

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	10-MED-09-1223
International Association of Fire Fighters, Local 2075	:	
	:	CONCILIATION AWARD
and	:	
	:	March 10, 2011
	:	
Liberty Township Trustees	:	

APPEARANCES

For the Union:

William Opsitnik, President
Phil Lucarell, Vice President
Ron Stauffer, Negotiating Team Member

For the Township:

Mark S. Finamore, Law Director
Michael Durkin, Fire Chief

**Daniel G. Zeiser
Conciliator
P.O. Box 43280
Cleveland, Ohio 44143-0280
440-449-9311**

I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) by letter dated January 11, 2011. The parties are the International Association of Fire Fighters, Local 2075 (Union or Association), representing all full time members of the Fire Rescue Department, excluding the Fire Chief and secretary, and Liberty Township (Township or Employer). Liberty Township is located in northeast Ohio, in Trumbull County just north of Youngstown. The Township covers 16.7 square miles and has a population of 23,522 according to the 2000 census. Interstate 80 runs west to east through the Township. Liberty Township is governed by a three (3) member board of trustees.

The Unit consists of fourteen (14) full time employees in the classifications of Captain, Captain Fire Inspector, Lieutenant, and Fire Fighter. The Township also has eleven (11) part time firefighters and five (5) volunteers. The parties have had a collective bargaining relationship for a number of years. The current collective bargaining agreement expired on December 31, 2010. The parties negotiated, reached impasse, and engaged in fact finding on December 14, 2010. The Fact Finder's report was issued on December 20, 2010. The Township rejected the report and the parties proceeded to conciliation.

II. THE HEARING

The hearing was held on February 23, 2011 at the Liberty Township Administration Building, 1315 Churchill Hubbard Road, Youngstown, Ohio. The parties provided pre-hearing statements. The Association accepted the Fact Finder's report, except for the recommendation as to Article 35 regarding additional certification. It sought clarification on this issue. The Township agreed with the Fact Finder's recommendations as to the following issues:

1. Article 32, Uniforms;
2. Article 36, Section 6, Insurance Coverage;
3. Article 35, Section 6, Part Time;
4. Article 12, Section 1, Rules and Regulations;
5. Article 38, Longevity Pay;
6. Article 18, Section 11, Sick Leave.

This left the following issues to be resolved by the Conciliator:

1. Cap on accrued sick leave;
2. Holidays/Personal Days;
3. Life Insurance;
4. Staffing minimums;
5. Pension pick up;
6. Additional certifications;
7. Wages.

The parties attended the hearing, introduced evidence, and presented their positions regarding wages. They jointly introduced the collective bargaining agreement and the Fact Finder's Report. Additionally, the parties introduced the following exhibits into evidence:

Township Exhibits

1. State Auditor's Report, February, 2011;
2. Cash Summary by Fund, 01/01/2011 to 02/14/2011;
3. Revenue Ledger for 2008;
4. Revenue Ledger for 2009;
5. Revenue Ledger for 2010;
6. Total Employee Costs.

Union Exhibits

1. Article 37, Wages, Fire Fighters Contract;
2. Article 8, Wages, Police Sergeants and Captain Contract;

3. Article 8, Wages, Police Patrolmen Contract;
4. Hourly wage rates for police unit members;
5. Auditor's Report, Findings 2009-001 and 002;
6. Cash Summary by Fund, 2010;
7. Costs from Fact Finder's Report;
8. Page from November agenda of Board of Trustees Meeting;
9. Fire Chief's 2010 Annual Report to Board of Trustees;
10. Total Costs of Employees with base pay rates;
11. Total Costs of Police with base pay rates;
12. Full Time Employees Hours worked 2010.

III. CONCILIATION CRITERIA

The Ohio public employee bargaining statute sets forth criteria the Conciliator shall consider in making a final offer settlement award. The criteria are set forth in ORC 4417.14 (G)(7) (a)-(f) and OAC 4117-9-06(H)(1)-(6) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interests 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) The stipulations of the parties;

(6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

IV. AGREEMENTS REACHED DURING HEARING

During the hearing, the parties reached agreement on the following issues.

Issue: Article 19, Cap on Accrued Sick Leave

The parties agreed to amend Section 1, Paragraph A as follows:

Employees may receive, after completion of ten (10) years of continuous service with the Liberty Township Fire Department, a cash payment in the amount of one (1) hour's pay for each four (4) hours of accrued but unused sick leave at the time of retirement. Each employee is entitled to a maximum accrual of two thousand four hundred ninety-six (2,496) hours for the purpose of cashing out. This does not limit the accrual of sick time for the purpose of using sick leave during active employment.

Issue: Article 27, Holidays/Personal Days

The parties agreed that the second sentence of Section 1 will be amended to show that an employee working any of the listed holidays will receive twenty-four (24) hours of pay at his regular hourly rate rather than eighteen (18).

Issue: Article 36, Section 2, Insurance Coverage

The Union accepted the Fact Finder's recommendation regarding insurance coverage. The Township accepted the recommendation except for the issue of life insurance. At the hearing, the parties agreed to add a new paragraph at the end of Section

2 as follows:

Age and service retirement employees shall be offered the right to maintain the Township group life insurance benefits provided to active employees at the cost of the retirees, who shall either reimburse the Township for the premium paid or pay direct payment to the insurance carrier, if the group life insurance provider will allow for the continuation of benefits to retirees.

Issue: Article 35, Rights of the Parties, Additional Certification

Section 8 will be added to the Article 35 as follows:

In order to promote a more professional and more qualified Fire Department, all members of Local 2075 will become Emergency Medical Technicians (EMT-B) and/or remain EMT-B. There will be no cost to the members and all training and continuing education is already covered by the Emergency and Ambulance Fund Budget.

All members that are currently required to maintain an EMT-Paramedic status are required to maintain their certification indefinitely.

V. POSITIONS, DISCUSSION, AND AWARD

Issue: Article 35, Section 5, Staffing Minimums

Union Position: The Union proposes increasing the staffing minimum from the current three (3) full time firefighters per shift to four (4).

Township Position: Current language.

Discussion: In addition to fourteen (14) full time firefighters, the Township has eleven (11) part time and five (5) volunteer firefighters. There are two (2) fire stations and the Township currently assigns two (2) firefighters to each station for each shift, which it has been doing since approximately 1998. The Fire Department recorded 875 fire responses in 2010, along with 1,184 EMS ambulance responses, for a total of 2,059. The Fire Prevention and Inspection Bureau performed 346 inspections, 156 re-inspections, and 541 investigations, conducted 17 demonstrations, and issued 2 permits, for a total activity of

1,062. Remarkably, no injuries occurred and there was no lost time in 2010.

The Union is asking that the staffing minimum be increased to the current practice. It relies on OSHA Standard 1910.134(g)(4), though it acknowledges that Ohio is not an OSHA state for these purposes. The Union contends this is a safety issue, that two (2) firefighters should enter into any environment in case one (1) becomes injured or is overcome, and that, without a fourth firefighter, safety is compromised. It points out that the Fact Finder recommended language that the Township schedule four (4) per shift.

The Township is concerned that, given the level of activity, a four (4) person staffing minimum would result in increased costs, particularly as a result of overtime. If one (1) of the four (4) firefighters becomes sick or cannot work and a part time firefighter is not available, the Township would have to call in a firefighter on overtime. Additionally, the four (4) man minimum could tie the Township's hands in case of layoffs, since it would limit the number of firefighters the Township could layoff and still meet the minimum.

While increasing the four (4) man minimum would only reflect the current practice, it could add to the Township's costs. There is some possibility that it could also tie the Township's hands in terms of layoffs, though the possibility did not come across to the Conciliator as likely during the hearing. The Fire Department is funded through a levy, which provides sufficient funds for its operations. This is discussed more fully below regarding wages. Additionally, the Conciliator is awarding wage increases, and additional cost increases that might result from increasing the minimum should be avoided.

Award: Maintain the staffing minimum at three (3) full time firefighters per shift.

Issue: Article 37, Section 2, Pension Pick Up

Township Position: For new employees hired after January 1, 2011, the employee will be responsible for the employee's pension contribution. The Township will not pay the employee's share of the statutory contribution as it does for current employees.

Union Position: Maintain current language.

Discussion: The Township acknowledges that, years ago when the cost was cheaper, it agreed to pay the employee's contribution to the Ohio Police and Fire Pension Fund, not to exceed ten percent (10%). Ohio law provides that employers pay a given amount into the fund and employees pay a set share. Given the current financial and political outlook, the Township wants to stop paying the employees' portion. According to the Township, the State of Ohio has its own budget issues and continues to cut the amount of funding it provides for municipalities. Public opinion has evolved so that it is no longer acceptable that public employees pay nothing toward their retirement. Many townships and other employers are asking employees to share a larger portion of health care and pension costs. The Township is willing to pay its statutory share, it is only asking that new hires to pay their share.

The Union responds that the pension pick up has existed since the mid-90s and eliminating it will create a two (2) tiered wage scale. New employees will make in essence ten percent (10%) less than current employees and employers have found that such wage scales present problems. Newer employees resent not making as much as more senior employees and it could result in the Township having difficulty attracting and retaining qualified employees. Additionally, under the current pay scale, it takes a firefighter seven

(7) years to get to full pay and this means new hires will never truly get to the same full pay as current employees.

The Township counters that this should not affect attracting and retaining qualified employees. It would simply revert new hires to the statutory requirements. Employees hired elsewhere may be required to pay their statutory contribution, so this would put new hires with the Township on equal footing. Further, new hires would not truly be losing the contribution, since they would not be entitled to it until hired. Finally, the Township would rather have this money go into the wage scale than pension pick up.

There is no question that the financial and political climate has changed in recent years. When the parties agreed that the Township would pay the employees' share of the pension contribution in the mid-90s, the economy was in the middle of a long growth period and the public's appetite for public spending was greater. Following the financial collapse in 2008, municipalities have experienced financial difficulty and taxpayers have changed their outlook on public employment. With private employers having laid off workers and hiring having yet to rebound, many see the retirement and other benefits of public employment in a whole new light. This is especially so when taxpayers see that some public employees pay little or nothing toward health care and retirement.

This is not to say that the Conciliator agrees with this new public opinion. Public employees provide valuable services and still do so, at least in Ohio, at a rate somewhat less than the private sector. Other benefits have tended to make up somewhat for the lesser pay. However, it must be acknowledged that public opinion has changed. One need only pick up the newspaper, turn on televised news, or access the internet to see how public employees are being cast in that new light. As difficult as it has been to have a tax

increase or levy passed because of rising costs in public employment, it will only be more difficult for the near future. While it certainly is not controlling, this new outlook must be taken into account. After all, one (1) of the statutory conciliation criteria is “The interests 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.” It is, though, only one (1) of the statutory factors.

The Conciliator is compelled to point out that this bargaining unit understands the current climate. The Union has agreed to certain cost increases, particularly in health care. During the hearing, the Union was cognizant of the cost of various items and rejected taking stances that would unnecessarily increase costs. It commends the Fire Chief for being frugal and staying within his budget and respects him for it. The bargaining unit and the Chief have worked hard to create an effective, hard working, efficient Fire Department. The Township recognizes this and is proud of its Fire Department. Moreover, the Union and Township have worked well together to craft an agreement without adding too much to the bottom line.

Last, it should also be noted that the Fact Finder agreed with the Township’s proposal.

Award: Two new sentences are to be added at the end Article 37, Section 2 as follows:

For all employees hired on or after January 1, 2011, the employee will be responsible for and shall pay the statutory employee pension contribution.
The employer shall not pay any pension pick up for new hires.

Issue: Article 37, Section 1, Wages

Union Position: Accept the Fact Finder’s recommendation of a 5% increase in the first

year for Captains and Lieutenants with 3% increases in the second and third year, and 3% increases for each year for Firefighters.

Township Position: Freeze wages for all three years.

Discussion: The Union contends that the Township's budget allows for its proposal and the wage increases will not be a hardship. It is asking essentially for a 3% cost of living increase, a 1% increase for the EMT certifications, and 1% for Fire Inspection. It believes that the EMT and Life Safety Inspection services of the Department provide a benefit to the community that should be compensated.

Initially, the Union sought parity with the Police Department, which it had at one time. The Union noted that a Police Captain makes approximately \$11,000 more than a Fire Captain, a Police Sergeant makes \$6,000 more than a Fire Lieutenant, and Patrolmen make roughly \$1,000 more than Firefighters. The Union noted that Firefighters can make up some of the difference with overtime pay, but would have to work about 1000 overtime hours to do so.

Even more important, the Union points to Fire District and Ambulance and Emergency levies that have been passed to pay for Fire Department services. These levies bring in sufficient revenues to pay for the Department and there is enough revenue to pay for the Union's proposed increases. During the hearing, Chief Durkin acknowledged that there was sufficient money raised by these levies to pay the increases. This is a testament to the Chief's fiscal responsibility and the bargaining unit and the Union's responsibility in keeping costs down.

The Union also pointed out that the Township had some financial issues in early

2010. The Township acknowledged the situation. It has a separate levy to fund the Police Department. In late 2009, the police fund ran out of money. The Township tried to borrow money to make payroll, but the banks grew concerned and declined to lend the money. The Township then borrowed approximately \$250,000 from the Fire District fund to pay the police payroll. This was an improper transfer under Ohio law. The Township has also borrowed from the Fire District fund to meet other obligations. The total borrowed is approximately \$345,000.

The Township notes that it is favored to have good Firefighters who are worth what they are paid. While it acknowledges that the Fire Department funds would support the raises for the near future, it questions whether that would continue beyond a few years. It also admits the disparity between the Police and Fire Departments. However, the Township is concerned that paying the money back to the Fire District fund could cause shortages elsewhere and result in difficult decisions, perhaps even layoffs.

Additionally, the State of Ohio is cutting its budget. Since townships cannot levy taxes, they have limited means to raise money. The two (2) largest sources of non-dedicated revenue for the Township are the Ohio Local Government and Ohio Inheritance Tax funds. The Township is fortunate to collect between \$400,000 and \$800,00 in a typical year. These sources are expected to be cut by the state. As noted above, the Township also points to political pressure. It argues that the public is beginning to resent public jobs and taxpayers believe government should do more with less. The Township believes there will be a public backlash if increases of 5% are awarded and ongoing levies could be defeated as a result.

The Conciliator understands that the Township is in a difficult position. It has

experienced some financial difficulties as a result of its own doing. However, this has nothing to do with the Fire Department. Rather, the problems arose in the Police Department and its fund. When its costs exceeded the police fund revenues, it borrowed from the Fire Department, which is illegal under Ohio law. There is no question that the Township had a difficult decision to make and the Conciliator believes it made the correct one – meet payroll and fix the problem after. The Fire Department should not be the one to suffer, though. There is sufficient revenue from the Fire District and Ambulance and Emergency levies to pay the increases. Indeed, if Chief Durkin had not been as financially responsible, the Township would be in even worse condition.

It is also understandable that the Township wants to keep costs down, given its financial missteps and the current political climate, but campaign promises to pay no increases are an insufficient basis on which to base a conciliation award. If the Township could prove an inability to pay, the Conciliator would be making a different award. However, the Township cannot show an inability to pay. It has been established, and the Township conceded, that there are sufficient revenues to fund the Fire Department. More important, the levy was passed by the voters specifically to fund the Fire Department. Simply put, the Township's residents recognize the value of the Fire Department and voted to fund it. While the Township may have to make difficult decisions elsewhere, the voters have provided for the Fire Department and the Township has the ability to pay the increases here.

While taxpayers may wonder how the Township could pay these increases and not be able to repair roads or make other expenditures, it will be incumbent on the Township to explain its funding sources and that certain funds are dedicated. An educated public

can only be a benefit to the Township.

Award: Captains are to receive a 5% increase in the first year and 3% increases in the second and third year. Lieutenants are to receive a 5% increase in the first year and 3% increases in the second and third year. Firefighters are to receive 3% increases each year.

Dated: March 10, 2011

/s/ Daniel G. Zeiser

Daniel G. Zeiser
Conciliator

Certificate of Service

This report was sent electronically to the State Employment Relations Board, to William Opsitnik, President of Local 2075 of the IAFF, and to Mark S. Finamore, Law Director for Liberty Township on March 10, 2011.

/s/ Daniel G. Zeiser