

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

May 10, 2016

In the Matter of)
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Bath Township, Summit County)
)
)
And)
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)
Bath Professional Fire Fighters,)
IAFF Local 4130)

15-MED-08-0723

APPEARANCES

For Bath Township, Summit County
Robin Bell, Clemans Nelson

For the IAFF Local 4130
Ryan Lemmerbrock, Esq.
Muskovitz & Lemmerbrock

Fact-Finder, Marc A. Winters

BACKGROUND

The Fact-Finding involves the Township of Bath, Summit County, (hereafter referred to as the “Employer”) and the IAFF Local 4130, (hereafter referred to as the “Union”). The Union’s bargaining unit is comprised of approximately eight (8) members. Six (6) full-time Fire Fighters and two (2) full-time Fire Lieutenants in accordance with SERB rules.

In a letter, dated January 22, 2016, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder for this matter under the Ohio Administrative Code Rule 4117.14(C)(3).

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement, expired on December 31, 2015. The parties have met on six (6) occasions to negotiate a successor agreement which began on or about September 22, 2015. Prior to the Fact-Finding Hearing, the parties have signed approximately eleven (11) tentative agreements. Although successful in resolving most issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.

The parties have a signed extension agreement whereby they have agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder pursuant to the Ohio Administrative Code Rule 4117-9-05(G).

The Fact-Finding Hearing was conducted on Thursday, April 7, 2016, in the offices of Bath Township. The Fact-Finding Hearing began approximately 10:00 A.M., and was adjourned at approximately 2 P.M.

Mediation at the Hearing was discussed and decided by all that any attempts to mediate, at this point, would not be productive.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to

finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition to, the testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement. The Parties have approximately thirteen (13) signed tentative agreements.

The following Articles resulted in tentative agreements prior to the Fact-Finding Hearing.

Article 7,	Non-Discrimination
Article 13,	Family Medical Leave
Article 16,	Uniform Allowance
Article 18,	Vacation
Article 21,	Arbitration
Article 27	Layoffs and Recall
Article 28,	Promotions
Article 30,	Duration
Article 33,	Alcohol and Drug Testing
New Article,	Mid Term Bargaining
New Article,	Savings Clause

During the Fact-Finding Hearing the parties were able to resolve, into tentative agreements, two more Articles.

Article 6,	Sick Leave, as it pertained to Section 6
Article 26,	Discipline, as it pertained to Section 1

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the party's proposals.

The following ten (10) issues remained and are the issues that were considered during the Fact-Finding Hearing on April 7, 2016.

- 1.) Article 9, Wages/Compensation
- 2.) Article 10, Incentives
- 3.) Article 11, Longevity
- 4.) Article 12, Sick Leave/Personal/Emergency/Funeral Leave
- 5.) Article 17, Hours of Work
- 6.) Article 19, Overtime
- 7.) Article 21, Arbitration (Section 2(C) only)
- 8.) Article 25, Jury Duty/Court Time
- 9.) Article 32, Residency
- 10.) New Article, Off-Duty Calls

DISCUSSION

Background: Bath Township

Bath Township ("Township") is located on the western edge of Summit County, approximately 20 miles south of Cleveland and just northwest of Akron. The Township covers approximately 23 square miles, with a population of approximately 9,700. The Township is governed by a 3-member Board of Trustees that serves in overlapping 4-year terms. The Township provides a full range of municipal services including Fire/EMS, Police, Parks and Recreation, Service Department, Waste, and other general administrative and community services.

Bath Township is an affluent suburb. The Township's median household income (as of 2012, as reported by the State of Ohio), was \$102,292, approximately double the median household income for Summit County (\$46,669) and Ohio (\$48,287). The average sales price for homes in the Township in 2015 was \$368,614, as reported by Summit County. By comparison, the average home sales price in Summit County in 2015 was \$178,913.

The Township is financed by property taxes, motel taxes, fees for services, and local government funding. Property taxes are levied for the General Fund, Roads and Bridge Fund, Park Fund and for the Police and Fire District Funds. General Fund funding is primarily comprised of property taxes (47%), along with motel taxes (12%) (currently there are 6 motels in Bath) and local

government funding (10%). The Township's high property values have allowed the Township to maintain very healthy financial reserves.

The Township's General Fund entered 2015 with a carryover reserve of \$3,932,000. The General Fund received \$2,138,000 in revenue, with expenditures of \$2,109,000, resulting in a \$3,961,000 carryover reserve as of 12/31/2015—a 188% carryover reserve.

The General Fund's health will further improve as a result of the passage of a Police levy in November 2015, which replaced the existing levy and added 0.5 mill to raise approximately \$300,000 per year. The additional levy funds will allow the Township to pay all Police costs from the Police Levy Fund, freeing up \$300,000 from the General Fund.

For 2016, the Township has budgeted for \$1,991,000 in General Fund revenue and \$2,964,000 in General Fund expenditures, resulting in a year-end reserve carryover of \$2,988,000. Thus, even with a projected -\$147,000 drop in revenue and +\$855,000 increase in expenditures, the Township still projects to end 2016 with a 101% carryover reserve.

The Bath Township Fire Department

The Bath Township Fire Department ("BTFD") is staffed by 10 full-time personnel— the aforementioned 6 Fire Medics and 2 Lieutenants (the IAFF members), along with the Fire Chief and Assistant Chief—and part-time personnel. There are approximately 24 part-time Fire Fighters used to supplement staffing in the BTFD. There are also 18 part-time "contractual" Fire Fighters that are jointly employed by Bath Township and Copley Township. The part-time "contractual" Fire Fighters work out of Fire Station 2, which covers both Bath and Copley. The full-time IAFF personnel staff the BTFD 24 hours a day, 7 days a week, working in 3 rotating 24-hour shifts ("A" shift, "B" shift and "C" shift). There are 3 IAFF personnel assigned to "A" shift, 3 IAFF personnel assigned to "B" shift, and only 2 IAFF personnel assigned to "C" shift. Pursuant to R.C. 505.60, the Township limits part-time personnel to working a maximum of 28 hours a week or 1,500 hours a year.

The BTFD has 3 ambulances (2 at Station 1, 1 at Station 2), 2 engines, a tanker truck, and 4 staff vehicles. The BTFD's emergency response calls have steadily increased in recent years, going from 1,267 responses in 2010 to 1,512 responses in 2014 and 1,477 responses in 2015. However, the BTFD's full-time staffing has remained the same during this period. Currently, among comparable Fire Departments in the area, the BTFD, with a total of 8 full-time Fire Medics/Fire Lieutenants responding to calls, is among the highest in number of calls per full-time Fire Fighter. Over 12% of those calls are back-to-back responses (no downtime between calls).

The BTFD's expenses are paid by the Township's General Fund, the Ambulance/EMS Fund2 and the Fire District Levy Fund. However, the General Fund's expenditures for the BTFD were cut significantly in 2015, with General Fund expenditures no longer being used towards Fire Fighter wages.

As indicated, total BTFD expenditures have remained below 2012 total expenditures every year since 2012. The Township, however, projects that the BTFD will spend approximately \$300,000 more in 2016 than it did in 2015. The BTFD's increased expenditures for 2016 are largely

attributable to the Township planning a 12.42% increase in Supervisor wages, a 9.12% increase in the wages of Administrative staff, a 3.46% increase in part-time Fire Fighter wages, and a 3.17% wage increase for the IAFF bargaining unit members. The Township also expects to see a \$43,000 increase in overtime expenditures towards the IAFF bargaining unit members (a 44.43% increase) and approximately a \$127,000 increase in operating and “miscellaneous” costs (a 55.17% increase).

The Township’s decision to cut General Fund expenditures towards the BTFD is a reflection of the steady revenue stream into the Fire District Fund and Ambulance/EMS Fund, both of which are to be used exclusively for BTFD expenditures.

With the Fire Funds’ revenue in 2015 returning to its high-point of 2011’s revenue level, and the BTFD steadily maintaining expenditures below 2012’s expenditure level, the unused carryover balance of the BTFD’s Fire Funds steadily increased from 2012 to 2014. The Fire Funds’ unused carryover balance dropped by \$263,000 in 2015, but remained strong by year-end 2015. The Fire Funds’ drop in carryover balance is attributable to the Township cutting General Fund funding for the BTFD by \$292,225 in 2015, which, as indicated above, was offset by increased expenditures from the Fire Funds.

Indeed, despite the Township’s cut in General Funds towards the BTFD and the coinciding increase in Fire Fund expenditures, the Fire Funds’ unused carryover balance as of 12/31/2015 was still \$800,000, constituting nearly a 38% carryover reserve compared to the Fire Funds’ 2015 total expenditures (\$2,109,000).

The Township has budgeted for a drop in the Fire Funds’ carryover balance for year- end 2016. This will occur only if the Township spends another \$276,000 from the Fire District Fund above actual 2015 expenditures (i.e., the Township actually increases BTFD employee wages anywhere from 3.2% to 12.4%, increases overtime compensation by 44.4% and increases operating and “miscellaneous” costs by 55.2%, etc.). Even if the Township actually increased all of these expenditures as budgeted (highly unlikely), the Fire Funds would still end 2016 with an unused carryover of \$234,000.

Fact-Finder’s General Discussion

Not often does a Fact-Finder hear a case where there is an ability to pay and the need for concessions are not necessary based on the financial condition of the Employer as in this case.

The above background discussion on the financial condition of Bath Townships and the Fire Department bears evidence to these statements and is attributable to the excellent financial management, over the years, by the Township Supervisors.

An interesting fact pointed out at the Hearing was that Bath Township has elected to not charge Bath residents for BTFD ambulance/EMS services; meaning, the Township is voluntarily waiving the collection of a sizeable portion of EMS billing revenue. A benefit for their residents that evidently does not occur at other surrounding communities.

The issues, here, for this Fact-Finder's recommendations are more of a control and maintain position as argued by both the Township and the Fire Fighters.

It, however, is not necessary to undergo an elaborate discussion over the issues to be decided since the remaining issues are either affordable to the Township or are issues that need some changes or controls added. While yet a few of the remaining issues have no merit or justification to them at this time.

On one hand you have the Township who wants to have some fiscal control and constraints on their spending; controls on the wage and benefit issues to maintain a close internal parity and consistency with other bargaining units/employees; and help with controlling future overtime costs.

On the other hand you have the Fire Fighters who, with respect to wages, want to stay at their hierarchy with their external comparables and be more in line with their internal comparables while retaining overtime opportunities; and adjusting/correcting a few other issues; still remaining status quo on most other issues.

Both the Township and the Fire Fighters have submitted other Fact-Finding Reports and comparables with arguments in support of their respective positions.

The recommendations that follows are a good faith attempt to have both sides accept this Report and are designed to help the Township maintain fiscal responsibility while still being as fair as possible to the needs of the Fire Fighters as well.

RECOMMENDATIONS

ISSUE NO. 1, ARTICLE 9, Wages/Compensation

Employer Position: The Employer proposes general wage increases of .75% in 2016 and .75% in 2017, and .75% in 2018. The Employer proposes adding two additional steps to the beginning of the scale for new employees hired after January 1, 2016. Newly hired employees will proceed through seven steps over 72 months.

Union Position: The Union proposes to increase the bargaining unit members' hourly wage rates by 3.0% effective January 1, 2016; 3.0% effective January 1, 2017, and 2.0% effective January 1, 2018. And, to modify the 2014/2015 "me-too" clause on wage increases so that IAFF bargaining unit members receive equivalent wage increases as other Township employees, should other Township employees receive a higher percentage wage increase.

Fact-Finder's Recommendation:

Consistent with the testimony and evidence and giving merit to the IAFF's position on keeping their position in the hierarchy of their external

comprables, the recommendation is for the IAFF's proposal in its entirety.

The above recommendation was given after considering and comparing Fire Fighter's pay increases with their internal comparables over the years as well as their position within the ranks of the other external comparables Fire Fighters wages. There was simply not a good reason given to change the hierarchy of the Employer's Fire Fighters with the other Fire Fighters in the comparable jurisdictions. While, at this time, there is also no other financial justification, by the Employer, to offer the lower wage increases contained in the Employer's proposal or the need to begin a two-tier wages scale for new hires, since, at least for the length of this collective bargaining agreement there probably will not be any new hires

This recommendation maintains the Fire Fighter's standing among the comparable jurisdictions while being in-line with the wage increases to the Employer's Police unit for 2016 and 2017 at 3% each year respectively.

Effective January 1, 2016, 3%; Effective January 1, 2017, 3%; Effective January 1, 2018, 2%.

Modify the 2014-2015 "me too" clause on wage increases so the Fire Fighter's unit receive equivalent wage increases as other Township employees, should other Township employees receive a higher percentage wage increase.

ISSUE NO. 2, Article 10, Incentives

Union Position. The Union proposes adding annual \$500.00 payments to members of the Summit County Technical Team or Arson Task Force and for any member who is a Fire or EMS instructor.

Employer Position. The Employer proposes current contract language and is opposed to the Union's proposal to add two new categories for incentive payments.

Fact-Finder's Recommendation:

Based on other financial issues in this Report, including the above wage recommendation, and taking into consideration the current available incentives, the status quo or no change is recommended.

ISSUE NO. 3, Article 11, Longevity

Employer Position: The Employer proposes to eliminate longevity for employees hired after January 1, 2016.

Union Position: The Union proposes current contract language. And, to update the dates listed in the contract to reflect the agreed upon term of the Collective Bargaining Agreement.

Fact-Finder's Recommendation:

Once again, there is no financial justification given to eliminate this benefit. For the term of this collective bargaining agreement, based on the testimony, it appears there will be no new hires and the Employer has not eliminated longevity from new hires in any of the Employer's other unit and non-unit employees. The recommendation is for no change or the status quo.

ISSUE NO. 4, Article 12, Sick Leave/Personal/Emergency/Funeral Leave

Union Position: Remove the cap on how many sick leave hours an employee can accumulate.

Employer Position: No change.

Fact-Finder's Recommendation:

The Fire Fighters for this Employer rank last out of the other thirteen jurisdictional comparables for the sick leave accrual cap. As such, this bargaining unit is considerably substandard in this area. Taking into consideration the increased risk for injuries and illnesses for Fire Fighters and without a reasonable financial justification not to remove the cap, the recommendation is to accept the Union's proposal.

ISSUE NO. 5, Article 17, Hours of Work

ISSUE NO. 6, Article 19, Overtime

ISSUE NO. 8, Article 25, Jury Duty/Court Time

ISSUE NO. 10, New Article, Off-Duty Calls

This Fact-Finder's Recommendation for the above-four issues can be summarized and the applicable recommended changes made all together.

Issue 5. Article 17, Hours of Work

Employer Position: The Employer's proposes to clarify the language in Section 1 and Section 2 but to retain the current FLSA 207(k) compliant 21-day work cycle with 48 hours scheduled in each seven day work period (Section 1), with one Earned Day Off in each 21-day work cycle (New Section 2). In order to meet some of the concerns voiced by the Union during negotiations, the employer proposes to add language to contractually provide for sufficient opportunities for training to members while on duty and to pay employees at a 48 hour rate (their regular rate) for off-site training.

Union Position: The Union proposes Adding terms allowing employees to reschedule an EDO ("Earned Day Off") within the same work cycle the EDO is scheduled for, with the approval of the Fire Chief. Also, add terms requiring the Township to provide each employee an annual bank of 76 hours to be used towards continuing education for EMS/Fire/Inspector/Instructor training occurring outside the employee's normal work schedule.

Issue 6. Article 19, Overtime

Employer Position: The Employer proposes that overtime shall be paid to employees who actually work in excess of 53 hours in a seven day work period as permitted by the Fair Labor Standard Act 207k exemption. The Employer also proposes that overtime be paid at the applicable rate (48-hour rate) rather than the 40 hour rate currently utilized. For purposes of determining an employee's eligibility for contractual overtime, all hours actually worked by the employee and scheduled vacation and holiday time would be included, as is the current practice.

The Employer proposes limiting compensatory time accumulation and utilization to 80 hours in any calendar year. Any overtime worked after an employee has accrued 80 hours which would increase the employee's yearly compensatory time above this maximum shall be paid at the appropriate overtime rate/regular rate. The Employer also proposes contractual language incorporating some of the principles of regarding the scheduling and administration of compensatory time under the FLSA. Excessive compensatory time provides more time off for the employees and the Township would like to have its full-time employees working their scheduled hours as much as possible.

Union Position: The Union proposes language to exclude sick leave from the definition of work hours. The Union also propose increasing the maximum number of compensatory time hours an employee can accrue from the current 120 hours to 240 hours, and increase the number of accrued compensatory time hours that an employee may retain from year-to-year to 96 (from the current of 48 hours).

Issue 8. Article 25, Jury Duty/Court Time

Employer Position: The Employer proposes using the applicable rate of pay (i.e., the 48 hour rate) rather than a set 40 hour rate for court time pay.

Union Position: The Union proposes current contract language.

Issue 10. New Article, Off-Duty Calls

Union Position: Add an Article to the CBA specifying that IAFF members are eligible to respond to overtime call-ins so long as the employee is able to respond within 20 minutes, and that the IAFF members will be compensated for a minimum of 1 hour for each off-duty call-in.

Employer Position: The Employer opposes the Union's proposal.

Fact-Finder's Recommendations:

In the above four (4) issues, the Township, in order to control overtime costs has proposed several whole sale changes to what has been and is occurring within the Fire Fighters work schedules.

Likewise, the Fire Fighters, in order to protect their work schedules and built in overtime have responded accordingly with their proposals.

The bargaining history between the two parties, the comparable data from the surrounding jurisdictions as well as the financial condition of the Township does not support the concessions and the changes that has been proposed by the Township. However, the Employer did make a sound argument with respect to controlling future overtime costs.

The following recommendations are the only changes recommended for Issues, 5, 6, 8 and 10. Any item or issues not listed here, below, from those four (4) issues, would then remain status quo.

There are only two glaring deficiencies from what occurs for this bargaining unit compared to the other like jurisdictions that need an adjustment. The majority of the external comparable jurisdictions overtime rate is more in line with their work week and work period. While this bargaining unit is substandard or subpar in the area of comp time maximums.

Fact-Finder's Recommendations:

The Union's proposal to increase the maximum number of compensatory time hours an employee can accrue from the current 120 hours to 240

hours, and to increase the number of accrued compensatory time hours that an employee may retain from year-to-year to 96.

The Union's proposal to exclude sick leave from the definition of work hours.

Whereas the Fire Fighters work period, work week and overtime threshold will remain the same, the overtime rate will be changed to the 48 hour rate to be consistent with the majority of other like jurisdictions.

ISSUE NO. 7, Article 21, Arbitration (Section 2(C) only)

Union Position: The Union proposes adding language to section 2(C) that would provide an arbitrator the ability to award attorney's fees when the arbitrator determines a party has engaged in bad faith conduct. The Employer is opposed to the Union's proposal.

Employer Position: The Employer proposes current contract language for Section 2(C).

Fact-Finder's Recommendation:

As there has been no evidence to suggest such a change is warranted the recommendation is the status quo.

ISSUE NO. 9, Article 32, Residency

Employer Position: The Employer proposes modifying the residency requirement to provide that bargaining unit members hired after January 1, 2016, must live in Summit County or a contiguous county that provides a response time of 30 minutes or less

Union Position: The Union proposes to delete the current contract language.

Fact-Finder's Recommendation:

Delete entire Article.

The testimony presented and the evidence produced at the Hearing support the conclusions and recommendations above.

Marc A Winters

Marc A. Winters