

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of Conciliation Between

OLMSTED TOWNSHIP  
FIREFIGHTERS, IAFF LOCAL 2845

Employee Organization  
And

Case No. 2015-MED-07-0641

OLMSTED TOWNSHIP

Conciliator: Jerry B. Sellman  
Date of Report: June 9, 2017

The Employer

---

**REPORT AND AWARD OF CONCILIATOR**

---

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Ryan J. Lemmerbrock, Esq. – Attorney with Muskovitz & Lemmerbrock, LLC, representing  
IAFF Local 2964  
Christian Platzar – Firefighter with IAFF Local 2845, Witness  
Damon Schreiber - Firefighter with IAFF Local 2845, Witness  
Chris Jansen - Firefighter with IAFF Local 2845, Witness

FOR THE EMPLOYER:

David A. Riepenhoff, Esq. – Attorney with Fishel Hass Kim Albrecht Downey, LLP,  
representing Olmsted Township, Ohio  
Stephanie L. Schoolcraft, Esq. - Attorney with Fishel Hass Kim Albrecht Downey, LLP,  
representing Olmsted Township, Ohio  
Michael D. Esposito - Director of Client Development, Clemans, Nelson & Associates, Inc.,  
representing Olmsted Township, Witness  
Patrick Kelly – Olmsted Township, Ohio Fire Chief, Witness  
Tiffany Fischbach – Trustee, Olmsted Township, Ohio, Witness  
Brian W. Gillette – Fiscal Officer, Olmsted Township, Ohio, Witness

**Preliminary Information**

This matter concerns an examination of unresolved issues between Olmsted Township, Ohio (hereinafter referred to as the “Employer” or the “Township”) and the Olmsted Township Firefighters Association, IAFF Local 2845 (hereinafter referred to as the “IAFF” or “Union”) under the terms of a successor Collective Bargaining Agreement.

**Background on the Bargaining Unit**

The Union is the exclusive bargaining representative of all full-time employees of the Olmsted Township Fire Department occupying the positions of Captain, Lieutenant, Firefighter/Paramedic, and Firefighter/EMT. There are currently thirteen (13) members of the bargaining unit—three (3) Lieutenants and ten (10) Firefighters. One (1) of the Firefighters is retiring this month, which will drop the bargaining unit size to twelve (12).

There is one (1) fire station in the Township, staffed twenty-four (24) hours a day, seven (7) days a week. The Olmsted Township Fire Department (“OTFD” or “Fire Department”) has approximately seven (7) response vehicles—two (2) Advanced Life Support ambulances, one (1) engine/pumper truck, one (1) aerial ladder truck, one (1) Fire Prevention car, one (1) rescue utility van, and one Shift Officer command vehicle (with ALS capabilities). Currently a total of fifteen (15) personnel staff the Fire Department, thirteen (13) of which are full-time IAFF bargaining unit members. There are two (2) non-bargaining unit employees—the Fire Chief and the Assistant Fire Chief. This month, one (1) of the IAFF bargaining unit members will retire, resulting in the bargaining unit dropping to twelve (12) members—three (3) Lieutenants and nine (9) Firefighters.

The IAFF bargaining unit members currently work an average of fifty-one (51) hours a week, in three (3), twenty-four (24) hour shift rotations (i.e., twenty-four (24) hours on duty

followed by forty-eight (48) hours off duty). A minimum of three (3) Firefighters are on-duty per shift.

Over the course of the last decade the Fire Department's workload has grown. As of 2000, the OTFD handled a total of approximately 1,200 emergency responses annually (fire and EMS calls). In 2012, the OTFD responded to a total of 2,161 EMS and fire emergency calls (1,517 EMS, 644 fire). The Fire Department's emergency responses hovered around 2,000 calls per year until 2016 (2,067 in 2013, 1,937 in 2014, and 2,009 in 2015). In 2016, the OTFD's run numbers dropped to approximately 1,700. In 2016, the OTFD modified the method it tracks emergency responses, tracking calls by incident response and not by patient as the Department had done in the past. During this time period the number of multiple (simultaneous) calls the OTFD responds to has remained high in comparison to prior years. From 2009 to 2012, the OTFD averaged 157 multiple calls per year. From 2013 to 2016, the OTFD averaged 261 multiple calls per year, resulting in the on-duty IAFF members being busier and more reliant upon mutual aid from neighboring communities.

While the OTFD's call volume has increased over the past decade and the number of multiple calls has increased in recent years, the Township was required to reduce staffing. As of 2009, the Township had eighteen (18) full-time Firefighters on shifts, with six (6) Firefighters assigned to each shift and a minimum staffing level of four (4) per shift. In 2013, staffing was reduced to fifteen (15), with five (5) Firefighters assigned to each shift and a minimum staffing level of three (3) Firefighters per shift. Thereafter, the staff was further reduced to twelve (12) responding Firefighters, with four (4) IAFF members assigned to each of the three (3) shifts. All three (3) shifts still maintain a minimum staffing level of three (3) Firefighters per shift.

### Background of the Township

Olmsted Township is located in the southwestern corner of Cuyahoga County, Ohio. It occupies approximately 10 square miles. It borders Cleveland suburb communities to its North and East, and by rural communities in Lorain County to its west. Olmsted Township itself is largely residential and partially rural. It is the only remaining Township in Cuyahoga County to possess governmental power, the remaining 19 having been subsumed into municipalities. Approximately 13,513 residents live in the Township, and the median household income for residents is about \$64,740. About 5486 (40.6%) of its residents are non-working. Approximately 3,250 of its residents derive their income from social security, retirement or public assistance.

The Township is governed by a three-member Board of Trustees elected by popular vote. In addition to the Fire Department, the Township also maintains a Service Department and Police Department. Service Department employees are represented by the Communications Workers of America union (“CWA”) and Police Department employees are represented by the Ohio Patrolmen’s Benevolent Association union (“OPBA”).

The Township receives funding from four primary sources: property taxes, the local government fund, interest, and levies. In 2016, the Township collected slightly over \$8 million spanning multiple funds. As more fully discussed below, it maintains a Fire Levy which, together with EMS collections, sustains the Fire Department.

### Financial Background of the Township

Not unlike many local governmental entities, the Township was impacted by the recession in 2008. General Fund expenses significantly exceeded revenue. General Fund revenues dropped sharply from 2007-2009 and mostly remained flat, if marginally increasing, through 2014. The Township felt the impact of the significant decrease in local government

funding, estate tax, and other sources of funds. As a result, it had to rely on property tax revenue, which was stagnant and impacted by declining property values and other economic factors.

In light of dwindling revenues, and the prospects of losing services provided by a full-time fire department, the Township turned to levies and EMS fees to support its Fire Department and EMS services. In 2010, Township voters approved millage increases to both the Fire and Police Levies, both increasing from 1.5 mills to 2.5 mills for the purpose of providing for the operations and improvements of the Fire and EMS service, and for the Police service. Specifically, the Fire Levy was passed, “to provide and maintain fire apparatus, appliances or buildings, sources of water supply... lines or fire-alarm telegraphs, and to pay permanent and part-time fire-fighting personnel...”<sup>1</sup>

With the increased millage from the 2010 Fire Levy and collections from EMS billings, the Fire Department was expected to be self-sustaining, and the Township has not made any discretionary transfers from its General Fund to supplement the Fire Department. The Township does supplement the Police Levy Fund, but this is because the Police Department does not collect fees from alternate sources like the Fire Department does with its EMS services.

While the Fire Department revenues received a boost due to the 2010 levy and ambulance collections in recent years, in 2016, the Fire Department’s expenses exceeded revenue again. It collected \$1,769,678 in revenue, but expended \$1,811,610. In 2017, the Township anticipates it will collect around \$1.5 million from the Fire Levy and \$325,000 from its EMS billings. In 2016, the Township spent approximately \$1.6 million from the Fire Levy Fund, including \$958,000 in salaries for its fire personnel, and spent \$380,000 from its Ambulance and Emergency Medical

---

<sup>1</sup> The IAFF asserts that the levy was passed primarily to pay for firefighter wages and benefits.

Services Fund.

The Township's Fire District Fund (levy taxes, intergovernmental revenue, and miscellaneous funds) has maintained a steady, slightly-increasing level of revenue in recent years, a relatively steady level of expenditures, and a healthy year-end carryover balance.

In 2013, with the loss of estate tax revenue, the Township lost an estimated \$500,000 per year in General Fund revenue. The estate tax loss, combined with reductions in Local Government Funds, signified an approximate \$600,000 loss in revenue to the General Fund. To account for this loss in General Fund revenue, the Township eliminated the Fire Department from any General Fund expenditures, resulting in a considerable cut in Fire Department revenue (more than \$200,000 per year). The Township reduced General Fund expenditures by \$284,000 in 2013, which allowed the General Fund to end the year with a \$1,249,000 carryover balance—nearly double the 2012 carryover balance and representing over a 67% carryover for 2014.

Having its finances strained in 2013, the Township contemplated personnel reductions, as well as other measures to maintain Township operations. To avoid layoffs, the OPBA bargaining units agreed to move all members to a provider health insurance network (MetroHealth), assume a greater share of premium contribution (10% uncapped), and adjust contract language to permit the Township flexibility in providing plan offerings so long as those offerings were consistent with that provided to non-bargaining unit personnel. No additional compensation was received for this mid-term change.

After this agreement, the local IAFF unit, which was engaged in successor negotiations, reached a three-year agreement with the Township that maintained current wage rates (subject to economic reopener) and coincided with the Township's change of its primary health care plan provider to the MetroHealth System under more restrictive language. These avoided layoffs and

allowed the Township to project attrition based on savings that would permit the Fire Department to operate within its dedicated funds. Though no general increase was provided, the IAFF unit members received a one percent (1%) longevity increase; other Township personnel do not receive this base percentage longevity increase. The IAFF members also benefit from lower employee premium contribution amounts.

All personnel in the Township were moved to the MetroHealth Network as the primary base plan in 2013 because at that point in time the prior MMO plan (with inferior benefit levels) was costing the Township almost \$2,200 per month for a family plan and more than \$700 per month for single coverage. The Township's maneuver to a different provider and network reduced the coverage costs to slightly more than \$1,150 per month for family coverage and roughly \$500 per month for single coverage, while enhancing benefit levels. Under both plans there were no deductibles (100% coverage); however, under the MMO plan office co-pays were \$20-\$25 and prescription co-pays were \$10/\$15/\$30. Under the MetroHealth plan, the office co-pays were reduced to \$10 and the drug costs were reduced to \$3/\$10/\$25.

Based on the Township's concerted efforts to reduce expenditures (including the reduction of three (3) fire department positions by attrition and temporarily leaving vacant the Assistant Fire Chief position), and fortunate one-time revenues, Olmsted Township successfully navigated 2013. In November 2013, the Township sought voter approval for additional funding for its operations, but voters rejected the levy.

In 2014, the Township, in light of insurance premium increases, switched to an HRA and high deductible plan. In successfully concluding reopener negotiations with the IAFF, the IAFF members did not receive a wage increase, but did receive their longevity pay increase, a \$500 dollar increase in paramedic pay, and an agreement from the Township to cap the employee's maximum

health insurance liability for those years (aside from the 10% employee premium contribution).

In 2014, the Township sought voter approval for a General Fund 4-mill levy that was necessary to address the Township's aging infrastructure in order to manage residential and economic development needs in the Township. Township Trustees sought this levy to help fund updates to the Township's infrastructure, including fixing roadways, installing sidewalks, and fixing substantial storm water and sewage issues. The voters approved the levy, which began collecting in 2015.

The General Fund collected less revenue in 2016 (\$3,143,698) than in 2015 (\$3,179,694). The Township is more and more reliant on property tax collections, which were less in 2016 (\$1,825,969) than in 2015 (\$1,857,276). The Township has all but lost interest income, and its local government funding has decreased substantially. The Township's General Fund has maintained a sizeable carryover from 2016 into 2017. However, this carryover is largely driven by money collected as a result of the General Fund Levy, which was enacted by the Township's voters to improve the Township's infrastructure. The levy was posited to the taxpayers as a way to generate funds to complete the following types of projects: sewer maintenance and improvement projects; construction, resurfacing, maintenance and repair of the Township's streets, roads, and bridges; construct sidewalks; complete storm water remediation; and for economic development. For the past few years, since the enactment of the levy, the Township has been planning capital improvement projects while preserving the money collected from the General Fund Levy in order to make the numerous infrastructure improvements and updates it promised its taxpayers when it was campaigning for the passage of the General Fund Levy. The Board of Trustees have acted diligently in seeking studies, coordinating with other government agencies, and following required bid processes, all of which takes a significant amount of time to complete. The Township has begun spending a sizeable amount of the saved Levy funds this year for required and overdue projects,

which is reflected by the Township's 2017 appropriations. It has appropriated \$5.5 million in General Fund expenditures for 2017, while it expects to collect approximately \$3.5 million.

The aforementioned capital improvement projects included \$850,000 for road repair and maintenance, with a \$438,496 roadway project that is now set to begin this spring once the weather clears; funds for the construction of sidewalks in various roadside areas throughout the Township, which was requested by residents approximately 4 years ago; funds to address storm water issues that the Township's Consultant estimates will cost \$6,000,000 to \$9,000,000; funds to complete a building for the Olmsted Township Service Department and make various updates to other infrastructure used by the Service Department (the construction of a salt bin and water retention facility this year); and funds for further economic development.

Capital improvements for the Fire Department are also targeted from funds available from the fire levies. Based on the Department's five-year capital plan (2016-2020), the department is scheduled to complete capital projects (vehicle and equipment replacements, turn-out gear replacement, emergency medical devices, etc.) amounting to several hundred thousand dollars in each of the next five years.

#### Negotiating history of the Parties

The parties engaged in multiple negotiation sessions since the fall 2015. In late 2015, the Union retained its principal representative to attend negotiations that occurred on December 16, 2015, wherein the Union declared impasse and requested Fact-finding. The parties thereafter engaged in unsuccessful pre-hearing mediation. On May 27, 2016, Fact-finder David Stanton conducted a Fact-finding Hearing. On September 28, 2016, The Fact-Finder recommended the following on the open issues before him:

- 1.) Personnel Reduction (Art. 8) – Incorporate the Union's proposed terms that part-time employees be laid off before full-time employees (Sec. 1), that employees be recalled upon filling a rank/position previously subject to layoff (Sec. 2), and clarify that full-

time employees will not be laid off as a result of increasing the use of part-time employees (Sec. 5).

- 2.) Holidays (Art. 13)– Add three (3) holidays as being eligible for overtime if worked (Sec. 3) as proposed by the Union; add terms prorating holiday in year of separation (Sec. 4) as proposed by the Township.
- 3.) Vacation (Art. 14)– Specify that two (2) employees will be allowed to schedule time off per shift (Sec. 1) as proposed by the Union.
- 4.) Sick Leave (Art. 15)– Remove the Fire Chief’s unfettered discretion to deny sick leave (Sec. 2) as proposed by the Union; add Township’s proposed language that sick leave may be denied for injuries incurred while committing a felony (Sec. 2); require medical certification of illness/injury from a “healthcare provider” rather than a “licensed physician” (Sec. 3) as proposed by the Union; require employees to produce medical certification after two (2) consecutive tours off (Sec. 3) as proposed by the Township; add language concerning discipline for sick leave abuse (Sec. 7) as proposed by the Township.
- 5.) Injury Leave (Art. 18)– Specify the period for injury leave benefits begins on the first tour the employee is absent because of the injury (Sec. 4) as proposed by the Union; maintain current contract language on the remainder of the Article as proposed by the Township.
6. Compensation (Art. 19)/Appendix A (Wage Increases) – Wage increases of 3.5% (effective 01/01/2016), 3.0% (effective 01/01/2017), and 3.0% (effective 01/01/2018).
- 7.) Compensation (Art. 19)/Appendix A (Longevity) – Reduce the longevity pay for new hires from 1.0% per year of service to a flat payment ranging from \$600 (5 years of service) to \$1,100 per year (20 years of service), as proposed by the Township.
- 8.) Compensation (Art. 19)/Appendix A (Additional Stipends – Paramedic Pay/Mechanic Premium/Fire Inspector) – No increase in Paramedic Pay (rejected Union proposal); pay Head Mechanic an additional \$150 as proposed by the Township.
- 9.) Health Benefits (Art. 20) – Add Township’s proposed terms recognizing the Township’s ability to change the insurance plan to the same plan in place for non-bargaining unit employees, but retain the existing limitations on employee out-of-pocket and deductible costs (Sec. 1); add language recognizing input from the insurance committee (Sec. 3); that a “minimally subsidized offering” be defined as 50% or less of the Township benefit package (Sec. 4); that Sec. 6 and Sec. 8 be

retained as written.

- 10.) Continuing Education (Art. 29) – Increase the funding for special schooling, educational seminars, etc. from \$6,000 per year to \$9,000 per year (Sec. 4).
- 11.) Overtime (Art. 32) (Emergency Call-Back) – Add terms granting IAFF bargaining unit members a minimum of three (3) hours of overtime pay when responding to an emergence call-back within thirty (30) minutes (Sec. 8) as proposed by the Union.
- 12.) Working Out of Classification (Art. 37) – Modify the term “next higher rank” to “Officer in Charge” (Sec. 1) as proposed by the Union; add terms recognizing that an Officer shall be paid wages equal to the rank he is appointed to act in (Sec. 2) as proposed by the Union.
- 13.) Fitness for Duty (Art. 39) – Retain the current contract language as proposed by the Township.
- 14.) Staffing (New Art./Memo. of Understanding) – Add Memorandum of Understanding to CBA establishing a “core level” of twelve (12) IAFF bargaining unit members while the Township utilizes part-time personnel, with a 1-to-1 ratio of part-time to full-time personnel on shift each day, with vacancies in the “core” twelve (12) being filled within a certain period of time.
- 15.) Deferred Compensation Plans (New Art.) – Add terms requiring the Township to accommodate employees wishing to participate in certain deferred compensation plans as proposed by the Union.
- 16.) Contracting Out/Privatization/Consolidation (New. Art) – Reject Union’s proposed New Article prohibiting subcontracting, privatization or consolidation into a fire district.

The Township rejected the recommendations and the Union failed to notify the Employer of its vote. After several information attempts to resolve their differences, on January 5, 2017, the parties attended mediation with the Federal Mediation and Conciliation Service, which ultimately proved unsuccessful.

As a result, the following issues were submitted to the Conciliator for resolution:

- 1.) Personnel Reduction (Art. 8)
- 2.) Holidays (Art. 13)
- 3.) Vacation (Art. 14)
- 4.) Sick Leave (Art. 15)
- 5.) Injury Leave (Art. 18)

- 6.) Compensation (Art. 19)/Appendix A (Wage Increases)
- 7.) Compensation (Art. 19)/Appendix A (Longevity)
- 8.) Compensation (Art. 19)/Appendix A (Additional Stipends – Paramedic Pay/Mechanic Premium/Fire Inspector)
- 9.) Health Benefits (Art. 20)
- 10.) Continuing Education (Art. 29)
- 11.) Overtime (Art. 32) (Emergency Call-Back)
- 12.) Working Out of Classification (Art. 37)
- 13.) Fitness for Duty (Art. 39)
- 14.) Staffing (New Art./Memo. of Understanding)
- 15.) Deferred Compensation Plans (New Art.)

From between each of the party's final settlement offers on each of the issues, a Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 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 interest and welfare of the public, and 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;
- (e) The lawful authority of the public employer;
- (f) The stipulations of the parties;
- (g) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of 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.

### **ISSUES**

The following summarizes the positions of the parties, the evidence and arguments

offered in support of each party's proposal, the Conciliator's analysis, and the Conciliator's Award on the issue presented. In issuing an Award, the Conciliator considered all of the proposals of the parties collectively, the tentative agreements and other fringe benefits as well as compensation received by other Township employees.

**ARTICLE 8**  
**UNION RECOGNITION**

Final Offers on Union Recognition

The Union proposes to adopt the Fact-finder's recommendations on this Article. It proposes to modify the language under Section 1, to specify that a layoff of IAFF bargaining-unit members occurs only because of a "lack of work, lack of funds, or consolidation or abolishment of functions," and delete current language that, regardless of the previously specified reasons, gives the Employer the right to lay off employees "if it determines it is necessary to reduce the size of the workforce." It also proposes to add new language in Section 1 specifying that IAFF members are to be laid off by seniority within the affected rank after all students, temporary, part-time, seasonal, probationary and/or provisional employees within that rank are laid off first.

Under Section 2, it proposes new language to clarify the procedure for recall from a layoff.

Under Section 5, it proposes to eliminate certain provisions in the current language to clarify that *any* IAFF unit member will not be laid off as a result of the use of part-time employees, eliminating the reference to current employees under the '95-'97 Agreement.

The Township proposes maintaining current language under Section 1, under which it retains the right to determine if a layoff is necessary, and proposes similar language as that of the

Union in regard to specifying that IAFF members are to be laid off by seniority within the affected rank after all students, temporary, part-time, seasonal, probationary and/or provisional employees within that rank are laid off first.

The Township proposes maintaining current language under Section 2.

The Township proposes language identical to the Union in regard to Section 5 to clarify current language that *any* IAFF unit member will not be laid off as a result of the use of part-time employees, eliminating the reference to current employees under the '95-'97 Agreement

#### The Position of the Union

The IAFF argues that the Township has decimated the full-time staffing level of the IAFF bargaining unit since 2009. If the OTFD is now further regressively moving from an exclusive full-time Fire Department to a combination part-time/full-time Fire Department, and the Union's bargaining unit work is being reassigned to part-time, non-bargaining unit personnel, the Union members that remain must be fully protected against being laid off and having the remaining Union positions filled by part-time, non-bargaining unit personnel. The Township has demonstrated it will slash full-time positions for cost-savings even when the cost-savings is not necessary. The IAFF avers that the Township has repeatedly promised the Union that it will not use part-timers when it means there will be less than twelve (12) full-time Union members working at the OTFD. If that is truly the case, the Township should have no issue committing in the CBA to laying off part-timers before the full-time Union members.

#### The Position of the Township

The Township modified its Fact-finding proposal, and offered to add language to Article 8, Section 1 "Procedure/Bumping" which specifies that students, temporary, part-time, seasonal, probationary, and/or provisional employees in the Fire Department are laid off prior to bargaining-

unit employees, which is the same language proposed by the Union. The Township seeks to retain the current language in Section 1, which gives the Employer the discretion to determine if it is necessary to reduce the size of its workforce, in addition to the lack of work, lack of funds, or consolidation or abolishment of functions. It argues that it is an inherent management right for the Employer to determine the adequacy of its workforce, “unless the employer agrees otherwise.” Ohio Rev. Code § 4117.08(C) and, while the bargaining unit’s size has been reduced over the past several years, this reduction was via attrition, not layoffs. There is no justification for a further change in previously negotiated language. Further, the Township argues that the IAFF’s proposal (to eliminate Township discretion) tracks Ohio Rev. Code § 124.31, civil service law. The Employer is not a civil service township and therefore is not bound by, and should not be bound by, civil service law governing layoffs.

The Township proposes current language for the remainder of the Article with the exception of Section 5. For Section 5, the Employer proposes that which the Union sought in Fact-finding, to delete reference to the 1995-97 Agreement, historical language, and also proposes reference to “current” full-time employees. The Section states that no full-time employee will be laid off where, as a result, the use of part-time employees will be increased.

### **Analysis**

The heart of the dispute concerning proposed changes in the language of Article 8 is in regard to the Township’s desire to retain language that gives it the right to determine if a layoff is necessary. Most of the other proposed changes recommended by both parties are not in conflict. The Conciliator recognizes the concerns of the Union that the number of bargaining-unit members has been reduced over the years and it wants to minimize the potential of the Township to hire part-time, non-bargaining unit firefighters to replace full-time firefighters. The

Conciliator also recognizes the position of the Township that it will not give up its rights to manage the services provided to the Township by determining, in its discretion, if a layoff is necessary.

While the number of IAFF bargaining-unit members has decreased since 2009, the evidence does not reflect that the decrease was a result of any layoffs, but from attrition. As such, there is no showing that there is a need for the elimination of language allowing the Township to exercise its discretion in determining if a layoff is necessary, since no abuse of that discretion can be seen as subverting the intent of the Union Recognition Clause. Since both parties are proposing the same language concerning the order in which layoffs occur in Section 1, it is appropriate to include the new language in Section 1 regarding this.

The Union's proposed language for Section 2 does appear to be of a clarifying nature and within the intent of the other language contained in Article 8, but such can only be included if the Union's final offer is awarded.

Since both the Township and the Union agree on clarifying language of Section 5, that language is appropriately adopted by the Conciliator.

I find no basis for removing the discretion of the Township to determine layoffs at this time, which is the same language contained in the predecessor agreements. As such, the final offer of the Township will be awarded.

### **Award**

The Conciliator selects the final offer of the Township in regard to Personnel Reduction, as follows:

**Article 8**  
**PERSONNEL REDUCTION**

**Section 1. Procedure/Bumping.** In the event that the Township decides to lay off employees of the bargaining unit because of lack of work, lack of funds, or consolidation or abolishment of functions, or the Employer determines it necessary to reduce the size of its work force, the Employer will provide fourteen (14) days advance notice of a layoff or abolishment to those employees affected by the reduction. When a layoff is necessary *for the reasons stated above*, the Employer shall determine the rank in which the layoff is to begin. *Employees within the affected rank shall be laid off according to their seniority with the least senior being laid off first, providing that all students, temporary, part-time, seasonal, probationary and/or provisional employees within the Department and within the affected rank/job classifications are laid off first.* Should the layoff begin above the rank of Firefighter, the employee with the least amount of rank seniority occupying the rank which is to be reduced in number shall be laid off. If the employee laid off occupies the Captain rank, he shall have the option to displace the Lieutenant with the least amount of rank seniority in the Lieutenant rank. If the employee laid off occupies the Lieutenant rank, he shall have the option to displace the least senior Firefighter with the least amount of rank seniority in the Firefighter rank. Any employee displaced as a result of bumping may attempt to exercise his total seniority in the same manner until the least senior Fire Fighter/EMT is laid off. Employees shall notify the Employer of their intention to exercise their displacement rights within five (5) days after receiving notice of layoff.

**Section 2. Recall Rights/ Procedure.** Laid off employees will be placed on a recall list. If the Employer decides to *fill a rank/position previously subject to layoff, the Employer will* recall laid off employees; ~~it shall do so~~ in reverse order of the layoff.

**Section 3. Reestablishment of Promoted Positions.** [Maintain Current Contract Language].\

**Section 4. Hiring after Reductions.** [Maintain Current Contract Language].

**Section 5. Order of Reduction/Part-time Personnel.** No ~~current~~ full-time employee (~~as of the execution of the 1995-97 Agreement~~) will be laid off where, as a result, the use of part-time employee is increased.

**ARTICLE 13**  
**HOLIDAYS**

Final Offer On Holidays

The Union proposes to add three (3) holidays (New Year's Day, Independence Day and New Year's Eve) as eligible for overtime compensation, if worked, under Section 3. It proposes new language under Section 4 that holiday time be prorated in the first and final year of

employment, that any over-use of the prorated holiday time be deducted from the employee's pay, and that if an employee has not yet utilized all available prorated holiday time at separation, the remaining unused holiday time shall be paid out to the employee.

The Township proposes clean-up/clarifying language under Section 2 (reference to Article 16.1 should have been reference to Article 14.1), current language for Section 3, and a new Section 4 that holiday time be prorated in the first and final year of employment, that any over-use of the prorated holiday time be deducted from the employee's pay. It opposes the additional language proposed by the Union that if an employee has not yet utilized all available prorated holiday time at separation, the remaining unused holiday time shall be paid out to the employee.

#### The Position of the Union

The Union seeks greater parity with the holiday benefits of the Township Police Officers. The Union currently receives only seven (7) holidays off per year and receives time and one-half if they work Thanksgiving or Christmas. By comparison, the Township's Police Officers receive eleven (11) holidays off per year, with the Police Officers being compensated at straight time if the holiday occurs on an Officer's day off and at a double time rate if an Officer works on any of the eleven (11) holidays. The Union proposed at Fact-finding that the Firefighters receive double time pay for working on any of six (6) holidays (the current two holidays and four additional holidays), bringing the Firefighters closer in line with the Township Police. The Fact-finder recommended five (5) payable at time and one-half instead of three additional holidays.

In regard to Section 4, the Fact-finder indicated he was receptive to the Township's proposal to prorate holiday leave upon separation, but did not recommended specific language.

The Union will agree to the language previously proposed by the Township, with an additional clarification that if an employee has not used all accrued holiday time at the time of separation, the employee be paid out for that unused holiday time.

#### The Position of the Township

The Township argues that the Union's proposal to receive additional pay for three (3) additional holidays is unwarranted. It notes that while the Fact-finder cited the fact that OPBA members receive 11 holidays off per year and receive double time if they work on any of the 11 holidays, it omits the fact that the Union employees work 24-hour shifts, while OPBA employees work 8 hour shifts. IAFF members do receive 7 floating holidays that the member gets to schedule, which means members receive 168 hours of holiday leave. OPBA and CWA members do receive pay for 11 holidays, but this equates to 88 hours of holiday pay, much less than what IAFF members receive. The Township's non-union employees only receive pay for 10 holidays, or 80 hours of holiday pay, again much less than the IAFF. The IAFF's proposal is not supported by internal comparables.

The Township proposes that bargaining-unit members annual holiday time should be prorated in the initial and the final year of employment for each completed month of service and the member shall be entitled to receive 14 hours of holiday time. It further proposes that an employee who separates from service during the year after having utilized a greater amount of leave than he is otherwise entitled to on a prorated basis shall be required to pay back such time through offset from his final pay or separation payment. It does not propose a cash payout for unused prorated time as proposed by the Union.

#### Analysis

The Union's rationale for adding three (3) holidays (New Year's Day, Independence Day

and New Year's Eve) as eligible for overtime compensation, if worked, under Section 3 is based upon internal and external comparisons. It argues that the police officers are eligible for overtime compensation if they work on any of the eleven (11) holidays listed in their contract [the Union only seeks five (5)]; other fire departments in the county have on average 6.11 holidays eligible for overtime compensation (double time if worked)<sup>2</sup>, and other comparable township fire departments have on average 7.51 holidays eligible for overtime compensation.<sup>3</sup> The Fact-finder found the internal comparables compelling in awarding an increase, in light of noting the different work schedules of the police and the firefighters. The Township's argument that the proposed increase should be denied because the firefighters have much more vacation hours seems to bear little relation to the increases sought for holidays worked. In light of the internal and external comparisons cited, an increase is justified, and deference should be given to the Fact-finder's recommendation.

The Township's proposal for prorating holiday time in the initial and the final year of employment makes sense as a clarifying procedure for handling the amount of holiday to which an employee who separates from service is entitled. While the parties agreed on the proration and the requirement to pay back holiday time to which the employee used but was not entitled, it did not appear to the Conciliator that neither party discussed or bargained over the issue of compensating the employee separating from service for unused holiday time. Since the issue here is holiday time in the initial and final year of employment, it would be consistent with other terms in the contract regarding compensation for unused vacation time and/or sick leave to compensate an employee for unused

---

<sup>2</sup> Citing Bay Village (5); Berea (0); Brookpark (9); Fairview Park (7); North Olmsted (10); North Ridgeville (12); Olmstead Falls (6); Middleburg Heights (0); and Parma Heights (6).

<sup>3</sup> Ashtabula (10); Austintown (11); Bath (6.6); Bazetta (11); Brimfield (10); Concord (3); Copley (4); Coventry (6 until 2016); Howland (10); Liberty (10); Mantua-Shalersville (0); Painesville (3); Ravenna (10); Springfield (11).

holiday time as proposed by the Union.

### **Award**

The Conciliator selects the Union's final offer regarding adding three (3) holidays (New Year's Day, Independence Day and New Year's Eve) as eligible for overtime compensation, if worked, under Section 3, the Township's final offer regarding clarifying language proposed under Section 2, and the Union's final offer regarding prorating holiday leave of an employee upon separation under Section 4, as set forth below:

### **Article 13 HOLIDAYS**

#### **Sections 1 [Maintain CCL]**

**Section 2.** Holidays may be taken at any time within the calendar year and used in conjunction with vacation. Requests for holiday time off will be approved according to Article **14, Section 1** ~~16.1~~. Holidays can be changed by the employee with the approval of the Chief or his designees.

**Section 3.** Any employee performing service on *New Year's Day, Independence Day*, Thanksgiving Day, Christmas Day, *or New Year's Eve*, defined as 7:00 a.m. on the date the nation's holiday is recognized until the following 7:00 a.m., will be paid time and one-half.

**Section 4. Proration. Bargaining unit members' annual holiday time shall be prorated in the first and final year of employment as follows: for each completed month of service the member shall be entitled to fourteen (14) hours of holiday time. An employee who separates from service during the year after having utilized a greater amount of leave than he is otherwise entitled to on a prorated basis shall be required to pay back such time through an offset from his final pay or separation payment. An employee who separates from service during the year having not yet utilized the prorated holiday time to which he is entitled will receive a cash payment for the value of the unused holiday time.**

### **ARTICLE 14 VACATION SCHEDULE**

#### **Final Offers on Vacation Schedule**

The Union proposes to modify language in Section 1 to allow employees, who have not scheduled all of their vacation time by December 1 of the year preceding the time request, to submit requests for leave at least thirty (30) calendar days in advance of the month in which

the requested shift off falls, thereby allowing the Fire Administration to complete monthly schedules at least a month in advance; to allow an employee the right to request a day off with less than thirty (30) days' notice so long as taking that day off does not result in overtime; and to specify that two (2) IAFF unit members will be allowed to schedule time off per shift.

The Township proposes retention of current language.

### The Position of the Union

The current CBA contains language that requires requests for vacation time be submitted to the Fire Chief or designees on two (2) separate forms on December 1 of the year preceding the time request. It also contains language providing that days not scheduled in this process will be scheduled on a first come, first served basis throughout the year. At the end of 2016, due to reduced staffing, the Fire Chief required that all vacation requests be submitted by December 1 so that he could plan on filling shifts well in advance. As a result, the Fire Chief did not allow Union members the opportunity to schedule vacation days throughout the year. In order to clarify what the Union believes to be the practice under the language of the contract, the Union proposes to modify the language in Section 1 that clarifies the Union members right to schedule addition vacation days throughout the year as long as the request is made thirty (30) calendar days before the month in which the requested shift off falls. Additionally, it seeks additional language that an employee may request a leave day with less than thirty (30) days' notice so long as the requested day off does not result in overtime.

Under current operations, the OTFD requires three (3) Union members on-duty per shift. The CBA does not specify the number of bargaining-unit members that are permitted to take a

vacation day per shift, but currently, only one (1) Union member is permitted off per shift for scheduled time off. This limitation was imposed when the OTFD's response personnel dropped to twelve (12), or four (4) Union members assigned to each shift. For several years, when the OTFD's full-time firefighting force was at eighteen (18) or fifteen (15) Firefighters, there were no issues with the Firefighters being able to schedule off when they wanted and on a number of occasions there were more than one (1) Union member off on a shift. When the response personnel dropped to twelve (12), the remaining Firefighters were not only left to cover the work, but were restricted in their ability to schedule time off when they wanted it. Along with the restriction on the ability to schedule leave, the one (1) off limitation has resulted in time off being spread out further across the year, having the unintended consequence of increasing the number of shifts where overtime is potentially necessary and reducing the number of shifts with full staffing of four (4). The Union submitted testimony and illustrations showing that adoption of the Union's proposal would not increase overtime, but it was admitted that overtime could occur if a part-time fighter decided not to come in on a day that vacation days were doubled up as proposed.

As a result of the one (1) vacation day per shift requirement, as well as the requirement to submit all vacation requests before December 1, union members with lower seniority cannot take days when they need to take them, as in the case of special occasions (weddings, birthdays, etc.) or opportunities to spend time with a child under shared custody circumstances. The Fact-finder recognized these problems and recommended the Union's position on this issue.

### The Townships Position

The Township opposes the Union's offer and proposes retaining current contract language. The Department's protocol of allowing one scheduled absence per shift helps manage the department's staffing and controls overtime costs. It is further necessary to assure that members schedule their "Kelly" days sufficiently in advance so as not to create scheduling difficulties at the end of the work cycle. When an employee is scheduled off on leave, the shift is filled with another bargaining unit member. This often creates overtime; the Employer paid 2,596 hours of overtime in 2016 (108 shifts). Scheduling is a management right. Restraining management's decision-making power in the day-to-day operations must be done so rarely, and only when justified. It is not justified here.

Contrary to the assertions of the Union, its proposal will only drive up the Employer's overtime costs by an estimated additional 1,400 hours (an additional 58 shifts), for an estimated total of 3,946 hours of overtime.

There is no evidence to support the IAFF's claims that its members have been severely restricted in their attempts to take leave. Every bargaining-unit member uses his or her full amount of vacation leave each year. The IAFF also reasons that by allowing two members off per shift, the Employer will be able to staff more shifts with four firefighters instead of three. The IAFF's rationale completely ignores the extremely high increased overtime costs associated with its proposal, and also, the fact that the IAFF's proposal addresses a problem that does not exist.

The Fact-finder awarded the IAFF's proposal on this issue, but the only rationale the Fact-finder cites in support of this recommendation is the fact that members are frustrated and the IAFF's proposal would give bargaining-unit members greater flexibility to schedule the time off they want. The Fact-finder did not conduct an analysis of any of the statutory-required criteria, and his decision usurps the Township's management rights with little to no justification.

## Analysis

The management mandated changes in the scheduling of vacation time over the last couple of years is obviously a frustration to the bargaining-unit members. It is understandable that restricting the choices of vacation times creates inconvenience and missed leisure opportunities. It is clear from the evidence that the changes occurred as a result of a reduction in the number of bargaining-unit members over the last several years, a large part of which occurred due to attrition in the workforce and a lack of funding to hire new employees. Not only was a firefighter's vacation benefit affected, but more work was required of fewer firefighters. The Township was tasked with balancing a tight budget, trying to prevent increased overtime costs necessitated by the need to service the Township, and fulfilling its contractual obligations to provide vacation benefits.

Management does have the right to determine the work schedule, which includes the scheduling of vacations, unless otherwise restricted by the CBA. It appears that the current language in the CBA was crafted to enable the OTFD to schedule vacation time a year in advance, but also allowed bargaining-unit members the opportunity to request a vacation day on a first come first served basis to the extent a vacation day was not scheduled. This dual process becomes less workable, however, when the workforce is reduced and there are fewer firefighters to fill the required shifts, particularly in light of the need to pay overtime. While the Union has attempted through its final offer to reconcile these two provisions, the language it chooses will further restrict Management's right to schedule the work. This further restriction is not in the public's best interest when one considers the reduced workforce and the potential for increased overtime costs.

The Union's position that no additional overtime costs would be incurred (at least

minimally) by allowing two (2) IAFF unit members to schedule time off per shift, as was permitted in the past, was thoughtfully analyzed, but not totally convincing in light of unknown assumptions and a record of already high overtime costs. The unknown assumption is the use of part-time firefighters. The Union had to admit that overtime costs would increase if part-time firefighters did not work on several of the days that two (2) IAFF unit members were scheduled off work. The Fire Chief further testified that the Employer paid 2,596 hours of overtime in 2016 (108 shifts) and that the Union's proposal will drive up the OTFD's overtime costs by an estimated additional 1,400 hour (an additional 58 shifts), for an estimated total of 3,946 hours of overtime. Considering the evidence on both sides, it would not be in the best interest and welfare of the public to restrict the Township's management right to determine the scheduling of vacation time in light of current circumstances.

**Award**

The Conciliator selects the Township's final offer to retain current contract language.

**ARTICLE 15**  
**SICK LEAVE**

**Final Offers on Sick Leave**

The Union proposes to modify the language under Section 2 to allow Union members to use sick leave for the reasons specified in CBA (remove the Fire Chief's discretion as to whether sick leave may be used) and to prohibit sick leave use for injuries incurred while in the act of committing a felony, which was previously proposed by the Township. It also proposes to modify the language in Section 3 to allow medical certificates confirming illness to be provided by a "healthcare provider" (as opposed to the current "licensed physician") and to require that

employees be required to produce written certification of an illness after two (2) consecutive tours (as opposed to the current “three [3] consecutive days”), also as previously proposed by Township. The Union also proposes a new Section, Section 7, stating that employees demonstrating sick leave abuse will be disciplined and that employees are prohibited from engaging in activities inconsistent with sick leave usage.

The Township’s final offer is identical to the Union’s, with the exception that it does not propose removing the Fire Chief’s discretion in granting sick leave.

#### The Position of the Union

The Union maintains that current contract terms regarding when sick leave may be used are contradictory. The CBA provides that sick leave may be used for personal illness, exposure to contagious disease, which can be communicated to other employees, and illness, injury or death in the employee’s immediate family, but “upon the Fire Chief’s approval.” If employees are permitted to use sick leave under the grounds expressly set forth in the CBA, those objective and agreed-upon grounds should dictate whether sick leave can be used, not the Fire Chief’s subjective discretion. As such, the Union proposes deleting the language giving the Fire Chief discretion to determine whether the employees can use sick leave for the reasons set forth under Article 15.

As to documentation of sick leave usage, documentation from a “healthcare provider” is sufficient proof and is more in line with current medical practices than the Article’s current “licensed physician” requirement. Employees visiting a medical center sometimes do not directly interact with a “licensed physician,” but rather an assistant or nurse practitioner. Other times an employee may interact with a physician for only a matter of minutes, instead interacting with that medical center’s staff. The documentation serves to verify medical treatment. Requiring an

employee to obtain documentation from a “licensed physician” as opposed to a “healthcare provider” puts an unnecessary burden on the employee.

The Union has no objection to the Township’s proposal to add a new section addressing discipline for abuse of sick leave. As such, it is made as part of the Union’s final offer on this issue.

#### The Position of the Township

The Township uses the same rationale set forth by the Union to support the modified language proposed for Sections 2 and 3, as well as the new Section 7. The only difference between the final offers of the two parties is in regard to the Fire Chief’s discretion as to whether sick leave may be used. The Township argues that the “discretion language” should be retained.

The Township argues that the Union’s proposal is contrary to internal and external comparables. No other Township employees have unfettered discretion to use sick leave without management oversight. To permit this would further erode management rights. OPBA and CWA members must receive approval of the appropriate management official prior to sick leave being approved, and non-bargaining employees must similarly have their sick leave requests approved. Moreover, there is absolutely no evidence that the Fire Chief has arbitrarily withheld approval for sick leave, so there is no need to change this language to bargained-for language.

While the Fact-finder awarded the IAFF’s position on this issue, recognizing that bargaining-unit members may use sick leave for the reasons specified in the CBA. Members already have the ability to use sick leave for the reasons specified in the CBA. Furthermore, the Fact-finder expressed concern that the Fire Chief may arbitrarily deny sick leave. However, there is absolutely no evidence that this has ever occurred. Additionally, the Fact-finder clearly did not take into consideration internal comparables or external comparables, all of which favor the

Employer's position.

**Analysis**

The final offers of both parties are identical except for one factor: the Union proposes eliminating the language subjecting the use of sick leave to the approval of the Fire Chief and the Township proposes retention of the language. The Conciliator is quite surprised the parties could not agree on the issues raised under the Article. The new modifications make sense and are in the best interest of both parties.

In regard to subjecting the use of sick leave to the approval of the Fire Chief, this language is not unusual in most contracts. While the Fact-finder recommended the language proposed by the Union because “[u]nfettered discretion can lead to arbitrary denials of such leave and such must be weighed against potential abuse by employees,” that conclusion overlooks a number of other relevant factors. Management usually retains that right in order to properly schedule the workforce when notified that the employee is to be absent. In addition, there is clear evidence that language subjecting use of sick leave to the approval of management is contained in both internal and external collective bargaining agreements cited by the Employer. In light of these factors, as well as the prior bargaining history of the parties and the lack of any abuse of discretion by the Fire Chief, there is no basis for eliminating the language in the new contract.

**Award**

The Conciliator selects the Township's final offer to modify the language under Section 2 to prohibit sick leave use for injuries incurred while in the act of committing a felony; to modify the language in Section 3 to allow medical certificates confirming illness to be provided by a “healthcare provider” (as opposed to the current “licensed physician”) and to require that

employees be required to produce written certification of an illness after two (2) consecutive tours (as opposed to the current “three [3] consecutive days”); and to add a new Section 7, stating that employees demonstrating sick leave abuse will be disciplined and that employees are prohibited from engaging in activities inconsistent with sick leave usage, as follows:

**Article 15**  
**Sick Leave**

**Section 1. Accrual.** [Maintain Current Contract Language].

**Section 2. Usage.** Employees may use sick leave upon the Fire Chief’s approval for personal illness, exposure to contagious disease, which can be communicated to other employees, and illness, injury or death in the employee's immediate family. *Sick leave may be denied for injuries incurred while in the act of committing a felony.* When sick leave is paid, it shall be deducted from the member's accumulated sick time on the basis of one (1) hour for every hour paid to the employee.

**Section 3. Documentation.** The Fire Chief may require an employee to furnish a satisfactory written signed statement justifying the use of sick leave. If medical attention is required, or if sick leave is taken for three (3) consecutive days or more *two (2) or more consecutive tours*, a certificate confirming the illness from a licensed physician *healthcare provider* may be required to justify the use of sick leave.

**Section 4. Immediate Family for Sick Leave Usage.** [Maintain Current Contract Language].

**Section 5. Separation Payment.** [Maintain Current Contract Language].

**Section 6. Sick Leave Incentive Payment.** [Maintain Current Contract Language].

**Section 7. Sick Leave Abuse.** Employees demonstrating an abuse of sick leave will be disciplined in accordance with Article 9 (Discipline and Discharge) of this Agreement. While on sick leave employees are prohibited from engaging in activities that are in conflict with the conditions resulting in the use of sick leave.

**ARTICLE 18**  
**INJURY LEAVE**

Final Offers on Injury Leave

The Union proposes to modify Section 4 of this Article by specifying that the “clock” on

injury-on-duty (“IOD”) benefits begins to run on the first regularly scheduled shift the employee is absent due to the duty injury. It proposes retention of current language on all other sections of this Article.

The Township proposes retention of current language on this Article.

#### The Position of the Union

Under the current terms of Article 18, Union members receive up to ninety (90) days of paid leave for recovery from an injury-on-duty (“IOD”). However, the date upon which the IOD benefits commence is not specified in the CBA. As a result, in 2014, following a member’s on-duty injury, the parties engaged in lengthy grievance proceedings to determine when the IOD paid leave should begin. The parties settled the grievance, but did not resolve the underlying issue of when IOD paid leave commences. As determined by the Fact-finder, it is logical for the IOD benefit period to begin on the first day an employee misses due to the on-duty injury. Thus, the Union proposes this clarification be incorporated into Article 18 to avoid any similar future disputes.

#### Position of the Township

The Township argues that there is no justification for the proposed change to Section 4.

#### Analysis

I would agree with the analysis and recommendation given by the Fact-finder that the logical date upon which the Injury on Duty benefits are to commence are from the first day an employee misses work due to the on-duty injury. This is a logical conclusion based upon the intent of the benefit granted to the employee. With no proffered basis for opposing this clarification, the Union’s final offer on this issue should be awarded.

**Award**

The Conciliator selects the Union's final offer to add clarifying language to Section 4 of Article 18 as follows:

**Article 18  
Injury Leave**

**Sections 1 – 3.** [Maintain CCL]

**Section 4. Sick Leave during IOD Benefit Period.** Any employee who is paid benefits under Section 1 shall not have their accumulated sick leave reduced during the period when such benefits are paid. *The IOD benefit period shall begin on the first regularly scheduled shift the employee is absent as a result of the duty injury.*

**Sections 5 – 7.** [Maintain CCL]

**ARTICLE 19  
APPENDIX A - WAGES**

**Final Offers on Wages**

The Union proposes that bargaining-unit members receive salary increases of wages by 3.5% effective 01/01/2016, 3.0% effective 01/01/2017, and 3.0% effective 01/01/2018.

The Township proposes a 3% wage increase effective January 1, 2016, a 3% wage increase effective January 1, 2017, and a 2% wage increase effective January 1, 2018.

**The Position of the Union**

The Fact-finder recommended the wage increases sought by the Union. The Olmsted Township Firefighters argue that they are woefully underpaid by any comparison to area firefighters, be it area townships or cities. A ten (10) year Firefighter in Olmsted Township receives annual wages of approximately \$57,000 (after the longevity benefits from prior years are rolled in), leaving a 10-year Firefighter in Olmsted Township \$8,000 to \$18,000 in annual pay behind fire departments in the area. Further, the Olmsted Township Firefighters have not

received a general wage increase since 2012. Instead, the Firefighters have seen their full-time force gutted and the Township take General Fund funding entirely away from the OTFD. Meanwhile, the Township's General Fund and Fire Funds are maintaining historically high cash balances.

At Fact-finding, the Union proposed 4.0% increases each year of the three (3) year CBA, along with a \$1,500 increase in the Union members' Paramedic pay. Even under that proposal, the Olmsted Township Firefighters would have still made \$10,000 less than the average annual pay for professional firefighters in the area. However, the Fact-finder recommended wage increases of 3.5% for 2016, 3.0% for 2017, and 3.0% for 2018, without an increase in the Paramedic Pay. In support of his recommendation, the Fact-finder cited the increased cash balances in the Fire District and Ambulance Funds, the decrease in health insurance expenses for the Union members, the Union's door-to-door campaign in getting a 4-mill operating levy passed by the Township residents, and his recommendation to allow the utilization of part-time personnel.

The Union submits that a higher wage increase is justified based upon comparable data, bargaining history, and the Fire Funds' ability to pay in light of other Health Benefits and Staffing.

#### The Position of the Township

The Employer argues that its proposal is prudent in light of the funding sources available to fund it and the increases that the OPBA members received, or will receive, for 2016-2018.

The OTFD is funded independent from the Township General Fund from funds

generated from a Fire Levy and funds from EMS revenues.<sup>4</sup> The Township, through prudent management since the 2008 recession, cooperation and sacrifices from employees, and the establishment of additional revenue from levies, is in a stable financial condition.

Notwithstanding its stable financial condition, the many capital improvements it must make this year and in coming years, and the increased costs of maintaining the OTFD (including needed capital improvements within the Department), preclude the level of increase sought by the Union.

The OTFD expenditures were greater in 2016 than revenues generated from the levies supporting its operations. With the planned increase in wages proposed, and the additional capital improvements planned, there is no additional money to pay the wage increase sought by the Union. The Union cites the carry-over in the General Fund, but a significant amount of those funds have been committed to planned infrastructure projects that were promised at the time the General Fund Levies were funded by the citizens of Olmstead Township.

While the Fact-finder recommended wage increases as proposed by the Union, he did not take into consideration these capital costs, did not analyze internal or external comparables, and did not give consideration to the actual funding source for the Fire Department: a levy and EMS billings. The Fact-finder's analysis focused solely on the Township's General Fund, yet the General Fund does not contribute to the Fire Department's operations, so any analysis of the General Fund is largely irrelevant in light of the Department's funding sources. Even if it were considered, the General Fund's current and near future obligations for large amounts of capital expenditures and pending storm water litigation make any dependence by the Fire Department

---

<sup>4</sup> See summary in the "Financial Background of the Township" section set forth in the "Preliminary Information" section of this Report.

on the General Fund by the Fact-finder irresponsible.

The Township does not deny that its General Fund has maintained a sizeable carryover from 2016 into 2017. However, this carryover is largely driven by money collected as a result of the General Fund Levy, which was enacted by the Township's voters to improve the Township's infrastructure. The Board of Trustees have acted diligently in seeking studies, coordinating with other government agencies and following required bid processes, all of which takes a significant amount of time to complete. The Township has begun spending a sizeable amount of the saved Levy funds this year for required and overdue projects, which is reflected by the Township's 2017 appropriations. It has appropriated \$5.5 million in General Fund expenditures for 2017, while it expects to collect approximately \$3.5 million.

The Fact-finder's recommended wage increases were largely based upon a conclusion that the increases were needed as "catch up" payments. However, all Township employees agreed to wage freezes and made other financial concessions to help the Township recover from the recession. Additionally, wage freezes were the norm in many collective bargaining agreements throughout the State after the recession. Since the Firefighters were receiving the same level of increases (or none at all) as both internal and external working groups doing similar work during this period, there is no "catch-up" to be had. In addition, the longevity payments received by the bargaining unit, even with the modified payment schedule proposed by the Township, results in fair compensation for the IAFF.

### **Analysis**

Fortunately for Olmstead Township, it is healthy financially after years of struggling to make up for lost revenues from the State and the downturn in the economy. Its current financial health is due to many factors, including, sacrifices by Township employees (both bargaining unit

and non-bargaining unit), new levies passed by the citizens of the Township, and sound fiscal management by the Township. The issue on wages is not focused upon whether or not to give any increases, to which both parties agree, but how much of a wage increase is appropriate in light of planned necessary (and promised) capital expenditures and wage increases given to other bargaining and non-bargaining employees.

The Township does have healthy carryovers in its General Fund and it appears the Fire Levy and EMS revenues cover most, if not all, of the OTFD expenses, depending upon whose budgeted figures you choose to rely. With the 2014 increase in the General Fund Levy, it is argued by the IAFF that not only can the requested wage increases be covered by the Fire and EMS revenues, but the General Fund is healthy enough to subsidize the Fire Department, if necessary. While not totally dismissing the argument, the Township counters that necessary and promised capital improvements in general will significantly reduce the General Fund, and planned capital expenditures for the Fire Department for equipment will further deplete the Fire Levy Funds.

Recognizing the above factors, and the impact of my Awards on Longevity and Health Benefits, I must conclude that the wage proposal of the Union is supported by the evidence. The Union provided financial projections, based upon data provided by the Township that both the wage increases and some anticipated capital expenditures can be covered by anticipated revenues from the Fire Levy and the EMS Fund. While the Fire Levy was intended for the acquisition of fire equipment, facilities, and safety equipment, in addition to wages, without proper wages there would be no firefighters to operate the equipment or provide services. OTFD expenditures for capital outlays were demonstrated to be necessary, and the Townships arguments that higher wages would, in the long run, eat into reserves necessary to pay for the capital outlay were

persuasive, however, the difference in the total dollar amount of the wage package (wages and longevity) proposed by the Union and the Township is insignificant. The Union's argument that higher wages were necessary to keep competitive with comparable communities was compelling and the Conciliator believes that the awarded wage increases, coupled with the ongoing longevity payments will enable the bargaining-unit members to do that.

The Township argued the need to maintain internal consistency in awarding wages. While the Conciliator generally agrees with this approach as being in the best interest of the community, departures are often recommended in order to not only adequately compensate safety forces, but to keep the wages competitive to attract new hires. The proposed increase in wages will not bring parity with the pay of comparable fire districts, but the firefighters will make major strides in that direction.

**Award**

The Conciliator selects the Union's final offer of a wage increase of 3.5% effective 01/01/2016, 3.0% effective 01/01/2017, and 3.0% effective 01/01/2018, as follows:

**Appendix A**  
**Wages**

Effective January 1, 2013~~6~~ – December 31, 2015~~8~~

**Fire Fighter/EMT**

**~~2015-1/1/2016 (3.5%) 1/1/2017 (3.0%) 1/1/2018 (3.0%)~~**

Starting Wage	<del>\$37,588.71</del>	<b>\$38,904.31</b>	<b>\$40,071.44</b>	<b>\$41,273.59</b>
After One Year	<del>\$42,676.66</del>	<b>\$44,170.34</b>	<b>\$45,495.45</b>	<b>\$46,860.32</b>
After Two Years	<del>\$49,471.06</del>	<b>\$51,202.55</b>	<b>\$52,738.62</b>	<b>\$54,320.78</b>

**ARTICLE 19**  
**APPENDIX A – LONGEVITY**

Final Offers on Longevity

The Township proposes new language that would modify how longevity payments are made by grandfathering in current members to the old longevity schedule, and requiring all new bargaining-unit members hired after January 1, 2016, to adhere to a new longevity schedule instead of the percent based longevity system in effect for current members. Both of these proposals are consistent with the agreement between the Township and OPBA. The Employer proposes current language for the remainder of this Article.

The Union proposes maintaining current contract language.

The Position of the Township

The Township argues that the current bargaining-unit members enjoy a very generous longevity package. After working for the Employer for three years, the members receive a base wage increase of 1% for annual wages for each year of full-time service after three years. These payments must also be considered in considering a wage package. While insulating current bargaining-unit members' longevity benefits for members hired before January 1, 2016, the Township is proposing and to transition the longevity payment to one lump sum payment per year. The primary rationale for the proposed longevity schedule is that it is the schedule used for OPBA and CWA members and is fair and equitable.

The Position of the Union

The Union argues that the proposed change will deny union members the benefit of ongoing longevity payments, which were bargained into the CBA. Under the Fact-finder's recommendation, longevity pay for new Union members would be converted from the existing

1.0% longevity pay for each year of service to flat payments on the following schedule: \$600 (5 years), \$700 (10 years), \$850 (15 years) and \$1,100 (20 years). Imposing this reduced longevity would cause new Olmsted Township Firefighters to lose thousands in compensation, when OTFD wages are already thousands behind professional firefighter wages in the area.

The recommended reduced longevity is not supported by comparable data, as it is well below external comparables on longevity pay. Further, the recommended reduced longevity pay is not supported by a comparison to Olmsted Township Police when the Police units' combined wages and longevity pay is compared to the Firefighters. The Township's Police Officers, at their top rate, currently make \$6,419 more than the Firefighters in annual wages and stipends (\$4,756 in 2015 prior to the Police receiving a 3.0% wage increase). Looking at the Township Police and Firefighters' compensation and longevity side-by-side, currently, it takes the Firefighters ten (10) years of service to match and exceed the wages and longevity pay of the Township Police. Under the change recommended by the Fact-finder, over the course of a twenty-five (25) year career, newly-hired Firefighters would be thousands of dollars behind in annual compensation in comparison to their Firefighter co-workers and the Township Police Officers. As a result, if the Fact-finder's recommended longevity change were recommended, over the span of a twenty-five (25) year career, newly-hired Firefighters would make approximately \$110,000 less than a Township Police Officer. Such a drastic loss in compensation is not supportable by any financial need or any comparable data.

### **Analysis**

Based upon the bargaining history of the parties and no significant basis for any change, the current language will be recommended.

**Award**

The Conciliator selects the Union's final offer to maintain current contract language.

**ARTICLE 19**

**Appendix A**

**(Additional Stipends – Paramedic Pay/Mechanic Premium/Fire Inspector)**

**Final Offers on Additional Stipends**

The Union proposes to increase the Mechanic Premium for the head mechanic by \$150 and maintain current Paramedic Pay, as proposed by the Township and recommended by the Fact-Finder.

The Township proposes to increase the Mechanic Premium for the head mechanic by \$150 and otherwise retain current contract language.

**Analysis**

Since the parties' proposals are identical, the proposal(s) to increase the Mechanic Premium for the head mechanic by \$150 and otherwise retain current contract language will be awarded.

**Award**

The Conciliator selects the Union final offer, which is identical to the Township's final offer to increase the Mechanic Premium for the head mechanic by \$150 and otherwise retain current contract language, as follows:

**Article 19**

**Appendix A**

**(Additional Stipends – Paramedic Pay/Mechanic Premium/Fire Inspector)**

**Paramedic Pay**

**[Maintain CCL] Mechanic**

Premium

For the year 2016, Mechanic Premiums shall remain unchanged. Effective with the year 2017, *each member designated by the Fire Chief as a vehicle maintenance officer/mechanic* will be paid an additional six hundred fifty dollars (\$650.00) in base wages annually. Further, the member designated as the vehicle maintenance *supervisor/head mechanic* ~~will perform maintenance duties on vehicles owned and operated by the Employer and will be paid an additional six hundred fifty~~ *eight hundred (\$65-800.00) dollars in base wages.*

Fire Inspector

[Maintain CCL]

**ARTICLE 20**  
**HEALTH BENEFITS**

Final Offers on Health Benefits

The Township proposes to delete current language in Section 1 and (1) add new language where the Employer agrees to provide bargaining-unit members the same health insurance plan as is provided to all other bargaining-unit employees under its group insurance plan; (2) delete language in Section 1 that references members' maximum liability for medical insurance for calendar years 2014 and 2015 (do not extend to new contract); (3) change language in Section 3 that currently requires the Employer and IAFF to mutually consent to changes to the health insurance plan, to language that requires the Employer to obtain input from the health insurance committee prior to making any changes to the health insurance plan; and (4) add language that would allow the Employer to contribute to an employees' HSA, FSA or other account in the event the Employer transitions to a plan that requires such accounts.

The Union proposes to (1) add terms recognizing the Township's ability to change the group insurance plan to the plan terms in place for non-bargaining-unit employees, but retain the current cost limitations on employee out-of-pocket expenses in Section 1; (2) add terms

recognizing the Township's ability to change plan offerings from year-to-year while receiving input from the insurance committee on those changes, but retain the current cost limitations on employee out-of-pocket expenses under Section 3; and (3) maintain the current contract language under Section 4. This was recommended by the Fact-finder.

#### The Position of the Township

The Township proposes to change language in the CBA to provide bargaining-unit members the same health insurance plan as is provided to all other bargaining-unit employees under its group insurance plan. It seeks consistency in Plan offerings.

Currently, the Township offers a High Deductible Health Plan to all of its employees and pays for the majority of costs associated with the plan, including deductibles and premiums. All employees are given an HRA, and the Employer contributes an amount equal to the employees' deductible into the HRA each year. For 2016 and 2017, the deductible for employees on a single plan was \$5,000 and \$10,000 for employees on the family health plan. For employees in this bargaining unit, the Employer also "bridges the gap" between the deductible and the maximum out-of-pocket under the plan if an employee participates in the Employer's wellness plan. For those that complete the wellness plan's requirements, the Employer contributes the difference between the deductible and the maximum out-of-pocket into the employees' HRA account.

Bargaining-Unit members enjoy a much lower health insurance premium contribution than others. Single plan participants pay only 10% (\$38/month) toward the premium versus the statewide average for public employers of 12.3% (\$72/month). Family plan participants pay only 10% (\$114/month) when the statewide average for public employers is 13.2% (\$202/month). The members enjoy a lower dollar amount of contribution while at the same time the Township pays more per month for a single plan (\$796/month with funded HRA) than the statewide average of

Townships in their tier (\$556/month); and for a family plan (\$1,974/month with funded HRA) than the statewide average of Townships in their tier (\$1,568). Members may also receive opt-out payments if they choose not to participate in the Township's plan.

The Employer's proposal is identical to language contained in the OPBA and CWA agreements. The Employer needs to be able to get the best health insurance for its employees at the best rates possible. This is only feasible when all employees are on the same health insurance plan; uniformity results in cost-savings because there is bigger, better buying power with more employees. The Township is able to obtain much better, more cost-effective health insurance for employees when all employees are subject to the same insurance plan.

The Township proposes to delete language in Section 1 that references members' maximum liability for medical insurance for calendar years 2014 and 2015, because during prior negotiations the "cap" language was only to relate to years 2014 and 2015 and not beyond. Maximum liability language should not be included in the new contract in light of the fact that a generous wage package is being offered and the Township is already reimbursing the employee for large amounts of their deductibles, if needed.

The Township's proposal to change language in Section 3 that currently requires the Employer and IAFF to mutually consent to changes to the health insurance plan, to language that requires the Employer to obtain input from the health insurance committee prior to making any changes to the health insurance plan, is based upon the Township's desire to obtain health insurance for all of its employees at the best possible rate.

The Township proposes mostly current language for Section 8 regarding wellness screenings where the Township covers the entire maximum out-of-pocket deductible amounts for bargaining-unit members, if the member participates in the wellness program. The Township

proposes to add language that would allow the Township to contribute to an employees' HSA, FSA or other account in the event the Township transitions to a plan that requires such accounts.

The Position of the Union

The Union negotiated out-of-pocket cost limitations under its Healthcare Benefits provisions two (2) years ago. The Townships attempt to eliminate caps on out-of-pocket costs to the bargaining-unit members is stripping the Union's right to bargain health insurance benefits. Nothing in the evidentiary record supports the Township's position to eliminate the current language capping costs. The Township's carryover balances have since increased. The Township's expenses on insurance benefits for the IAFF unit have steadily *decreased* since 2012. The Township's insurance expenses on the IAFF members in 2016 (\$116,507) is nearly a third of the Township's insurance expenses on the IAFF members in 2012 (\$321,580). The Township spent \$10,000 more on health insurance for IAFF members in 2012 alone than the Township spent on IAFF members in 2014, 2015 and 2016 *combined*.

Precedent from other fact-findings and conciliations overwhelmingly indicates that a party's right to bargain health insurance benefits should not be stripped from that party through R.C. Chapter 4117's dispute resolution process. There is no basis to overturn that well-established principle here.

The Township, in 2014, moved to a high-deductible plan under which the Township increased employee deductibles to the maximum allowable under law and offset the deductible costs by funding HRAs for the employees. This saved the Township hundreds of thousands of dollars on premium expenses. In moving to the high-deductible plans, the Township assured the employees that their insurance expenses would not go up because of the offsetting \$10,000/\$5,000 in HRA funding and the ability of employees to negate the remaining \$2,700

(family) or \$1,350 (single) deductible completely by participating in the Township's wellness screenings. Thus, as a part of the CBA settlement in 2014, the IAFF insisted the Township agree that the maximum out-of-pocket expenses (not including premium contributions) the IAFF members would pay would be \$2,700 (family) or \$1,350 (single), with the ability to offset these amounts through the wellness screenings, as promised by the Township. The Township, in return, insisted the IAFF members take a 2-year wage freeze on top of the wage freeze taken in 2013, to which the IAFF reluctantly agreed, given the importance of the health insurance benefits to the members. Now, the Township asks the Conciliator to disregard the bargained-for terms and allow the Township to unilaterally shift up to \$12,700 in annual insurance costs onto the IAFF members.

The majority of IAFF members are making approximately \$57,000 a year in wages, stipends and longevity combined. If the Township only took away the wellness screening offset (\$2,700 for family, \$1,350 for single), resulting in the IAFF members having to pay those portions of the deductible, it would be equivalent to an IAFF member with family coverage losing over 4.7% in compensation each year; an IAFF member with single coverage losing 2.4% in compensation each year. If required to pay the entirety of the high-deductibles, IAFF members would lose the equivalent of over 22% in compensation for family coverage, over 11% for single coverage. It is wholly unreasonable for the Olmsted Township Firefighters to have potentially thousands of dollars in insurance expenses unilaterally shifted onto them where there is no financial basis for the Township to do so and the Union just bargained a 2-year wage freeze to prevent such a cost shifting just two (2) years ago.

The Union's final offer includes language expressly stating the Township can change the Union's insurance benefit plan to whatever is in place for the non-bargaining-unit employees.

The Union should, nonetheless, retain the right to bargain the out-of-pocket costs for any new program.

**Analysis**

Much of the language in the final offers of both parties is the same, with the major exception of the inclusion of caps on firefighter out-of-pocket costs for health insurance. The Township argues that the existing language in Section 1 that caps an individual bargaining-unit member's maximum liability for annual hospital and medical insurance coverage costs (e.g., employee costs associated with deductibles, maximum out-of-pocket, co-pays, co-insurance, etc.), was only added for the years 2014-2015 as a bargaining compromise to offset a wage package which provided no increase. The Union argues that it has bargained liability caps for annual hospital and medical insurance coverage costs and the Township's proposal strips away its bargained-for rights. I would agree with the Township, that the clear language contained in the predecessor agreement was intended only for the years of 2014 and 2015. That does not mean that caps cannot be negotiated in a new contract, but that the level of those caps was set only for the years cited in consideration of the agreement on the wage package.

In considering which final offer to award, the history of the parties' relationship, the insurance plan offered to other employees in the Township, and the results of the Township's endeavors to obtain affordable insurance were important factors. The evidence presented indicates that with the exception of a misunderstanding over a prior issue involving an opt-out proposal, the parties have worked together to tackle the rising costs of health care. As noted by the Union, the Township's expenses on insurance benefits for the IAFF unit have steadily *decreased* since 2012. The Township's insurance expenses on the IAFF members in 2016 (\$116,507) is nearly a third of the Township's insurance expenses on the IAFF members in 2012

(\$321,580). The Township spent \$10,000 more on health insurance for IAFF members in 2012 alone than the Township spent on IAFF members in 2014, 2015 and 2016 combined. The reduction in expenditures resulted from changes in healthcare plans as well as attrition in the Fire Department, but nonetheless occurred during years of decreased revenues when a reduction in the cost of a healthcare plan was needed. The plan changes also resulted in much lower premium contributions by the members with comparable coverage. These plan changes resulted in much higher deductibles for the members, but the Township offset those costs through direct offsets and additional reimbursements through the members' participation in a wellness program.

Wary of the new high deductibles under the Plan change in 2014-15 and the potential of increased out-of-pocket costs, as noted above, the Union negotiated caps on health costs for the years 2015-15 as part consideration for accepting no wage increases due to the Township's tight fiscal condition.

The results of the Township's efforts to offset the out-of-pocket deductible liability of the bargaining-unit members, as well as other Township employees, through funding of HSAs and FSAs and the maintenance of a wellness plan have proved to be successful. With the HAS and FSA contributions, if the employee participates in the wellness program, out-of-pocket costs for the deductible have been covered by the Township. With this history over the last couple of years, the employees have experienced little, if any, costs above the premium contributions, which under this contract are proposed at 10% (unchanged from prior CBA).

The Union argues for the continuance of a cap on maximum liability for annual hospital and medical insurance coverage costs for fear that a bargaining-unit member may be required to pay the entirety of the high-deductibles and/or the Township may take away the wellness screening offset. These events could occur, but projected expenditures to fund these plans and

the past experience of the Township make such occurrences a low probability, if similar plans stay in place.

No one can predict where the cost of healthcare will be in the next two years (one year of the CBA has already passed), but the overall proposal of the Township contains the tools to give it flexibility to meet the financial challenges of obtaining adequate and affordable healthcare coverage. The Union does not disagree with much of the language granting the Township such flexibility. Based upon the rationale presented for establishing caps for the years 2014-15 and the specific language contained in the expired CBA, it must be concluded that the caps were intended only for those two years. The Township is not stripping away the right of the Union to bargain maximum liability caps as argued by the Union; it proposes not to extend them beyond the period agreed to. Under the arguments presented, the Conciliator cannot conclude that the Township is proposing to take away a bargained-for right.

Based upon the internal comparable consistency of the Township's offer, which increases the bargaining power of the Township to obtain the best insurance for its employees; the past bargaining history of the parties; the wage package awarded the Union, which includes both increased wages and maintenance of longevity payments; and the similarity other proposed language offered by both parties, the Township's proposal should be awarded.

### **Award**

The Conciliator selects the Township's final offer, as follows:

#### **Article 20** **Health Benefits**

**Section 1.** The Employer shall obtain and maintain in full force and effect a policy of hospitalization and medical insurance for each employee and/or the employee's dependents as may be eligible for coverage. This policy shall include a dental, vision, and prescription program. ~~For calendar years 2014 and 2015, an individual bargaining unit member's maximum~~

~~liability for annual hospital and medical insurance coverage costs (e.g., employee costs associated with deductibles, maximum out of pocket, co-pays, co-insurance, etc.), excluding the premium contributions set forth in Section 2, shall not exceed \$2,700 for family coverage or \$1,350 for single coverage. Employees have the ability to earn a Township-funded offset of the \$2,700 for family, \$1,350 for single coverage out-of-pocket costs through the completion of the wellness program set forth under Section 8.~~ ***The Employer agrees to provide full-time bargaining unit employees the same medical insurance health plan as provided to other non-bargaining Township employees under a group insurance plan. Such group insurance may be provided through a self-insured plan or an outside provider. Cost containment measures may be adopted by the Employer in consideration of projected costs, market availability of coverages, and utilization.***

**Section 2.** The election of single, dependent, or family coverage rests with the eligible bargaining unit employee. Employer shall contribute ninety percent (90%) and its employees shall contribute ten percent (10%) of the monthly cost of health insurance premiums.

**Section 3. Insurance Changes.** ~~Any plan that is mutually agreed to may be implemented in place of the existing plan in effect. The Employer may change plan offerings from year to year while receiving input from the insurance committee provided that the plan offerings are the same as those in effect for all other Township personnel (both bargaining and non-bargaining unit personnel, including elected officials) and the plan changes do not result in bargaining unit members' annual costs exceeding the maximum liability limits set forth under Section 1.~~

**Section 4. Spousal Coverage.** Spousal coverage will be available, only upon proof that the spouse does not have other medical insurance coverage available to him/her through the spouse's employer. Such coverage, to be subject to the carve out requirement, must be offered as part of an Employer sponsored benefit package and not merely an unsubsidized/minimally subsidized offering made available through the Employer. If such coverage is available, the employee's spouse must enroll in at least single coverage from his/her employer or pay the difference between the coverage that the employee would be on were the spouse not enrolled on the township plan (i.e., single or EE/child(ren)) and the cost of coverage with the spouse enrolled (i.e., EE/Spouse or Family). Falsification of spousal coverage information may result in termination.

**Section 5. Coverage Coordination.** A bargaining unit member who is married to another Township employee is only entitled to coverage under a single family policy from the Employer. For purposes of the coverage of dependent children, member's dependent children shall be permitted to remain on the Township plan irrespective of parental birth date.

**Section 6. Insurance Opt-Out.** Any member of the bargaining unit who elects to waive health

and medical insurance coverage in its entirety (including dental and optical), meaning that they are not covered on the Township health insurance plan, shall receive a monthly bonus of \$250 per month for a waiver of single coverage and \$500 per month for a waiver of family, employee/spouse, or employee/child(ren) Employees must make such waiver request in writing thirty (30) days prior to opt-out payment being applicable, and must provide proof of insurance to the Employer before choosing to waive the Employer's current policy.

**Section 7. Dental/Vision Coverage.** The parties agree that the Township will continue to provide dental and vision coverage to unit members. The cost of such coverage shall be borne by the Township and will not be included in calculating the parties' respective contribution amounts for coverage under this article.

**Section 8. Wellness Program.** The Township shall offer a wellness program in which employees may voluntarily participate. The wellness program shall consist of the screenings specified and required by the insurance company implementing the wellness program. The Township shall fund the employees' HRA (healthcare reimbursement account) *HSA (health savings account), FSA (flexible savings account), or other applicable account* with ~~the~~ \$2,700 (family) or \$1,350 (single) offset upon receipt of notice of completion of the wellness program.

The results of employee screenings shall be kept confidential and shared only with the employee. Results shall not be provided to the Township. This does not prohibit notification to the Township of whether the employees completed the wellness program thereby entitling the employee to the out-of-pocket offset. An employee's failure to achieve/complete wellness components shall not constitute a basis for the Township to initiate any actions that may result in adverse employment actions against the employee. Adverse employment actions do not include an employee being ineligible for the out-of-pocket offset due to failing to achieve/complete the wellness components.

**Section 9. Insurance Committee.** A health care committee will be created for the purpose of providing the Township suggestions on the provision of health care services, reviewing benefit levels/plan offerings, and discussing concerns with coverage. The committee shall consist of one (1) representative from each of the Township's bargaining units and a number of non-bargaining unit representatives and/or management representatives less than the total number of union representatives participating in the committee in order to allow for an odd number of voting representatives. The committee may discuss and by majority agreement issue recommendations regarding a change in health care providers or insurers or modifications to existing level of benefits for the following year. However the committee is not responsible for selecting the health care provider or determining the level of benefits. Recommendations from the committee on such shall not be binding upon the parties.

**ARTICLE 29**  
**CONTINUING EDUCATION BENEFITS**

Final Offers on Continuing Education Benefits

The Union proposes to increase the Township-funded continuing education fund (for schooling, seminars, etc.) from \$6,000 to \$9,000 under Section 4. This proposal was recommended by the Fact-finder.

The Township proposes retention of current contract language.

The Position of the Union

The Fact-finder determined that the Township's General Fund and Fire Funds are capable of budgeting an additional \$3,000 annually towards the training and schooling of the Firefighters. Given the Firefighters' workload and staffing deficiency, the remaining Firefighters must be adequately trained and schooled in handling all possible emergency scenarios. Additional training and schooling of the Firefighters is of benefit to the Township and the Township's residents. Throughout bargaining the Township has provided the Union no explanation for its opposition other than the additional cost.

The Position of the Township

The IAFF's proposal is unnecessary and unsupported. There is no evidence that bargaining-unit members have been denied any requested schooling, educational seminars or other training. There is also no evidence that the allotted amount currently is insufficient for the members' training needs. There is no reason to obligate the Employer to contribute additional money to this fund on a yearly basis.

**Analysis**

While the Union's proposal was recommended by the Fact-finder, and involves a minor

amount of money, which the Township can afford, the Union did not provide any factual data supporting the request, other than more education is better for the members and the community. Without any evidence that current funds are inadequate, there is no reason for changing the current contract language.

### **Award**

The Conciliator selects the Township's final offer, which is to maintain current contract language.

### **ARTICLE 32** **OVERTIME (EMERGENCY CALL-BACK)**

#### Final Offers on Overtime (Emergency Call-Back)

The Union proposes to add a new Section 8 to Article 32 that grants IAFF bargaining-unit members three (3) hours of overtime pay if they respond to an emergency call-back within thirty (30) minutes of the call-back. This proposal was recommended by the Fact-finder.

The Township proposes retention of current contract language.

#### The Position of the Union

When the Township calls on off-duty Firefighters to respond in the event of an emergency, those Firefighters should receive the same pay as Township Police receive for emergency call-backs—three (3) hours of overtime.

#### The Position of the Township

The Fact-finder recommended the IAFF's proposal without regard to external comparables, and with little consideration of whether or not the proposal was warranted. Accordingly, the Employer's position on this issue should be awarded.

#### **Analysis**

There was little evidence presented as to whether call-backs were a problem or that the

additional compensation would either solve a problem, be in the best interest and welfare of the public, or consistent with other comparable collective bargaining agreements (other than the OPBA). If additional compensation was necessary in order to solve a call-back problem, one would think that it would be a proposal of the Township, which opposes the modifications to this Article. In light of the increased compensation package awarded, the Conciliator finds no basis for the request for additional compensation relating to call-backs.

**Award**

The Conciliator awards the final offer of the Township to retain current contract language.

**ARTICLE 37**  
**WORKING OUT OF CLASSIFICATION**

**Final Offers on Working Out of Classification**

The Union proposes in Section 1 to modify the terms “the next higher ranking” to “officer in charge” to allow members assigned to the officer in charge to receive an additional \$2 per hour. Additionally, it proposes a new Section 2 that would allow an IAFF Officer appointed to a higher-ranking capacity to receive compensation equal to the rank appointed.

The Township proposes retention of current contract language.

**The Position of the Union**

The Union proposes to change the language of Section 1 – “the next higher rank” to “Officer in Charge”-, which is a non-substantive change that merely reflects the title the Firefighter takes on when assigned to perform the duties of the next higher rank, or the “Officer in Charge.”

The Union’s proposed additional terms under Section 2—that Officers receive pay reflecting the higher rank that Officer is required work in—are necessary in light of prior

instances where the Township required Fire Lieutenants to perform the duties of the Fire Chief with no additional compensation. There have been four (4) different Fire Chiefs in the OTFD since 2013, with time periods where there was no active Fire Chief present. This resulted in Fire Lieutenants having to act in the capacity of the Fire Chief, but without commensurate pay. As recognized by the Fact-finder, Officers in the OTFD should not be required to take on the additional responsibilities of a higher rank and not receive the pay associated with that higher rank and the associated responsibilities. The Union is not opposed to Officers working in a higher capacity; they should simply receive fair compensation for it.

#### The Position of the Township

The Union has provided no evidence sufficient to support a change of existing contract language. The IAFF stated that changing the language in Section 1 (“the next higher rank” to “Officer in Charge”) was a “non-substantive change.” If this is the case, there is no need to change the language.

The Union’s proposal to add a new section wherein an officer appointed to a higher-ranking capacity shall receive compensation equal to the rank he is appointed (e.g. Lieutenant to Captain or Acting Chief, Captain to Acting Chief) is unwarranted. This proposal is unwarranted, particularly where some of the positions referenced (Acting Chief) are outside the bargaining unit and the pay is set by the Board of Trustees on a case-by-case basis after considering many factors. There is no rigid wage scale to apply.

#### Analysis

I would agree with the recommendation of the Fact-finder. If an employee is assigned to perform the duties, and assume the responsibilities, of a higher-ranking officer, that employee should be compensated at the rate of pay of the assigned position. While the change in the

language of Section 1 appears to be of little difference, since I must choose one or the other final offer, it will be included in the Award.

**Award**

The Conciliator awards the Union's final offer on modifications to the Working Out of Classification Article, as follows:

**Article 37**  
**Working Out of Classification**

**Section 1.** Any member who is assigned to perform duties of the ~~next higher rank~~ *Officer in Charge* due to absence for reasons such as illness, personal leave, vacation days, etc., shall be paid an additional two dollar (\$2.00) per hour for each shift so assigned.

**Section 2.** In the event an Officer is appointed to act in a higher ranking capacity that Officer shall receive compensation equal to the rank he is appointed to (e.g., *Lieutenant to Captain or Acting Chief, Captain to Acting Chief*).

**NEW MEMORANDUM OF UNDERSTANDING**  
**STAFFING**

**Final Offers on Staffing (Core Staffing)**

The Union proposes to Attach a Memorandum of Understanding ("MOU") to the CBA setting forth the following terms:

- A "core staffing" level of twelve (12) full-time Union members will be maintained while the Township utilizes part-time personnel in the Fire Department.
- In the event the "core staffing" drops below twelve (12), the Township will fill the vacancy within ninety (90) days, with the parties being able to agree to extensions.
- That part-time personnel will not be utilized when the "core staffing" of twelve (12) full-time Union members is not maintained.
- The part-time personnel utilized in the OTFD as Firefighter/Medics will be state-certified as a Firefighter and a Paramedic, and will not serve as Fire Officers.
- The number of part-time personnel on-duty will not exceed the number of full-

time Union members on-duty (a 1-to-1 ratio), except when: (1) there is an emergency call-out situation, (2) a full-time Union member uses sick leave with less than twenty-four (24) hours of notice, or (3) full-time Union members are unavailable to work overtime to satisfy the 1-to-1 ratio.

The Township opposes the creation of a minimum staffing MOU. It takes the position that the Union's proposal infringes on the Employer's statutory right to determine the adequacy of its workforce. Ohio Rev. Code § 4117.08(C)(6). In light of this express managerial right, the Employer, under no circumstances, should be forced to agree to a core staffing level of any kind. The Employer should not be strong-armed into including a permissive subject of bargaining into its CBA.

#### The Position of the Union

At Fact-finding, the Union proposed the "core staffing" level of twelve (12) Union members while part-time personnel were used, along with the part-timers having to hold state-certifications, and that there be an on-shift ratio of one (1) full-time Firefighter to one (1) part-time Firefighter. The Fact-finder recommended terms establishing the "core staffing" level of twelve (12) Union members and setting a 1-to-1 ratio of full-time Firefighters to part-time Firefighters working on the shifts. The Union argued, and the Fact-finder concurred, that the Fact-finder determined the terms were fair "protectionary measures" against further deterioration of the bargaining unit and protecting the safety of the Union members while on-shift.

The Union argues that since the OTFD has been staffed by full-time firefighters for over thirteen (13) years, the Township is required to bargain over transferring bargaining-unit work to non-bargaining-unit employees, i.e. part-time firefighters.

#### The Position of the Township

The Township opposes the proposal of the Union and objects to any MOU on core staffing.

The Township argues that this is a permissive subject of bargaining and an employer is only required to bargain over minimum staffing when provisions regarding such have been inserted into an existing contract. It cites *In re Salem Fire Fighters, Local 283*, SERB 2008-ULP-09-0380 to support this position. Since there is no minimum staffing provision in any predecessor agreement, the Township cannot be required to bargain over this topic. It further argues that it has the right to hire part-time firefighters as recognized under Article 5, Section 5 and it is not required to bargain over the issue.

The IAFF's proposal is also inconsistent with external comparables. Of comparable jurisdictions, only one jurisdiction has a core staffing clause contained in its CBA.

The Fact-finder mistakenly asserted that the minimum staffing was a proposal of the Township at Fact-finding, which led to a mix of the parties' proposals regarding the use of part-time firefighters.

### **Analysis**

While the Fact-finder considered proposals presented to him and fashioned a basis for establishing a core staffing MOU, he did not either consider or address the statutory issues raised by the parties on this issue. In order to consider the Fact-finder's Recommendation and determine if the final offer of the Union is to be awarded (the Township opposes consideration of a core staffing provision), these issues must be addressed.

History demonstrates that the OTFD was, at one time, only a part-time operation and began hiring full-time firefighters in 2002. It eventually became a full-time operation and, as asserted by the Union, has been a full-time operation for thirteen (13) years. As a result of budgetary constraints, attrition in the force, and increased demand for services, discussions commenced a few years ago about increasing the OTFD part-time base. Since the number of bargaining-unit members had been decreasing since 2012 (not through layoffs, but by attrition), discussions took place about a possible

minimum or “core” staffing plan. The CBA did not, and does not, have a minimum staffing article.

In discussions about hiring part-time firefighters, the Township has taken the position that it has retained the management right to do so. In addition to its Article 2 Management Rights, Article 8, Section 5, provides that “No current full-time employee (as of the execution of the 1995-97 Agreement) will be laid off where, as a result, the use of part-time employee is increased.” The Township refers to his provision as a clear acknowledgement that it has the right to hire part-time firefighters.

Since the Township has retained the right to hire part-time employees and has not agreed to any minimum staffing provisions in its contracts, it opines that the subject of minimum staffing is a permissive subject of bargaining under O.R.C. 4117 and it is not obligated to bargain, and in this case be subject to, terms of minimum staffing in a MOU.

The Union maintains that since the OTFD has operated with only full-time firefighters for thirteen (13) years, hiring part-time employees is in essence assigning bargaining-unit work from the bargaining unit; the elimination of bargaining-unit work comes within the meaning of “terms and conditions of employment” and is a mandatory subject of bargaining.<sup>5</sup> Here, it argues, the Township has refused to bargain on this issue. Regardless of the characterization of this issue as a mandatory or permissive subject of bargaining, it argues that it is within the purview of a fact-finding panel or conciliator to consider all unresolved issues and to make a determination regarding each issue.<sup>6</sup>

In this case, considering the facts that the CBA has language permitting the Township to hire part-time firefighters, and the CBA does not currently contain any minimum staffing language, this issue is a permissive subject of bargaining and the Township is not required to bargain over the issue. This case is distinguishable from those where minimum staffing language is contained in the CBA,

---

<sup>5</sup> See, *Lorain City School Dist. Bd. Of Educ. V. State Employment Relations Board*, 40 Ohio St.3d 257 (1988)

<sup>6</sup> See, *In re Salem Fire Fighters, Local 283*, SERB 2008-ULP-09-0380.

and the employer's position is to eliminate minimum staffing.

The Conciliator recognizes the frustration encountered by the Union, which is comprised solely of full-time firefighters, in regard to maintaining its core and balancing the re-introduction of part-time employees, but there are statutory limitations on its ability to bring the Township to the bargaining table on this issue and, the Conciliator cannot resolve the unresolved issue in its favor without more meaningful bargaining on the issue. The Union is correct that, as an unresolved issue, it can be an issue brought to the attention of a Fact-finder or a Conciliator, but the lack of discussions on the issue and data to support a new core staffing proposal make any determination premature as part of their joint bargaining process.

#### **Award**

The Conciliator awards the Township's final offer, which is to oppose a MOU on Minimum Staffing.

### **NEW MEMORANDUM OF UNDERSTANDING PART-TIME EMPLOYEES**

#### **Final Offers on Staffing (Part-Time Employees)**

The Township proposes an MOU that requires part-time medics to hold certain certification requirements, and provides for the ability of a bargaining-unit representative to participate in the hiring process for part-time officers.

The Union had no objection to this MOU, but wanted it tied to its MOU for core staffing.

#### **Analysis**

No analysis is necessary since there is no objection to this proposal. Requiring Medics to hold certain certification requirements is in the best interest of the public as well current bargaining-unit members

**Award**

The Conciliator awards the final offer of the Township on this issue as follows:

**MOU  
PART-TIME EMPLOYEES**

*Section 1. Part-time personnel. Any part-time fire medics utilized by the Employer herein shall minimally possess a State of Ohio Firefighter Level II Certification and State of Ohio EMT-P Card. Any such part-time fire medics shall not serve as Fire Officers, acting or permanent, while a regular full-time officer is on station or scene. In the event a part-time fire medic is hired into a bargaining unit position, his or her seniority date shall be based on his full-time hire date.*

*Section 2. Evaluation/Hiring. The parties agree that a representative of the bargaining unit will participate in the evaluation process of potential candidates for part-time service with the department. Such representative will be an officer unless mutually agreed upon otherwise.*

**NEW ARTICLE  
DEFERRED COMPENSATION PLANS**

Final Offers on Deferred Compensation Plans (New Article)

The Union proposes that the Township offer its employees the following deferred compensation plans: The Ohio 457 plan, the OAPFF 457 plan and OAPFF Roth IRA plan.

The Employer rejects the IAFF's proposal.

The Position of the Union

The 457 plans are deferred compensation plans in which hundreds of municipalities across Ohio currently participate. Allowing participation in the 457 plans, and assisting employees in directing pay towards retirement savings, costs the Township nothing. A 457 plan in the Township would merely mean that the Township agrees to make payroll deductions for contributions to the plans designated by the participating Firefighters. The Township claimed at fact-finding that the deferred compensation plans would "create an additional administrative burden." As found by the Fact-finder, there is no evidence that offering the deferred compensation plans would be a problem for the Township.

The Position of the Township

The Township argues that the IAFF's proposal would be administratively burdensome. If bargaining-unit members wish to contribute to an additional retirement plan, the member can still do so on their own.

Analysis

I would agree with the Fact-finder on this issue, that Union's proposal concerning these deferred compensation plans have a favorable impact on the employee, are in the best interest of the public because of supporting the creation of a retirement account, and are included in many collective bargaining agreements of other public employees doing similar work. No evidence was submitted to demonstrate that this would be an undue administrative burden.

Award

The Conciliator awards the Union's final offer on Deferred Compensation Plans, as follows:

**Deferred Compensation Plans (New Art.)**

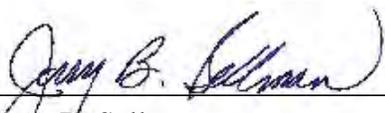
*Section 1. The Employer shall offer and maintain the following deferred compensation plans: The Ohio 457 plan, the OAPFF 457 plan, and the OAPFF Roth IRA plan. The employee shall choose which, if any, of the plans in which they want to participate.*

Conclusion

After due consideration to the positions and arguments of the parties and the criteria enumerated in ORC §4117.14(G)(1) and ORC §4117.14(G)(3) regarding the scope of the issues before the Conciliator and ORC 4117.14(G)(7), the Conciliator awards the last best offer of the each respective Party as specifically set forth hereinabove. At the mutual request of the parties, the Conciliator also awards all tentative agreements reached by them.

This concludes the Conciliator's Report and Award.

June 9, 2017  
Columbus, Ohio



---

Jerry B. Sellman

**CERTIFICATE OF SERVICE**

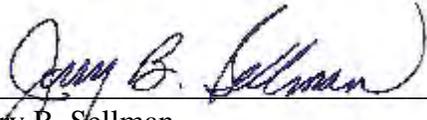
The undersigned certifies that a copy of his Conciliator's Report and Award was sent via email, receipt confirmed on June 9, 2017 to:

SERB

Mary E. Laurent  
Administrative Assistant  
65 E. State Street  
Columbus, OH 43215  
[mary.laurent@serb.state.oh.us](mailto:mary.laurent@serb.state.oh.us)

Ryan J. Lemmerbrock  
The BF Keith Building  
1621 Euclid Avenue, Suite 1750  
Cleveland, Ohio 44115  
Phone: (216) 621-2020  
Fax: (216) 621-3200  
[Lemmerbrock@mllabor.com](mailto:Lemmerbrock@mllabor.com)

David A. Riepenhoff  
Stephanie L. Schoolcraft  
Fishel Hass Kim Albrecht Downey, LLP  
400 S. Fifth Street, Suite 200  
Columbus, Ohio 43215  
(614) 221-1216- Telephone  
(614) 221-8769- Fax  
[dripenhoff@fishelhass.com](mailto:dripenhoff@fishelhass.com)  
[sschoolcraft@fishelhass.com](mailto:sschoolcraft@fishelhass.com)

  
\_\_\_\_\_  
Jerry B. Sellman