

FACT-FINDING BETWEEN:

**UNION TOWNSHIP,
CLERMONT COUNTY BOARD OF TRUSTEES,**

and

**UNION TOWNSHIP PROFESSIONAL
FIREFIGHTERS, IAFF LOCAL 3412**

Decision Issuing June 29, 1999

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) **SERB Case No.** 2 10 03 11 99
) **99-MED-03-0130**
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) **Before Fact-finder**
) **Cynthia Stanley**
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REPORT AND RECOMMENDATIONS

I. Hearing

Fact-finder Cynthia Stanley conducted a hearing between Union Township Professional Firefighters, International Association of Firefighters Local 3412 ("the Union" or "IAFF") and Union Township, Clermont County Board of Trustees ("the Township") on June 15, 1999, in the administrative offices of the Township at 4312 Glen Este-Withamsville Road, Cincinnati, Ohio. Hearing commenced at 10 a.m. and concluded at approximately 1:15 p.m. local time. The Fact-finder's opinion is due to issue by June 29, 1999, the date to which the parties have by mutual agreement extended fact-finding.

The IAFF was represented by Terrell B. Snyder of Haynes & Snyder. Also participating for the Union were Vice Chair of the Contract Committee Rick J. Daugherty, Vice President Kevin J. Ollier, and Union President James M. Watkins. The Township was represented by Charles A. King of Clemans, Nelson & Associates, Inc.. Also participating for the Township were Fire Chief Stan Deimling and Township Administrator Ken Geis.

Timely filed pre-fact-finding submissions were received and reviewed in this process. The Fact-finder wishes to thank the representatives and the bargaining teams for their organized and comprehensive presentations.

The bargaining unit on the date of hearing consisted of some 31 firefighters and lieutenants. The duties of bargaining unit members consist of firefighting and emergency medical services.

II. Mediation

The Union indicated willingness to mediate prior to hearing. The Township also evinced willingness to mediate, with a preference for doing so after the hearing. Post-hearing, the

mediator's judgment was that mediation would not be fruitful in that time and place. The parties were accepting of that opinion.

III. Criteria

The Fact-finder has given consideration to the criteria set forth in Rule 4117-9-05(J) of the State Employment Relations Board.

IV. Issues and Recommendations

Each party's fact-finding proposal is incorporated herein by reference. The Fact-finder recommends that all portions of the just-expired contract not specifically amended by the parties' own agreements or by this report should continue as they were, through the term of the collective bargaining agreement.

The Fact-finder will not attempt to summarize every line of reasoning offered by the parties in this hearing. The reader will find those arguments cogently set forth in the pre-fact-finding submissions. Language proposed by the undersigned is in bold face.

The parties reached agreement prior to hearing on the following Articles: 1, 2, 3, 6, 7, 11, 12, 15, 18 20, 21, 22, and 25.

a. Article 4: IAFF Representation

The parties have agreed to increase to four the number of stewards and to increase to three the number of bulletin boards for Union use.

The Union is seeking paid leave for Union business for the President or his designee, at a rate of 96 hours per year. The Union argues that this would be a level comparable to other local fire departments in Anderson Township and Blue Ash. The Union argues further that this Township's FOP contract provides for 40 hours and that the Department's other unions are also seeking an increase in such leave. The Union asks for office space with a filing cabinet and removal of the current fifteen-minute restriction for the processing of grievances during working hours. IAFF also proposes a substantial rewrite of Section 4.4.

The Union's proposed section 4.4(d) would acknowledge what the Union believes is a right of confidentiality of statements made to a Union representative in his/her official capacity. The recognition of such rights is important to the Union because of a deep rift between the Township and this unit over termination of the President (James Watkins, participating in the hearing) and the Secretary. The Union reports that the incident at issue involved refusal by the officers to disclose names of Union members who requested

confidentiality regarding a Union affair. These events are the subject of Unfair Labor Practice case 99-ULP-0172 in which SERB found probable cause on June 3, 1999.

The Township argues there is no right to confidentiality in the just-expired contract, and that Township dollars should not be used to subsidize the Union in terms of paid leave for the President and access to Township property and equipment. The Township further argues that 96 hours would cost the Township \$1300, and that the FOP provision for paid leave is solely for attendance at conference, conventions, and educational seminars. The Township resists IAFF's efforts to amend Section 4.4, and offers instead to take out the provision in 4.4(b)'s last sentence which limits on-duty grievance processing to 15 minutes, and replace it with discretion in the Chief, the Assistant Chief or a Captain as to when the IAFF representatives would exercise their reasonable time to investigate, present and process formal grievances on grounds.

The Fact-finder recommends 40 hours of paid leave time for this unit. The language would read:

Section 4.7. Union Business Leave

An employee acting as Local President shall be granted administrative leave of 40 hours per year, without loss of pay or benefits for the purpose of discharging his official representational duties as Local President. Such duties include but are not limited to: attendance at Local meetings, State and International meetings and conferences, pension business, educational conferences and meetings of the Township Board of Trustees. The President may designate another representative to use any portion of the above said leave.

The Fact-finder also recommends the modifications to Section 4.4(b) proposed by the Township:

The representatives shall be permitted reasonable time to investigate, present, and process formal grievances on the Employer's property, provided that in each and every instance where such time is required, only one (1) representative is assigned to the grievance. The representatives shall process all grievances during non-working hours, if possible. When processing of grievances must be done during working hours, the time allocated for such processing will be scheduled by the Chief, Assistant Chief, or a Captain.

The Fact-finder believes this report would have little chance of acceptance with a recommendation for contract language on confidentiality. For that reason, she does not recommend addition of such language, nor does she recommend IAFF's other proposed changes for this Article, in hopes that the focus could remain on wages.

b. Article 5: Management Rights

Citing the current difficulties between the parties, the Union proposes to add the following two sections to the Management Rights Article:

Section 5.2: The Employer retains all rights, authority, and powers, as listed above, of an Employer except as specifically and expressly modified herein.

Section 5.3: The Employer is free to implement changes in policy or operation during the term of this Agreement so long as such changes do not alter any of the terms specifically agreed upon herein. Nothing in this Agreement limits the right of the Employer to purchase goods or non-emergency fire or EMS services or to sign mutual or automatic aid agreements.

The Township vigorously opposes any such additions, arguing that doing so is unnecessary.

The Fact-finder does not believe this report would be accepted with a recommendation for inclusion of the language, and she does not recommend it for this bargaining cycle.

c. Article 13: Discipline

The Union proposes to expand the explicit procedural guarantees of the contract in several ways, including guaranteeing the employee the right to present evidence in the hearing before the Township Administrator, to call witnesses in his/her behalf, and to cross-examine witnesses; the right to file a written brief to the Administrator prior to the pre-disciplinary conference; the right to a written report of the Administrator's opinion and recommendation. Further, the Union proposes the addition of a contract section to clarify contractually what it considers an existing right to arbitration of disciplinary actions of suspension and above. The Union proposals are a result of the serious on-going problems between the parties.

The Township rejects these proposals adamantly, insisting among other arguments that the Fact-finder should not insert herself into an on-going argument regarding contract interpretation.

Procedural safeguards can act to regularize strained relations, helping to insulate a grievance process from personalities; however, the Fact-finder does not recommend the proposed changes, because she sees no chance of voluntary acceptance of this report, if she recommends the language.

d. Article 14: Grievance Procedure

Beyond routine clerical changes which the parties indicated at hearing they will handle themselves, the Union's proposals on this Article center on adding a discovery basis to how the time limit for filing a grievance is figured, eliminating the Captains' step from the grievance process, and requiring the Township Administrator to copy his/her report to the Trustees.

The Township opposes eliminating the Captains' step, citing to the possibility it will become more viable as the Department continues to grow. The Department argues, in regard to the proposed discovery basis of the grievance filing time limit, that a discovery basis would mean no effective time limit at all. The Township opposes a requirement that the Administrator copy his/her grievance reports to the Trustees.

The arbitrator does not recommend eliminating the Captains from the grievance procedure or requiring the Administrator to copy the Trustees in every case, in deference to recommending the following language for Section 14.3. Step 1:

Within ten (10) calendar days of the date on which the facts or circumstances giving rise to the grievance were or should reasonably have been discovered, the grievant and/or his/her representative shall present the written grievance to the grievant's Captain. The Captain shall render a written decision within five (5) calendar days of receipt of the grievance.

e. Article 16: Hours of Work and Overtime

The parties agreed before fact-finding and have finalized language to add a section which provides for pay for employees authorized and participating in mutual aid emergency response teams.

The Union proposes an Hourly Reduction Day system, using a 12-week interval for HRD days, with a 28-day calendar work period. The Union asserts that the system would eliminate or drastically reduce the amount of overtime the Department pays. The IAFF believes that current staffing levels are sufficient to accomplish this reduction. The Union's proposal seeks to amend the method for calculating overtime from hours worked to time paid, and for overtime to be paid on a daily basis; light duty assignments and station/shift bidding. The IAFF also emphasizes the need for language requiring the Township to provide coverage for use of compensatory ("comp") time and shortening the notice required for employees to use comp time. Evidence at hearing included requests for comp time denied for lack of coverage.

The Township has no interest in an HRD system and strongly resists this proposal as well as the expansion of what would count toward triggering overtime pay, overtime figured

on a daily basis, light duty assignment, and shift/station bidding. On use of comp time, substantive changes are resisted by the Township.

The fact-finding report is focused on finding a commonly acceptable ground. There are concepts of good quality in the proposed language; however, this major rewrite is more change than the Fact-finder believes can be effected through this fact-finding report, in light of the other changes and wage increases she is recommending.

f. Article 17: Wages

The Union's wage position at fact-finding is: 12.5% over the three-year term of the contract, divided as 2.5%, 5% and 5%, plus parity allowances of \$4,000 at the beginning of the contract and \$1,000 at the end of the contract, both to be added to the base. IAFF argues that this posture represents a significant reduction from earlier wage positions. The Union presentation focused on historic and current disparities between this Township's firefighters and wages paid comparable Departments in other jurisdictions and also wages paid to this Township's other safety forces. The Union emphasizes statistics on run volume and population density in presenting evidence which arguably supports a conclusion that the gaps between the unit and comparables is widening. IAFF seeks retroactivity to the day after expiration of the just-expired contract.

The Township's position on wages is 3%-3%-3%. The Township argues against a parity allowance and also against any major jump in wages, as the Department is not experiencing difficulty in recruiting.

Testimony indicates that retention is a problem, even if recruitment is not. The Fact-finder believes the quality of services provided by the bargaining unit is influenced by the retention of experienced firefighters. The Fact-finder finds that Union Township firefighter wages, while "in the pack", a phrase aptly used by Conciliator Donnelly in May 1996, are lagging behind those of similarly-situated Departments. The Fact-finder recommends wage increases of 5%, 5% and 4% over the three-year contract, with the first year's increase retroactive to May 15, 1999. Second and third year increases would take effect on the anniversary of the ratification date.

The language would read as follows, absent agreement of the parties otherwise:

Section 17.1. Rates of pay for bargaining unit personnel for the term of this Agreement shall be as follows:

	Current	May 15, 1999	[1st anniversary of signing]	[2d anniversary of signing]
FF/EMT				
Step 1	\$25,206.72	26,467.06	27,790.41	28,902.03

Step 2	\$26,531.80	27,858.39	29,251.31	30,421.36
Step 3	\$27,887.00	29,281.35	30,745.42	31,975.24
Step 4	\$29,995.09	31,494.84	33,069.58	34,392.36
FF/PAR				
Step 1	\$28,609.78	30,040.27	31,542.28	32,803.97
Step 2	\$30,085.44	31,589.71	33,169.20	34,495.97
Step 3	\$31,681.57	33,265.65	34,928.93	36,326.09
Step 4	\$33,639.08	35,321.03	37,087.08	38,570.56
LT				
Step 1				
Step 2				
Step 3	\$34,526.90	36,253.25	38,065.91	39,588.55
(prob.)				
Step 4	\$35,415.89	37,186.68	39,046.01	40,607.85

The above-listed annual salaries reflect a 5% increase in each of the first two years of the contract and a 4% increase in the third year.

Section 17.2. Employees hired prior to 1999 shall be placed at their respective pay range of the new Agreement. New hire employees start at Step 1, and advance through the steps on their anniversary of date of hire.

Section 17.3. [unchanged]

g. Article 19: Vacation

The parties agreed prior to fact-finding to change the current practice of entitlement on individual anniversary dates to entitlement to everyone on January 1 of each year, making scheduling of vacation much easier. During fact-finding, the parties made clear that employees with less than one year of service would continue under the existing contract's proration of vacation relative to hire date; however, the less than one year employees will participate in the annual scheduling of vacation under the new system, with actual crediting of their days held off until the anniversary of the employee's date of hire.

The Union is seeking the addition of language granting to the Fire Chief discretion to allow carryover of vacation for no more than three years in special and meritorious cases, a provision similar to that already present in the Township's Personnel Policy Manual and the FOP contract. Citing O.R.C. 9.44(A) and (B)(2) and case law, the Union also seeks language which would credit employees for prior service with a township being counted toward vacation time computation.

The Township counters that the credit for prior service with a township language elsewhere is limited by a requirement that the prior township service must have been immediately before the employee came to the current township. The Township strongly resists the last sentence of the IAFF carryover proposal, regarding three years.

The Fact-finder recommends in replacement of existing sections 19.1 and 19.2 the following language (or other language as the parties might agree):

Section 19.1. Employees shall be entitled to annual vacation leave as follows:

- 1. After one (1) year of continuous service, twelve (12) work days for 40 hour employees; six (6) twenty-four (24) hour tours for 24/48 continuous operation personnel.**
- 2. After five (5) years of continuous service, 40 hour employees earn an additional one (1) day per year, up to a maximum of 22 days annually; 24/48 employees earn an additional 12 hours per year, up to a maximum of 240 hours.**

An employee who changes status and becomes a 40 hour employee shall have his vacation recalculated to reflect the amount which he would be entitled to as a 40 hour employee.

Effective January 1, 2000, employees with one (1) or more years of service shall be credited with their annual vacation entitlement on that date and each January 1 thereafter. Employees with less than one (1) year of service shall be credited with annual vacation entitlement on their first anniversary date of hire, prorated to the following January 1.

Section 19.2. All vacation for each calendar year is scheduled prior to January 1 of each year. Employees, in order of their seniority, including employees with less than one (1) year of service, shall select, on the vacation calendar, those dates on which they desire to use their vacation leave. Each employee is responsible for selecting dates for all of their vacation entitlement. No carryover shall be permitted, except that the Fire Chief may in his sole discretion in special and meritorious cases permit an employee to accumulate and carryover his vacation leaves to the following year.

Employees may only schedule off one (1) holiday per year and the same holiday off once every three (3) years.

Section 19.3. [same as current contract]

Section 19.4. For the purposes of calculating vacation leave, years of prior service with a Township which immediately preceded the employee's time of service with Union Township shall be included as years of service.

h. Article 23: Leaves of Absence With Pay

The parties have agreed on a Funeral Leave section and changes to Court Leave.

In its June 10, 1999, proposal, IAFF seeks an acknowledgment of employee rights under USERRA, an increase in the maximum number of paid Military Leave hours to 240 from 176, and an increase in Occupational Injury Leave hours to 1200.

The Township resists these proposals, arguing in regard to Occupational Injury Leave that increasing it would invite using the full time. The Township argues USERRA rights are statutorily created and do not belong in a collective bargaining agreement. The Township itself proposes minor changes to amend Military Leave to comply with recent state statute changes. The Union has accepted these changes by incorporating them into its latest proposal.

The Fact-finder recommends that the minor changes on account of state statute changes, as proposed by the Township and incorporated by IAFF in its language, be adopted. She will not repeat those here, as the parties appear to be in synch. The Fact-finder agrees that especially the Occupational Injury Leave hours increase is an attractive change; however, in an effort to keep attention on wages, she does not recommend it or IAFF's other proposed changes for this Article.

i. Article 24: Continuing Education

The parties resolved this issue during fact-finding.

j. Article 29: Duration

The parties's presentations each identified a three-year term for the contract. The term of the new contract will be three years, effective on the date of signing, except that the first year increase in wages would be retroactive to May 15, 1999.

k. Article (New): Safety and Health

The Union proposes a new Article which would, among other things, create a joint committee to address health and safety issues and prevent management from assigning firefighters to perform services such as construction or vehicle and grounds maintenance, for which the Union argues the firefighters are not qualified. The Union points out that these duties are more properly handled by the Township's maintenance department and that a committee created by contract could not be unilaterally dissolved by the Township.

Further, IAFF's Article would protect employees from discipline for refusing to engage in unsafe work practices or equipment usage.

The Township's position points out that issues of health and safety are currently dealt with under Article 7, Labor/Management Meetings, and that the Township has an active safety program designed to minimize the risk of employee injury.

The Fact-finder does not recommend inclusion of the proposed Article in this contract. She believes that additional bargaining must occur before such provisions could gain acceptance.

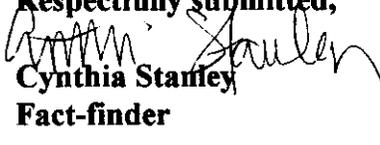
I. Article (New): Physical Fitness & Mental Health

The Union's proposed new Article on physical fitness and mental health is intended to address needs which arise because of the extreme physical and mental stresses firefighters encounter in their work. The proposal emphasizes helping firefighters to improve their preparedness for handling these stresses.

The Township resists making physical fitness a contractual benefit and counters with a reference to physical fitness condition testing.

Until the parties are prepared to discuss the same kind of program, a fact-finding recommendation for language would be futile. The Fact-finder declines to recommend either party's proposal.

Respectfully submitted,

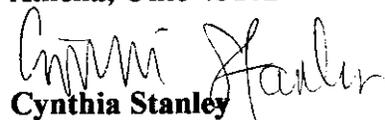

Cynthia Stanley
Fact-finder

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing Fact-finder's Report and Recommendations was served on the following by overnight delivery this 29th day of June, 1999:

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