

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :  
CONCILIATION BETWEEN: : CASE NOS. 2013-MED-07-0845  
: 2013-MED-07-0846  
THE FRATERNAL ORDER OF POLICE, LODGE186 : Date of Hearing: July 10, 2014  
: Date of Award: August 13, 2014  
Union, :  
and :  
WEST CHESTER TOWNSHIP :  
Employer. :

CONCILIATION AWARD

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## **CONCILIATION AWARD**

### **I BACKGROUND**

On May 5, 2014, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Conciliator in the matter of the Fraternal Order of Police, Lodge 186 and West Chester Township (Case Nos. 2013 –MED – 07-0845 and 0846). A Conciliation Hearing was held at 9:45 A.M. on July 10, 2014, at the West Chester Township Hall at 9113 Cincinnati-Dayton Rd., West Chester, Ohio 45069. The Fraternal Order of Police, Lodge 186 (“FOP” or “Union”) was represented by Susan Jansen, Esquire, Doll, Jansen, Ford & Rakay, and Brent Lovell, President of Fraternal Order of Police Lodge 186. West Chester Township (“Township” or “Employer”) was represented by Donald L. Crain, Esquire and Alexander L. Ewing, Esquire, Frost Brown Todd LLC. Inc. Also, in attendance on behalf of the FOP were Lieutenant Joe Gutman, Officer Michael Veenman and Officer Robert Obermeyer. Township Administrator Judith Boyko, Acting Chief David Kelly, Commander Brian Rebholz and Captain Joel Herzog were also present on behalf of the Township.

As required by SERB’s rules, an attempt was made by the Conciliator to mediate the outstanding issues. Although there was some indication that a tentative agreement could be reached, such did not occur, and the parties chose to submit the outstanding issues for determination and award by the Conciliator. Both parties presented evidence in support of their respective positions. The parties agreed that the Conciliator’s Award would be issued via email to the parties’ representatives and SERB on August 13, 2014.

#### **A. Description of the Bargaining Units and Employer**

The Union is the certified exclusive representative for two (2) bargaining units in the Township’s Police Department. One unit (“officers’ unit”) consists of all full-time police officers

below the rank of sergeant, and the other unit (“supervisors’ unit”) consists of all full-time employees in the rank of sergeant and lieutenant. The current collective bargaining agreements for these units have an effective date of October 1, 2010 to September 30, 2013. There are approximately sixty-two (62) police officers in the officers’ bargaining unit and thirteen (13) sergeants and five (5) lieutenants in the supervisor’s unit. .

The Employer, the Township of West Chester, Butler County, Ohio, is located in the South Western part of the State between the cities of Cincinnati and Dayton, just off of I-75. It consists of thirty-five (35) square miles with a population close to 61,000, and it has been one of the fastest growing communities in Ohio. It is also the largest township in the State.

The Township has contracts with three other bargaining units. One is with the International Association of Fire Fighters, Local 3518, for all full-time fire fighters, lieutenants/EMTs and paramedics, effective January 1, 2012 through December 31, 2014. Another is with the Fraternal Order of Police, Ohio Labor Council for all full-time communication officers/dispatcher, effective October 1, 2012 to September 30, 2015. The Township also has a contract with AFSCME Ohio Council 8, AFL-CIO for full-time employees in the Service Department, effective June 1, 2009 to May 30, 2012.

## **B. History of Bargaining**

The last, or current, collective bargaining agreements covered the period from October 1, 2010 to September 30, 2013. The record reflects that the parties met on eight (8) occasions in their in an effort to reach successor agreements, i.e., September 20, 23 and 30, 2013; October 7 and 31, 2014 ; November 4 and 20, 2014; and, January 13, 2014. The latter two sessions were with the assistance of a mediator. The parties were able to agree on and resolve all, but five Articles of the CBA. Pursuant to Ohio law and the Ohio Administrative Code the unresolved issues were referred to Fact Finding and heard by Fact Finder James E. Rimmel.

### **C. Summary of the Fact Finder's Recommendations**

The Fact Finder in his report made the following recommendations as to the Articles that were in dispute.

#### **ISSUE 1: ARTICLE 14, VACATIONS (Both Units)**

**Recommendation:** The vacation schedule set out in Article 14, Section 1 of the parties' former Agreements should be carried over unchanged in their successor Agreements.

#### **ISSUE 2: ARTICLE 15, HOLIDAYS (Both Units)**

**Recommendation:** It is recommended that the current provisions of Article 15, Section 3 under the former agreements (1 October 2010 through September 2013) between the parties be carried over unchanged in their successor Agreements.

#### **ISSUE 3: ARTICLE 17 INSURANCE (Both Units)**

**Recommendation:** Amend the provisions of Article 17, Section 2(a) to read as follows: "Basic Plan: Effective the month after this Agreement is ratified/approved Employees shall pay an amount equal to 14.5% of the premiums during the life of this Agreement and premium equivalents including but not limited to any applicable HRA reimbursements or fees owned by the Township to participate in the program, rounded to the nearest tenth of a dollar."

Amend the provisions of Article 17, Section 2 (B) to read as provided under paragraph (a) above and adding the following clause: "To the extent this percentage calculation yields less than one-half of the difference in premium costs between the Basic Plan and the Elective Plan any employee who opts for the Elective Plan will be assessed such costs. At no time is the Employee's portion of these costs for this benefit (Elective Plan) to exceed one-half of the overall cost of the added premium between the Basic Plan and the Elective Plan."

Add a new provision to Article 17 to read: Effective 1 April 2014, a health insurance coverage for spouses of new employees will be provided upon certification by the Employee that the Employee's spouse is not eligible for insurance coverage from the spouse's employer, pension, or Medicare."

#### **ISSUE 4: ARTICLE 27 DURATION (Both Units)**

**Recommendation:** Article 27 –Duration of the parties’ successor agreements should read as follows: “This Agreement shall become effective as of October 1, 2013 and shall continue until September 30, 2016. Thereafter, it shall continue in force from year to year unless either party hereto notifies the other in writing at least sixty (60) days prior to the expiration of the term or extended term of this Agreement, of any intention to make changes in or terminate the Agreement. ”

**ISSUE 5: ARTICLE 19 WAGES (Both Units)**

**Recommendation:** Amend Article 19 –Wages to provide no schedule wage increases over the terms of the successor agreements. The successor agreements under Article 19, Section I shall set forth those rates which were in existence as of 30 September 2013 as the agreed –to rates of pay for the terms of the successor agreements. Additionally, a new Section 12 should be added to this Article captioned “Annual Lump Sum Payments.” This new Section should read: “Each police officer [Sergeant/Lieutenant] in the employ of the Township on 30 September of 2014, 2015 and 2016 will be paid a lump sum equivalent to one and one-half percentage (1.5%) of his/her annual base rate of pay, as set under Section I above.”

The parties should carry over the existing provisions of Article 19, Section 5 without change in their successor agreements.

**D. Rejection of the Fact Finder’s Recommendations**

The FOP, pursuant to the Ohio Revised Code and SERB’s Administrative Rules, overwhelmingly rejected the Fact Finder’s Report and Recommendations in both units. Of the sixty-two (62) officers, fifty-five (55) voted to reject the report and two (2) voted to accept it. Of the eighteen (18) supervisors, fifteen (15) voted to reject the report and two (2) voted to accept it. Both units voted to reject the report primarily due to the Fact Finder’s recommendations to add a new component to Article 17 regarding the health insurance premiums. It was and is the FOP’s belief that the Fact Finder’s language with respect to the new premium component for the Elective Plan is unclear and potentially costly to its members.

The Employer to the contrary believes that the Fact Finder’s recommendation on the new premium component or “buy up” should remain and become part of the successor agreements. While the Employer concurs with the “buy up” provisions recommended by the Fact Finder, it does not agree with his findings and recommendation that the employees pay a paltry 14.5% of the health insurance premium. The employer as its last best offer for this Conciliation proposes

that in addition to the “buy –up” to be paid by the employees selecting the Elective Plan, employees pay 15%, effective 1/1/2015, and 16%, effective 1/1/2016, of the premium for any health insurance plan offered by the employer (this would include the HSA Plan).

#### **E. Resolved Issues**

Prior to the Conciliation Hearing the Parties agreed and signed a Post-Fact-Finding Agreement which provided for: 1) withdrawing all proposals regarding Article 15 - Holidays and Article 14 Vacation in both agreements; 2) that the duration of the successor collective bargaining agreements shall be from October 1, 2013 through September 30, 2016 and that Article 27 of the agreements shall be modified to reflect that term; and, 3) the FOP withdrawing its proposal regarding Article 19 – Shift Differential (Officers’ Unit). In addition, during the Conciliation Hearing, the parties agreed that January 1, 2015 would be the effective date of the addition of a new provision to Article 17 of the agreements as proposed by the Employer regarding the availability of health insurance for spouses of new employees.

These agreed to provisions of the Post-Fact Finding Agreement and the effective date of the spousal provision are incorporated herein, along with all tentative agreements and unchanged provisions of the current agreement, as being part of this Conciliation Award and are made part hereof by reference. They will not be more specifically addressed in this report.

#### **F. Unresolved Issues**

The following are the remaining unresolved issues for determination by the Conciliator.

1. Article 17 - Welfare (Health Insurance)
  - a) Premiums
  - b) Buy-Up Plan Language
2. Article 19 – Wages

## II CRITERIA

Under Ohio Revised Code, Sections 4117.14 (E) and (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Conciliator is required to give consideration to the following criteria in choosing between the Parties proposals, on an issue- by- issue basis. That statute in pertinent part reads as follows:

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact –finding panel shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section.

\* \* \*

(G)(7) After hearing the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulation of the parties;
- (f) 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.

The remaining unresolved issues in this matter will be determined by giving consideration to all of the foregoing criteria, and thereafter choosing between each of the Parties' final settlement or last best offer on the each issue.

### III ISSUES

#### ARTICLE 17– WELFARE (INSURANCE)

##### PREMIUMS

##### Employer’s Position

The Employer proposes as its final settlement offer regarding premiums to increase the employee share of the premium from the current 13% to 15% effective 1/1/15 and to 16% effective 1/1/16 for all plan options: Basic Plan, Elective Plan and Health Savings Account (HSA). While the Employer is in agreement with the Fact Finder on the proposed “buy-up” language for the Elective Plan, it “slightly “ disagrees with him on the premiums to be paid by the employees. The Fact Finder found and recommended that the premiums to be paid by the employees should be increased to 14.5% effective the month after the Agreement is ratified or approved.

The Township argues that the proposed premium increases are justified in view of rising costs, both internal and external comparables, the popularity of the proposed health insurance premiums under Senate Bill 5 and the impact of the Affordable Care Act. In support of its position, it introduced into evidence the exhibits from the fact-finding hearing and more current documentation and articles establishing that other employees in the Township are paying premiums of 15% and that the premiums for employees in other Ohio governmental jurisdictions are as high as, or higher than 15%. However, there was no indication that any current employees of the Township were paying 16%.

##### Union’s Position

The FOP proposes as its final settlement offer regarding premiums to increase the employee share of the premium from the current 13% to 15%, effective upon the date of the Conciliator’s Award, 15% effective 1/1/15 and 15% effective 1/1/16 for all plan options. It also



proposes that the remainder of Section 2 remains current contract language. In support of its position, it introduced evidence of both internal and external comparables.

With respect to external comparables, the FOP states that police officers in comparable jurisdictions pay an average of \$179.55 per month for a family health insurance plan while West Chester officers in 2014 are paying \$234.69 per month for the family Elective Plan (FOP Exhibit 4). In addition, it argues that the average premium contribution for a family plan for employees in comparable jurisdictions is 11.4% while the West Chester officers are agreeing to pay 15%.

In its Position Statement, the FOP agreed to add a new provision to Article 17 as proposed by the Township regarding the availability of health insurance for spouses of new employees, except that the effective date would be the date the Conciliation Award is issued. As indicated above under, **I E. Resolved Issues**, the parties now agree that the effective date for this provision is January 1, 2015.

#### **BUY-UP PLAN LANGUAGE**

##### **Employer's Position**

The Employer proposes as its final settlement offer on this matter a modification of the Fact Finder's recommendation. In the last year of the contract, employees selecting the Elective Plan would pay 25% of the cost between the Basic Plan and the Elective Plan in addition to the proposed 16% of the premium. This according to the employer is necessary to deal with the rise in insurance costs. The Employer argues that given the many changes in the insurance industry, employers are moving away from offering multiple plans to employees in favor of a more cost-effective option.

The Township's most cost-effective plan is the Basic Plan. This plan, according to the Employer, is not a "cut rate" plan that leaves employees vulnerable to risks or lapses in coverage; rather it is a plan that provides sufficient health care coverage to its employees and

their families and encourages employees to be educated consumers and advocates keeping health care costs manageable. The Elective Plan has become increasingly expensive, and there is no additional benefit provided by the Elective Plan that outweighs its cost.

Finally, the Employer argues that there is no equitable cost benefit. The Township and taxpayers pay an additional expense for slightly less than half of the Union employees who are covered under the Township's plan to be in the Elective Plan. The purpose of the "buy up" is to share the burden of these increased costs with employees who actually select the Elective Plan. It is simply unfair, according to the Employer, to expect the Township and other employees to bear the costs of a plan that provides little additional benefit. The Employer believes that the "buy-up" would give an added incentive to employees to choose the Basic Plan.

The Fact Finder agreed with the Employer on a "buy-up" plan at 50%. Since the Township has reduced its demand by proposing only a 25% "buy-up", its proposal is reasonable and should be adopted by the Conciliator.

### **Union's Position**

Although the FOP is willing to increase the premium paid by employees in the bargaining units to 15%, effective with the issuing of the award, it is opposed to the buy-up charge for bargaining unit employees who enroll in the Elective Plan. Approximately 60% of the FOP membership participates in the Elective Plan and 40% participate in the Health Savings Account or High Deductible Plan. None of the FOP members participate in the Basic Plan. The FOP argues that it is significant that none of the other Township employees in other bargaining units are required to pay a buy-up charge for the Elective Plan (FOP Ex. 2).

According to the FOP neither the Employer nor the FOP can rely on a proposal which is identical to the language recommended by the Fact Finder because the parties disagree as to the impact of the recommended language. Such recommended language, according to the Union leads to an inequitable result. The FOP argues that the example presented by the Fact Finder, in his report, that there would no increase in premium for those employees choosing the Elective Plan is ambiguous. Certainly, the Employer does not agree there would be no

additional cost to the bargaining unit employees in the Elective Plan. The Employer anticipates an additional sharing of costs or premium by employees in the bargaining units. This according to the Union is the major reason it rejected the Fact Finder's report.

### **DISCUSSION AND AWARD**

The FOP's final settlement offer on Article 17 should be adopted and incorporated into the successor Collective Bargaining Agreements. While the Conciliator recognizes that deference should be given to the Fact-Finder's Award, such would not be appropriate regarding the provisions of Article 17. The extent to which a conciliator is compelled to adhere to the recommendation of a fact-finder depends upon the facts presented. The deviation from the recommendation of a fact-finder could be due to error or flawed data or the inability of the conciliator to discern the factual or statutory basis upon which recommendations have been made or how it is to be implemented.

While the premiums proposed in the Fact Finding Report and by the parties could be supported by both internal and external comparables, the Conciliator finds the FOP's proposal the most reasonable and appropriate. The 15% premium as proposed by the FOP corresponds with the maximum that other Township employees are currently paying. The 16% proposed by the Township effective January 1, 2016 is not, currently, being charged to other bargaining unit employees. The FOP's proposed premium also corresponds with the premium rates charged to employees by other comparable employers.

If the premium rate to be paid by the employees were the only consideration under Article 17, deference to the Fact-Finding Report would be appropriate. However, the Fact Finder's recommendation on the "buy-up" language and the example he gave as to its implementation is not clear. The Fact Finder's example has no additional premium cost to the employee. This certainly was, and is, not the Employer's intent in its proposal on the "buy-up". The employer obviously intended that the employees share an additional burden in selecting the Elective Plan or option. The Employer's interpretation that it anticipated employees paying

an additional premium for choosing the Elective Plan has been clearly expressed to the Union. This is in conflict with the example given in the Fact Finder's Report. For this reason, alone, it would not be appropriate to give deference to the Fact Finder's recommendation.

While the Fact Finder's intent to give the Employer some relief from the so called "Cadillac" or high priced Elective Plan is understandable, the Conciliator believes that it was based upon the false assumption that the so called "Basic Plan" or option was in fact the required, must keep or "basic plan" of the Employer. This assumption is not supported by the language of the current CBA Article 17, Section 2 (d) which reads as follows:

" The Township is under no obligation to offer or meet the current level of benefit for the Basic Plan or the HSA, or to provide the Basic or HSA plans in any subsequent year. "

The inference is clear, the Elective Plan is not optional, but is a clear contractual right, especially when read in conjunction with the first sentence of Section 2 of Article 17, which states: "The township will provide health insurance for all full-time Employees in the form of plan options: Basic Plan, an Elective Plan, and/or a Health Savings Account (HAS)." Should the Township not provide the Basic Plan or option, there would be no basis on which to calculate additional "buy up" premium for the Elective Plan. The apparent intent of the foregoing language was to keep the Elective Plan as the Township's "basic plan" and the currently named Basic Plan and HSA as less expensive options to the Elective Plan or its true basic plan. It makes no sense to calculate an additional premium or the buy-up for the Elective Plan in the manner proposed by the Employer, and as set forth in the Fact Finder's Report. It would be simpler and clearer to increase the premium to be paid for the Elective Plan or option. The actual percent of the premium employees would be required to pay for the Elective Plan under the proposed buy-up would be more than 15%; it could reach as high as 20%. Considering that 60% of the employees in the bargaining units are in the Elective Plan and none are in the Basic Plan, this would create an undue burden on those employees and their families in the Elective Plan.

Understandably, the Township desires to control premium costs and has devised the "buy up" concept to drive employees into the Basic Plan or HSA options because it cannot

justify a premium increase above 15%, or as it has proposed 16%, with either external or internal comparables. Nor can it justify the “buy-up concept” with any comparables.

Therefore, the Conciliator finds that the Employer’s Final Settlement Offer is hereby rejected and the FOP’s final settlement offer is hereby adopted and incorporated in the successive Collective Bargaining Agreements, except for its proposed Section 8 regarding the effective date for spousal coverage. Section 8 of FOP’s proposal shall be deleted and the Employer’s proposal shall be adopted and incorporated as paragraph f) under Section 2 of Article 17 of both agreements. All provisions of Article 17 of both agreements shall be unchanged, except for Section 2 which shall be changed to read as follows:

Section 2. The Township will provide health insurance for all full-time Employees in the form of plan options: Basic Plan, an Elective Plan, and/or a Health Savings Account (HSA). Employees who wish to participate in a Township health insurance program are required to pay for such coverage via a pre-tax reduction plan through contributions equal to the following:

- (a) Basic Plan: The Employee shall pay the amount equal to 15% effective upon the date of the Conciliator’s Award, 15% effective 1/1/15 and 15% effective 1/1/16 of the premiums and the premium equivalents including, but not limited to any applicable HRA reimbursement or fees owed by the Township to participate in the program, rounded to the nearest tenth of a dollar, or
- (b) Elective Plan: The Employee has the option to participate in the Elective Plan by paying an amount equal to 15% effective upon the date of the Conciliator’s Award, 15% effective 1/1/15 and 15% effective 1/1/16 of the premium and the premium equivalents including, but not limited to any applicable HRA reimbursement or fees owed by the Township to participate in the program.
- (c) Health Savings Account (HSA): The Employee has the option to participate in a Health Savings Account and pay an amount equal to 15% effective upon the date of the Conciliator’s Award, 15% effective 1/1/15 and 15% effective 1/1/16 of the monthly premium and monthly premium equivalents including but not limited to any applicable HRA reimbursement or fees owed by the Township to participate in the program, rounded to the nearest tenth of a dollar.
- (d) The Township is under no obligation to offer or meet the current level of benefit for the Basic Plan or the HAS, or to provide the Basic or HAS plans in any subsequent year.
- (e) It is understood that the Elective Plan, or its equivalent, as offered by a carrier, during the term of this Agreement will change from a 100% in-network, 70% out-of-network plan to a 90% in-network, 60% out-of-network plan, effective July 1, 2011.
- (f) Effective January 1, 2015, health insurance coverage for spouses of new employees will be provided upon certification by the Employee that the Employee’s spouse is not eligible for insurance coverage from the spouse’s employer, pension or Medicare.

## ARTICLE 19 – WAGES

### Union Position

The FOP proposes as its final settlement offer 1% increases of base wage rates effective with the pay periods beginning closest to October 1, 2013 and October 1, 2014 for both bargaining units, and a reopener on wages sixty (60) days prior to October 1, 2015. Notice of the reopener on wages would have to be given sixty (60) days prior to Oct 1, 2015 and the provisions of Ohio Revised Code Section 4117.14 would apply. The parties have an agreement that the awards of back wages by a fact finder or conciliator could be retroactive to the expiration of the previous contracts or the payroll period beginning nearest such date.

The Union argues that the Township is able to pay the modest wage increases which it seeks. The approximate cost of a 1% increase each year of the contract for both the officers and supervisors combined is \$90,876 in 2014, \$182,661 in 2015, and \$275,363 in 2016 (FOP Ex. 14).

Although the FOP questions the Township's budget projections, it submits that even assuming the Township's projections are correct, the Township's goal of maintaining 25% of the annual expense as a carryover is met through the end of 2015 (FOP Ex. 11). The five (5) year levy continues through 2015 and by the Township's projections, the ending carryover at the conclusion of 2015 will be \$5.8 million which is approximately 40% of the Township's own projected expenses for 2015 of \$14.4 million (FOP Ex. 11). The township's projected carryover balance of \$3,039,785 at the end of the contract year, 2016, is \$681,413 short of the carryover goal. The FOP submits that the Township is only able to project a negative carryover balance by the conclusion of 2017 by grossly underestimating revenues and overestimating expenditures and that 2017 is two years beyond the expiration of the five year levy and one year beyond the expiration of the three year contract which the parties are currently negotiating.

Finally, the Union argues with respect to the internal comparables, the Township agreed to a 1.4% increase effective October 1, 2013 and a 2% increase effective October 1, 2014 with dispatchers. It also agreed to a 2.5% increase effective January 1, 2013 and a 2.5% wage increase effective January 1, 2014 with the IAFF Local 3518 (FOP Exhibits. 15 and 16).

### **Employer Position**

The Township proposes as its final settlement offer on wages the Fact Finder's recommendation as set forth below.

#### **ARTICLE 19 WAGES (Both Units)**

**Recommendation:** Amend Article 19 –Wages to provide no schedule wage increases over the terms of the successor agreements. The successor agreements under Article 19, Section I shall set forth those rates which were in existence as of 30 September 2013 as the agreed –to rates of pay for the terms of the successor agreements. Additionally, a new Section 12 should be added to this Article captioned “Annual Lump Sum Payments.” This new Section should read: “Each police officer [Sergeant/Lieutenant] in the employ of the Township on 30 September of 2014, 2015 and 2016 will be paid a lump sum equivalent to one and one-half percentage (1.5%) of his/her annual base rate of pay, as set under Seciton I above.”

The parties should carry over the existing provisions of Article 19, Section 5 without change in their successor agreements.

The Township believes that the Fact-Finder's recommendation regarding wages for both bargaining units is a fair increase of compensation while respecting the Township's need to conserve resources. It values the work of its police officers and wants them to be paid well and believes they are well compensated. In the light of its current financial circumstances, it cannot justify a base wage increase. The nature of the Police Department's funding requires the Township to take the necessary actions to control expenses, which includes avoiding unwarranted base wage increases. The Township further argues that even with a wage freeze, it will deplete its reserve fund in 2017. Thus, it must be prudent in the near future.

In support of its position, the Township strongly argues that deference should be given the Fact- Finder's Report and cites several conciliation awards in support. Also, it argues that

the considering the current status of the Township's finances, it would not be in the public interest to grant a base wage increase. It must continue to work within the confines of the existing police levy. The existence of reserves should not result in overly generous wage increases. This is especially true if the Township seeks to renew or replace its levy in the future. It cannot be giving large wage increases when many other comparable jurisdictions are accepting freezes, and expect taxpayers to approve a levy for additional funds.

The Township also argues that its police employees fare exceptionally well against its external comparables. In support of this position, the Township submitted data on wages and benefits for both large cities and jurisdictions comparable to the Township in size and composition (Fact-Finding Exhibits F-24 & F-23 and Conciliation Exhibits C-3 & C-4). The data established in both surveys that the Township was at or near the top in terms of entry and top level wages. Many of the jurisdictions cited in the data submitted have accepted wage freezes within the past few years.

The State Employment Relations Board Annual Wage Settlement Report submitted by the Township reflects that the police officers have received reasonable wage increases. According to that report, the average police wage increase for 2012 was 1.2%. For townships, the average increase was 1.01%. In the Cincinnati region, the average increase for 2012 was 1.14% (Fact Finding Exhibit 44). The West Chester police officers are coming off a 3% - 3%-2.5% contract. The Township maintains that West Chester police employees are currently paid well above the average of employees in comparable jurisdictions. Considering that the lump sums proposed are equivalent to a more than a 1% wage increase, the increases proposed by the Township are appropriate in view of the external comparables.

As to internal comparables, the Township maintains the FOP has fared well when compare to other employee groups at the Township. The police employees have received 3% wage increases from 2006 to 2011 and 2.5% increase in 2012. Their wages increases have out-paced wage increases received by other bargaining units and by non-union employees. The police units received higher wage increase than the fire unit (which received 2.5% over 3-years beginning in 2012) and the dispatchers unit (which received a 0%-1.5%-2% beginning October



2012). The current wage schedule of the police officers exceeds those of firefighters, and even if no base wage is awarded, the police officers and firefighters will have similar annualized salaries. According to the Employer, the police officers will remain the best-paid in the Township.

The Township further argues that the police contract is the “lead contract” and any base wage increase awarded to the police will detrimentally impact the Township’s ability to negotiate lump sums with its other units. In addition, the Township states that lump sum payments are necessary to decrease the wage compression between the Lieutenants (who are members of the bargaining unit) and the Captains (who are not part of the bargaining unit).

In conclusion the Township maintains that the Fact-Finder has made a reasonable and fair recommendation on wages. Conservatism with regard to the next three years is warranted in view of the Townships funding sources and its political realities. Both internal and external comparables support the Fact-Finder’s recommended 1.5% annual lump-sum payments.

#### **DISCUSSION AND AWARD**

The Employer’s final settlement offer on Article 19 to adopt the recommendation of the Fact-Finder should be adopted and incorporated into the successor Collective Bargaining Agreements. Although deferral to the Fact-Finder’s Award regarding Article 17 would be inappropriate, that is not the case with the recommendation on Article 19. The Township’s argument for deferral is persuasive. As SERB Conciliator Dennis Byrne stated in *City of Lakewood and Local 382, IAFF*, SERB 00-MED-09-0952, May 1,2002, p.4:

A conciliator is not bound to follow the fact finder’s recommendations, but only a foolish or naive conciliator will change the fact finder’s recommendations without an overriding reason. In general, the party that disagrees with the fact finder must prove that the neutral made some mistake in fact or logic. If the moving party cannot adequately prove that the fact finder made a mistake, then there is no reason for a conciliator to make a different recommendation than the fact finder... Whether or not a conciliator agrees with the recommendation is somewhat beside the point. The conciliator must be deferential to the fact finder unless it can be proved that the fact

finder made a serious error in his/her report. This means that the bar has been set very high for the party that wishes to have the fact finder's recommendations modified.

The Conciliator does not find any mistake in fact or logic in the Fact Finder's Award regarding wages under Article 19 of the Agreements. Thus, there is no overriding reason to change the Fact Finder's recommendation. The evidence submitted for the Fact Finding and the Conciliation Hearings support the Fact Finder's recommendation.

The parties have submitted numerous exhibits into evidence regarding the finances of the Township. While those exhibits could be interpreted to show there may be sufficient funds to increase base wages from reserves, as claimed by the FOP, such would not be in the public interest considering the limited and uncertain revenue sources, and the need to pass a future police levy in a difficult political climate. The lump sum payments, however, may not be as offensive to the anti-tax groups, and would not have the compounding effect that increase on base wages would.

Likewise numerous exhibits have been submitted regarding both external and internal comparables. Those exhibits clearly establish that the employees in the bargaining units are highly paid and will remain at the top of the pay scales in the comparable jurisdictions and in the Township.

In arriving at his recommendations, the Fact Finder found that the evidence most compelling was SERB's Annual Wage Settlement Report, showing that wage settlements for police units have averaged 1.15% over the past three (3) years. This data, according to the Fact Finder showed that the historical percentages employed in West Chester were no longer supportable. The significant reduction in state revenues for local government, the anti-tax sentiment in the community, the loss of several large employers, and the Township's limited revenue sources could not be ignored. The Fact Finder stated that the future reality is the situation concerning the uncertainty of the police levy. This will be recurring unless new sources of revenue become available. Even if the Trustees are able to get the current levy renewed, the claimed fragile situation will continue to exist.

Therefore, the Conciliator finds that the FOP’s final settlement offer is hereby rejected, and the Employer’s final settlement offer is hereby adopted and incorporated into the successor Collective Bargaining Agreements. All provisions of Article 19 of both agreements shall be unchanged, except for Sections 1, 11 (Officers below Rank of Sergeant) and 9 (Sergeants and Lieutenants); those Sections shall be changed to read as follows:

**OFFICERS BELOW THE RANK OF SERGEANT**

**Article 19**

Wages

Section 1. Effective with the pay period beginning closest to October 1 of each year of this contract, rates of pay computed hourly for Employees shall be in accordance with the following schedule, subject to the conditions set forth in paragraph 2, below:

Employees hired before July 1, 2010 are to be paid in accordance with the following five step schedule:

<u>Dates</u>	<u>Step 1</u>	<u>Step 2*</u>	<u>Step 3</u>	<u>Step4</u>	<u>Step 5</u>
10/1/13	\$54,303.19	\$58,415.28	\$62,527.37	\$66,639.46	\$70,751.55

The following rates and six step schedule are payable to employees hired on or after July 1, 2010:

<u>Dates</u>	<u>Step 1</u>	<u>Step 2*</u>	<u>Step 3</u>	<u>Step4</u>	<u>Step 5</u>	<u>Step 6</u>
10/1/13	\$54,303.19	\$57,592.86	\$60,882.53	\$64,172.21	\$67,461.88	\$70,751.55

\*Employees may be initially hired at Step 2 at the Employer’s discretion and at a higher Step if agreed to by the FOP.

\* \* \*

**Section 11. Annual Lump Sum Payments**

Each police officer in the employ of the Township on September 30 of 2014, 2015, and 2016 will be paid a lump sum equivalent to one and one-half percentage (1.5%) of his/her annual base rate of pay, as set forth in Section 1, less lawful deductions.

**SERGEANTS/LIEUTENANTS**

**Article 19**

**Wages**

Section 1. Pay rates computed hourly during term of this Agreement shall be as follows:

<u>Dates</u>	<u>Sergeants</u> (115%)	<u>Lieutenants</u>
10/1/13	\$81,364.28	\$93,568.92

The above percentage figures represent a multiple of top pay for Patrol Officers and Sergeants, as noted. An Employee promoted to the rank of Sergeant or Lieutenant will be paid 7.5% greater than the previous rank for one (1) year after the effective date of the promotion.

\* \* \*

**Section 9. Annual Lump Sum Payments**

Each Sergeant and Lieutenant in the employ of the Township on September 30 of 2014, 2015, and 2016 will be paid a lump sum equivalent to one and one-half percentage (1.5%) of his/her annual base rate of pay, as set forth in Section 1, less lawful deductions.

**CERTIFICATION**

The Conciliation Report and Award are based on position statements, and the evidence and testimony presented to me for the hearing conducted July 10, 2014. Recommendations contained herein are developed in conformity to the criteria for fact finding and conciliation found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Conciliator

August 13, 2014

**PROOF OF SERVICE**

This Conciliation Report was electronically transmitted this 13th day of August, 2014, to the persons named below.

**Appearances:**

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/s/ John F. Lenehan  
John F. Lenehan



