED SICK LEAVE**

It is the position of the Union that the Township increase the pay out at the time of separation, for unused sick leave. Specifically, the union has contended that it should have the ability to cash out sick leave commencing with five years of service. The Union also points out that it would be willing to accept the counter offer of the Township, if the Township would be willing to give employees under ten years of service the one quarter rule as defined in O.R.C. 124.39 (C).

It is the position of the Township that it is entitled to view the use and access of the banked sick leave as a benefit of longevity with the Department and service within the community. It is the position of the Township that ten years is a reasonable floor to create for use of this time. Furthermore, the Township argues this position may cause a junior employee to retain his employment if he cannot access these moneys, thus allowing the Township to retain qualified employees. It is also pointed out by the Township that the payment for less than ten years service is an issue within the discretion of the Township pursuant to the adoption of a policy for the pay out. The Township contends the sick leave pay out given to the Champion Township Road Department is the newest policy of sick leave pay out and should be accepted.

## **FINDINGS AND RECOMMENDATIONS**

After carefully considering the positions of the parties and in order to attempt a resolution of this problem, it is proposed that the proposal accepted by the Road Crew be established for the Union. Furthermore, it is recommended that the Township adopt the following policy in accordance with the Ohio Revised Code 124.39 (C):

“A political subdivision may adopt a policy allowing an employee to receive payment for more than one-fourth the value of the employee’s unused sick leave or for more than the aggregate value of thirty days of the employee’s unused sick leave, or allowing the number of years of service to be less than ten. The political subdivision may also adopt a policy permitting an employee to receive payment upon a termination of employment other than retirement or permitting more than one payment to any employee.”

### **3. VACATIONS**

It is the position of the Union that at the present time employees are permitted to take vacation in twelve hour increments. The Union requests that employees should be able to take their vacation in four hour increments. The Union contends that to permit the employees to take their vacation in four hour increments will cost the same amount of money to cover such hours, and it will not be harmful to the Township in any manner.

The Township argues that the request of the Union in this instance is without basis as it would leave one man on duty by himself more often, and consequently there would be more cost to the Township in overtime payments.

## **FINDINGS AND RECOMMENDATIONS**

Upon carefully considering the arguments of the parties, it is my considered opinion that the position advanced by the Union in this circumstance has some basis. It became obvious during the discussion of this issue that on occasion an employee may need a period of time longer than four hours to take care of various matters. Furthermore, when it becomes necessary to call out employees, they are more receptive to coming out for an eight hour rather than a four hour period of time. I have also carefully considered the contention of the Township that addition overtime cost would result by more extensive vacation increments, but I am not convinced that any additional overtime costs would occur for the Township. Consequently, it is my recommendation that employees be permitted to take their vacation in eight hour increments.

#### **4. IN CHARGE PAY**

It is the position of the Union that when a non ranked employee is on duty, without an officer on duty, that said employee should receive a twenty six cents an hour increase. The Union believes this is justified because of the non ranked employee being in charge of the operations during such time.

The Township contends there is no justification for this request, because no additional duties or responsibilities are imposed upon a non officer when an officer is absent from work. Furthermore, the Township contends that as a full time employee the non officer clearly has the operational and administrative powers to order and direct reserve officers both in the station house and at an emergency scene.

#### **FINDINGS AND RECOMMENDATIONS**

Upon carefully considering the positions of the parties, it is my position that there is no justification for increasing the non officer's hourly rate for his being the officer in charge. The non officer has the authority to make the necessary decisions, and this would include calling an officer in the chain of command.

#### **5. TEMPORARY LOSS OF ORDERS**

In this situation, the Union seeks to provide a procedure to protect employees in the event they have a temporary loss of their EMS orders. The Union proposes that if such a temporary loss of license should occur, then the affected employee should be able to continue working for a three month period of time with the reduction in base rate of pay of ten cents per hour. The Union contends there is basis for this proposal because of the dual roles performed by the employees as Firefighters and E.M.S. It is pointed out that the only compensation received by the employees for their E.M.S. duties is the ten cents per hour, and a reduction of the pay of employees by this amount would provide the basis for employees to continue working should they temporarily lose their orders.

It is the position of the Township that orders and certification for EMS status is a condition of initial and continued employment. The Township contends that the loss of such orders and certification disqualifies an employee from employment. It is the responsibility of the employee to maintain license status, and should an employee not have licensee status then the Township can be opened up to liability while putting itself in breach of its insurance coverage.

## **FINDINGS AND RECOMMENDATIONS**

Undoubtedly, the Township cannot be put in a position of jeopardizing its insurance coverage. This would occur if the Township permitted an employee to perform functions for which the employee is not licensed. However, this is not being requested by the Union. What is being requested is a grace period for employees who lose their license for a temporary period of time due to an administrative problem. During this grace period the Union is requesting that employees be permitted to work the other functions which do not require licensing, until the proper licensing is obtained. If this would occur, the Township would not be faced with insurance coverage difficulties because employees would not be completing duties for which they are not licensed. It is therefore my recommendation that in the event an employee loses his license because of an administrative problem, which is no fault of the employee, then the employee will be permitted to perform his firefighting duties for a reasonable period of time not to exceed thirty days, until the employee obtains his license. Furthermore, should this occur, the employee's pay should be reduced by ten cents per hour during such time.

### **6. PENSION PICK UP**

It is the position of the Union that seven percent of the employees' pension costs that are paid by the employees be picked up via the fringe benefit method. When the Township failed to consider the Union's request, the Union proposed that all employees having twenty years or more would have the maximum amount of their pension pick up paid by the fringe benefit method and all other employees would receive two personal days each year. The Union contends there is justification for this proposal because the Township already picks up the maximum amount allowable for the Police Department. The Union believes it would only be fair to make the same pension pick up payment for employees in the bargaining unit.

It is the position of the Township that there is no justification nor does the Department have such justification for increasing the true wages of employees within the department by ten percent a year. Furthermore, with the proposed pick up and the percentage of raises agreed upon, this is not warranted or justified by any comparable. Finally, the Township contends such a raise as is being requested by the Union is not reasonable when the rate of inflation and cost of living is less than three percent annually and the Union has already agreed upon three percent increases.

## **FINDINGS AND RECOMMENDATIONS**

Upon carefully considering the contentions of the parties regarding this issue, it becomes readily apparent that any payment related to the pension pick up is synonymous with wage payments made by the Township. I have considered the position of the Township and recognize that prior pension payments made for Police Department employees were made in lieu of wage increases. It would be inappropriate, in my opinion, to now provide payments for pension pick up when the employees within this bargaining unit already received wage payments in lieu of pension pick up payments. Consequently, it is my recommendation that the Township not make pension pick up payments under these existing circumstances.

### **7. LONGEVITY**

The Union requests that a change be made in the existing longevity arrangements. Specifically, the Union requests that the following formula be used for all full time employees of the Fire Department:

Two dollars (\$2.00) each month for completed year of service if the employee has more than five (5), but less than ten (10) years of service with the Champion Township Fire Department and

Three dollars (\$3.00) each month for completed year of service after ten (10) years but less than twenty (20) years and

Four dollars (\$4.00) for each completed month if the employee has over twenty (20) years of completed service.

It is the position of the Township that it is satisfied with the language of the present Agreement which provides \$2.00 each month for each completed year of service if the employee has more than ten but less than twenty years and \$3.00 each month for each completed year of service up to a maximum of twenty five years, which will be a maximum of \$75.00 per month if the employee has over twenty years. The Township contends that the policy of longevity is within its discretion, pursuant to the agreed upon management rights clause. The Township believes that a floor of five years for longevity is not suitable in light of the previous agreement between the parties.

## **FINDINGS AND RECOMMENDATIONS**

Based upon a careful review of all of the detailed information submitted by the parties, I would propose that the following changes be made to the longevity provisions of the Agreement:

Two dollars each month for completed year of service if the employee has more than six but less than ten years of service with the Champion Township Fire Department.

Three dollars each month for completed year of service after ten years but less than twenty years.

Four dollars for each completed month if the employee has more than twenty years of completed service.

## **8. MANPOWER**

The Union proposes that the Township provide additional manpower so that there will be four employees per shift. Because the Township has claimed it doesn't have the necessary funds to staff the Township as requested by the Union, the Union has provided several different methods for obtaining the necessary funding. The Union contends that residents can be billed for the E.M.S. service in the same manner that non residents are billed for such service. Alternatively, the Union proposes that an additional levy be utilized, and that part time employees be utilized until the levy money is received by the Township. It is the position of the Union that additional staffing is justified on the basis of N.F.P.A. recommendations on staffing, as well as comparisons with other departments in the county with the same call volume and the call to employees ratio. Furthermore, it is contended by the Union that there has not been any increases of employees for the past sixteen years, but the number of calls have doubled. The Union would also note that the 2 in 2 out rule has been adopted, and in the past the Union has attempted to abate the manpower shortage problems. This has been done by utilizing the institution of automatic responses from other departments, attempts to maximize the use of Township equipment, and the utilization of part time employees and reserve firefighters. The Union contends that everything has been tried to eliminate the existing problems, but the only answer to the problem is to increase the number of full time employees in the department.

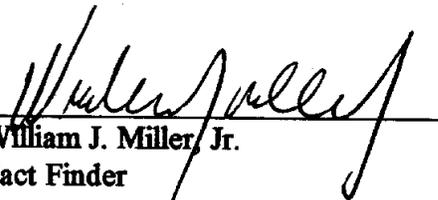
It is the position of the Township that this issue is not a mandatory subject of bargaining and the number of staff employed is a management right and prerogative which is clearly within the discretion of the Township. Furthermore, the Township contends that should there be an appropriate safety issue regarding manpower then such issue can be pursued in the grievance procedure. However, the Township contends this issue is not one which it wishes to negotiate away during this collective bargaining process.

### **FINDINGS AND RECOMMENDATIONS**

Upon carefully considering the positions of the parties regarding this issue, it is readily apparent that the issue of manpower determination within the Township is a prerogative of management. The Township has the authority and prerogative to determine the size of the work force. This is not unusual, as management most always retains the prerogative to determine the size of the work force. Consequently, it is my recommendation that the request of the Union to increase manpower not be accepted, and that the Township make manpower determinations as determined by its needs and budgetary considerations.

### **CONCLUSION**

In conclusion, this fact-finder submits his findings and recommendations as set forth herein.

  
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William J. Miller, Jr.  
Fact Finder

May 26, 1999