

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

| | | |
|-------------------------------|---|-----------------|
| IN THE MATTER OF FACT FINDING | * | |
| | * | |
| For | * | |
| | * | |
| SUMMIT TOWNSHIP, PENNSYLVANIA | * | |
| | * | PERA-F-11-228-W |
| And | * | |
| | * | |
| THE INTERNATIONAL UNION OF | * | |
| OPERATING ENGINEERS, LOCAL 66 | * | |

**AMENDED
FACT FINDING REPORT**

Michael D. McDowell, Esq., Fact Finder
Original Report Date: September 26, 2011
Amended Report Date: October 12, 2011

APPEARANCES

For Summit Township:

Michael D. Hnath, Esq.
Dillon McCandless King Coulter & Graham
128 West Cunningham Street
Butler, PA 16001

For the International Union of Operating Engineers, Local 66:

Tiffany R. Waskowicz, Esq.
Joshua M. Bloom & Associates, P.C.
1230 Grant Building
310 Grant Street
Pittsburgh, PA 15219

SUBMISSION

The Fact Finder was notified officially of his appointment by the Pennsylvania Labor Relations Board by letter dated August 16, 2011. The Parties, Summit Township, Pennsylvania, ("Township") and the International Union of Operating Engineers, Local 66 ("Union") are seeking to establish the initial Collective Bargaining Agreement ("CBA") between them. The bargaining unit now consists of two (2) full time employees in the Road Department as one employee who passed away this year has not yet been replaced.

The parties commenced negotiations for the initial CBA in the spring of 2010. The parties met on several occasions and were able to voluntarily agree on the bulk of the issues, but were at impasse on certain other issues.

This matter is a Fact Finding regarding the terms for the initial CBA between the parties, in accordance with Section 802 of the Public Employe Relations Act, Act 195 of 1970, as supplemented by 34 Pa. Code Section 95.61 et seq.

A Fact Finding Hearing was held on September 13, 2011, in Butler, Pennsylvania.

At the Fact Finding hearing, the parties were afforded the opportunity to introduce all evidence they deemed pertinent to this dispute concerning the following issues on the proposed Articles to be included in the initial Agreement:

Article V - Call Out Time, Section 1;
Article VII - Seniority, Section 6, Voluntary Layoffs;
Article IX - Wages, Overtime and Holidays, Section 1, Section 2, Section 3, Section 5 and Section 6;
Article X - Leaves of Absence, Section 1;
Article XII - Management Rights, Section 1, Section 2, Section 3(e);
Article XV - Insurance Benefits, PART A, Section 2, Section 6;
Article XIX - Pension Plans, Section 2;
Article XXV, Favored Nation;
Article XXVI, Duration of Agreement.

The parties have either reached agreement on, or withdrawn, all other issues.

The factors considered in this Fact Finding Report are to include:

- the public interest;
- the interest and welfare of the employee organization;
- the financial capability of the municipality;
- the results of negotiations between the parties;
- the existing terms and conditions of employment of the employee organization members and those of similar groups;
- and such other testimony and documentation deemed relevant.

With the issuance of this Fact Finding Report, the hearing is declared closed.

After careful consideration of the evidence presented, the arguments of the parties, and the factors mentioned above, the following Amended Fact Finding Report is issued:

GENERAL CONSIDERATIONS

In presenting this Fact Finding Report, the Fact Finder has given full consideration to all reliable information presented at the Fact Finding Hearing relevant to the issues presented. In this case, there is no prior CBA between the parties. Further, neither of the parties has provided significant internal or external comparisons for any of the issues presented, and neither of the parties has presented significant evidence of the organizational structure, history, or financial condition of the Township or region to be considered in the evaluation of the parties' proposals.

ISSUES IN CONTENTION

ARTICLE VI - CALL OUT TIME, Section 1

Union's Position:

The Union proposes that call out time should be compensated at a rate of time and one half for each hour for at least two (2) hours. This is for nonscheduled time when the employee is called out to work. The Union argues that for the inconvenience of coming to work when not scheduled to work, the employee should be compensated at the overtime rate and for at least two (2) hours.

Township's Position:

The Township asserts that the compensation for call outs should be at the "applicable" wage rate. The Township points to its other proposals which provide for a full time employee having at least a 32 hour work week. If an employee otherwise worked a 32 hour work week, that employee would not be eligible for time and one half under the wage laws and the Township's proposal on overtime until he or she works more than 40 hours in a work week. Thus, an employee who otherwise worked a 32 hour work week would not be entitled to time and one half pay until he or she reached 40 hours of work in the week. Therefore, the Township asserts, the appropriate language for the call out provisions would be that compensation for call outs should be at the applicable rate - either the employee's straight time rate if the employee worked less than 40 hours per week, or at the overtime rate for call out hours if the employee otherwise worked 40 or more hours per week.

Recommendation of the Fact Finder:

It is recommended that the Union's position be adopted. There is an inconvenience to the employee for giving up time to perform unscheduled work. There is an additional value to the Township for the employee coming in to do unscheduled work. The callout pay rate for this work should be independent of the number of hours of work otherwise performed by the employee. It is recommended that the new language for callouts read as follows:

Section 1. When an employee is called to work after his regular work day for special service, he shall be paid time and one half (1½) his rate for all hours worked, the minimum call out time shall be at least two (2) hours. Call outs will be for emergency only. When the Township calls out they must talk to the employee or leave a message on their phone. Call outs made by the Supervisor, shall be made to the Road Foreman first.

ARTICLE VIII - SENIORITY, Section 6, VOLUNTARY LAYOFFS

Union's Position:

The Union asserts that this proposal is a creative attempt to resolve the Township's flexibility concerns and that the proposal was initially acceptable to the Township. However, the Township withdrew its approval after it studied the language. The language provides the Township with the option, in the event that there were no volunteers for layoff, to invoke a temporary reduction in the workweek from 40 hours to 32 hours for a limited period. This appears to have been proposed by the Union in negotiations as a way of attempting to persuade the Township to agree to a 40-hour work week rather than a 32-hour workweek.

Township's Position:

The Township agrees that this provision was a creative attempt to address the work week issue. However, the Township opposes the part of the Union's proposal which includes language in Section 6 which would contemplate a 40-hour minimum work week, as it had proposed at least a 32-hour work week for full-time employees.

Recommendation of the Fact Finder:

It is recommended that the Union's proposal be adopted with the exception of the provision which assumes a 40-hour work week, as the Union's proposal for a 40-hour work week is not recommended elsewhere in this Fact Finder's Report. It is recommended that the provisions of Section 6 read as follows:

Section 6. VOLUNTARY LAYOFFS: *In the event there is insufficient work due to lack of funds to employ the entire workforce, the Township may request volunteers for layoff on a seniority basis, with award of such going to the most senior employee. Layoffs shall be a minimum of four (4) weeks, to a maximum of eight (8) weeks with either the Township or the voluntary employee retaining the right to request a call back at any time after four (4) weeks up until the eight (8) week period. After eight (8) weeks, employee must specifically agree to a continued voluntary layoff.*

Any full-time employee on voluntary layoff shall be entitled to all benefits and rights due to the employee under the Collective Bargaining Agreement as if the employee was still on full-time status.

Nothing contained in this Section shall affect the Township's right to permanently reduce the size of the workforce, to determine how many full-time or part-time employees are needed in the Road Department, and/or to effectuate layoffs of the workforce beyond the four (4) weeks. Employees who are involuntary laid off shall not retain any benefits and rights under the Collective Bargaining Agreement, except for recall rights under Article VIII, Section 3.

ARTICLE IX - WAGES, OVERTIME AND HOLIDAYS, Section 1, Section 2, Section 3, Section 5, Section 6.

Union's Position:

With respect to Section 1, the Union proposes the regular work week for all full-time employees be scheduled as an 8 hour a day for 5 consecutive days, or 10 hours per day for 4 consecutive days, for a total of 40 hours per week. This language would be a guaranteed 40 hour workweek short of layoff. The Union proposed that the Board must confer with the Union on the establishing temporary hours or over time.

With respect to Section 2, the Union proposes that overtime rate at time and one-half be applied to all time worked over 8 hours on a five day schedule or over 10 hours on a four day schedule and for all hours on Saturday and Sunday.

With respect to Section 3, the Union proposes to add a "Half-Day Christmas Eve" as a Holiday.

With respect to Section 5, the Union proposes to add the provision that "No employee shall be laid off, replaced by, and/or have their hours reduced by salary men, temporary employees, seasonal, part-time employees, or elected officials." The purpose of this provision is to protect the work hours of bargaining unit employees and provide that an employee should not be laid off and essentially replaced with those listed in the Union's suggested Section 5.

With respect to Section 6, the Union proposes that the wages per hour be increased by \$0.50 as of 1/1/11, an additional \$0.50 as of 6/1/11, an additional \$0.75 as of 1/1/12 and an additional \$0.50 as of 1/1/13. With respect to the employees' hourly rate, the Union points out that the employees received a \$0.50 increase in 2005 and 2006, no increase in 2007, a \$0.25 increase in 2008 and no increase in 2009. The Union also presented evidence, which was not contradicted by the Township, that its proposal of switching the medical benefits plan to the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) together with the Union's proposed wage increases would be significantly less costly to the Township than the Township's proposed wage increases with the Township's current medical benefit plan.

Township's Position:

With respect to Section 1, the Township proposes the regular work week for all full time employees be scheduled as an 8 hour a day, for at least 32 hours per week. If the employee worked more than 8 hours per day, the workweek could be adjusted by the Township for purposes of reducing or eliminating overtime. The Township maintains that it does not have any present intent to reduce the hours of work from 40 hours per week but wishes this flexibility should conditions change. Should conditions change, the Township maintains they wish to have the option to reduce the hours of work rather than lay off an employee.

With respect to Section 2, the Township proposes that the overtime rate of time and one half is triggered to be paid only when the employee exceeds forty hours of work in a work week, including weekends.

With respect to Section 3, the Township opposes the Union's proposal to add a "Half-Day Christmas Eve" as a Holiday.

With respect to the Union's requested Section 5, the Township maintains the elected supervisor can continue, by law, to perform work in the road department. Further, the Township does not wish to be restricted in whom they can employ to do the work.

With respect to Section 6, the Township proposes that wages per hour be increased by \$0.50 as of the date of ratification and approval of the Agreement, an additional \$0.50 on 1/1/12, and an additional \$0.50 on 1/1/13. The Township had previously offered retroactivity of the wage increase and a \$500 signing bonus but represented that it no longer wishes to include those in its proposal as they were made to encourage the Union to enter into an agreement presented earlier in the year.

Recommendation of the Fact Finder:

With respect to Sections 1 and 2, it is recommended that the Township proposals be accepted. This is a very small bargaining unit and the flexibility provided by this proposal is appropriate.

With respect to Section 3, it is recommended that the Union proposal of adding one half day for Christmas Eve as a holiday be accepted for the same reason.

With respect to section 5, it is recommended that the language proposed by the Union with the exception of "salary men" (as I am not comfortable with this term or how it relates to the elected Board of Supervisors), or "elected officials" due to the cited provisions of the Second Class Township Code.

With respect to Section 6, it is recommended that employees be provided with a \$500 (five hundred dollar) signing bonus, that the employees' hourly wage rate be increased by \$0.75 (seventy-five cents) upon ratification and approval of the Agreement by the Parties, and that the employees' hourly wage rate be increased by \$0.75 (seventy-five cents) on January 1, 2012, and that the employees' hourly wage rate be increased by \$0.50 (fifty cents) on January 1, 2013.

It is recommended that the language of the Agreement, with respect to the above, read as follows:

Section 1. The regular work week for all full-time employees covered by this Agreement shall consist of at least thirty-two (32) hours, Monday through Friday. Part-time employees shall be permitted to work up to thirty-two (32) hours per week on a regular basis. The regular workday for all full-time employees covered by this Agreement shall consist of eight (8) hours of work in a day, plus a duty-free, unpaid period of 30 minutes. If employees work more than 8 hours in a day, the hours may be adjusted within the workweek to reduce or eliminate overtime. The normal hours of work will be determined by the Board of Supervisors. The need for, days of work and hours for full-time and part-time employees shall be determined by the Board of Supervisors.

Section 2. Overtime pay shall be as follows:

(a) Employees shall be paid at the rate of time and one half (1 1/2), i.e., straight time plus halftime, for all hours worked in excess of forty (40) hours per workweek. All paid time (work and unworked) shall count toward overtime. The workweek shall start at 12:01 AM Sunday and shall in the following Saturday at midnight.

(b) There shall be no pyramiding of overtime.

Section 3. Holidays. Regular, full-time employees who have completed their probationary period shall be paid the following holidays:

| | |
|-------------------------------|-------------------------------|
| <i>New Year's Day</i> | <i>Good Friday</i> |
| <i>Memorial Day</i> | <i>4th of July</i> |
| <i>Labor Day</i> | <i>Thanksgiving Day</i> |
| <i>Day After Thanksgiving</i> | <i>Half Day Christmas Eve</i> |
| <i>Christmas Day</i> | |

.....

Section 5. No employee shall be laid off, replaced by and/or have their hours reduced by temporary employees, seasonal or part-time employees.

Section 6. Wage Rates and Classifications.

| <i>Classification</i> | <i>Current</i> | <i>Upon ratification and Acceptance</i> | <i>1/1/2012</i> | <i>1/1/2013</i> |
|-----------------------|----------------|---|-----------------|-----------------|
| <i>Road Foreman</i> | <i>\$16.25</i> | <i>\$17.00</i> | <i>\$17.75</i> | <i>\$18.25</i> |
| <i>Road Workers</i> | <i>\$15.25</i> | <i>\$16.00</i> | <i>\$16.75</i> | <i>\$17.25</i> |

Within fourteen days of the ratification and acceptance of this Agreement by the parties, the Township will pay to each bargaining unit employee the total amount of \$500.00

ARTICLE X - LEAVES OF ABSENCE - Section 1.

Union's Position:

The Union proposes that unused paid sick days be accumulated to a maximum of 60 days. The Union also proposes that in the event the employee is separated from employment, the employee will be paid the accumulated sick leave at the employee's then-current rate of pay.

Township's Position:

The Township opposes accumulation of unpaid sick days and opposes the payout on separation.

Recommendation of the Fact Finder:

It is recommended that employees be permitted to accumulate up to nine (9) days sick leave, for which the employee will be paid upon separation, at the employee's current rate of pay. The Parties have agreed to three (3) paid sick days per year for each full time employee. The only dispute is in the accumulation of sick leave and the payout of accumulated sick leave when there is a separation of employment. In the three (3) years proposed for the term of this contract, an employee could only accumulate nine (9) days if he or she did not take a sick day during the term of the CBA. Whether or not this accumulation limit will be expanded or contracted is better left for future negotiations. The provisions of Section 1 should read as follows:

Section 1. Sick Leave. Each full-time Employee shall receive three sick (3) days per year. Unused sick leave days can accumulate to a maximum of nine (9) days. Full-time employee shall be compensated in cash for any accumulated, unused sick leave when they are permanently separated from employment as a result of retirement, layoff, or voluntary resignation for any reason other than one which would have been just cause for discharge. Such day shall be compensated at the employee's current rate of pay.

ARTICLE XII - MANAGEMENT RIGHTS, Section 1, Section 2, Section 3(e).

Township's Position:

With respect to Section 1, the Township asserts that it merely preserves management rights not in conflict with other provisions of the CBA.

With respect to Section 2, the Township points out that it is a Second Class Township. Under Pennsylvania law the Township elected Board of Supervisors have the statutory right appoint themselves as road department employees and to "do or direct to be done" the work of the road department. The Township wishes to retain that right and its proposed language is directed to that purpose.

With respect to Section 3(e) the Township proposes language that would allow it to subcontract work when employees are "temporarily not available due to performing other duties" in order to provide it with greater flexibility.

Union's Position:

With respect to Section 1, the Union asserts that the language of the Section should be more limited.

With respect to Section 2, the Union's position does not oppose the Township's proposal if the phrase "as long as no full time employees are currently on layoff" is added. The Union asserts that if bargaining unit employees are laid off because they are told there is a lack of work, it will not contractually agree to have someone come in and do their job, be it an elected official, part time worker, contractor, etc. Essentially, the Union does not want the roadmaster to perform work which may result in a reduction in or continuation of a reduction in hours or the layoff or the continuation of the layoff of bargaining unit employees.

With respect to Section 3(e) the Union objects to allowing the Township to subcontract work when employees are "temporarily not available due to performing other duties." The Union maintains that it will agree to provisions that allow such subcontracting in emergency situations but that the Township's language essentially allows the Township not to hire additional Union members to perform the work.

Recommendation of the Fact Finder:

With respect to Section 1, the Township's proposal will be recommended as it is limited by the express provisions in other portions of the CBA. With respect to Section 2, the Union does not dispute that the Second Class Township Code provides the statutory right to the elected Supervisor to "do" the work of the Road Department. See 53 P.S. § 67302. The Township's proposal limited to the statutory requirements will be recommended as I am not convinced that the diminishment of this statutory right is appropriate.

With respect to Section 3 (e), it is recommended that the subcontracting provision not include language allowing the Township to subcontract work when employees are "temporarily not available due to performing other duties" as the Union's arguments are more compelling.

It is recommended that the pertinent provisions of Article XII read as follows:

Section 1. General. Except to the extent abridged by a specific provision of this Agreement, management's rights include, but are not limited to the responsibility for the management of the Township, including its overall budget, utilization of technology, its organizational structure, the direction of its work forces, and management of its facilities, to assign duties to the workforce, and the financial management of the Township; the right to hire, discipline, suspend and/or discharge for just cause, to layoff or otherwise relieve employees from duty for lack of work or other legitimate reasons; to transfer, promote or demote employees; to make and enforce reasonable work rules and policies for the maintenance of discipline and operation of the Township; to discontinue processes or operations; to establish and change work schedules and assignments; to determine the number of hours per day or per week operation shall be carried on, and the starting and quitting time and the number of hours of shifts to be worked; to select and to determine the number and types of employees required; to assign work to such employees in accordance with the requirements determined by management; or otherwise take measures as management may determine to be necessary for the orderly and efficient operation of the Township.

Section 2. Roadmaster. The Board of Supervisors retains its statutory right under the Second Class Township Code to name one or more of the elected supervisors as roadmaster and to perform all of the statutory duties of the roadmaster.

The Township also has the right to determine if there will be a foreman, who will be a foreman, and to demote and remove the foreman. Any bargaining unit employee demoted and removed as foreman but retained as an employee shall retain all seniority rights for purposes of layoff.

Once selected to be the foreman, an employee shall serve a probationary period of one hundred and twenty (120) calendar days in such capacity. During the probationary period, a foreman may be demoted by the Board of Supervisors and such demotions are expressly excluded from the Grievance and Arbitration provisions of Article XIII. This exclusion shall not apply if the Township terminates the employment of the foreman altogether, in which case the provisions of Articles XI and XIII shall apply.

In the event that a foreman successfully completes the probationary period, the Township must have just cause to demote and remove the foreman and Articles XI and XIII shall apply.

Section 3. Contracting Out/Subcontracting. Notwithstanding any other provision in this Agreement to the contrary, the Township retains its legal right to contract out or subcontract work:

- a. Which is not ordinarily performed by bargaining unit employees; or***
- b. Which is beyond the expertise or ability of bargaining unit members; or***
- c. Which require specific licenses not currently held by bargaining – unit employees or is hazardous in nature; or***
- d. Which requires equipment beyond that which the Township has in its possession; or***

e. When employees covered by this agreement are temporarily not available due to injury/illness, provided this does not result in a reduction of hours for bargaining-unit employees on paid status; or

f. Which constitutes an emergency.

ARTICLE XV - INSURANCE BENEFITS, PART A, Section 2, Section 6

Union's Position:

With respect to Section 2, the Union proposes that the medical benefits plan be switched to the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1). This plan is not as rich as the Township's medical plan as the employees' obligation for deductibles is \$500 per family with an Out-of-Pocket Maximum of \$1,000 per family and \$20 co-payment for doctors visits. This would be a potential total cost to the employee with family coverage of \$1,500. The Union proposes that the switch to this plan, even while retaining the current payment to each employee of \$1,400 by the Township towards medical expenses, will provide significant savings in premiums which will more than offset the wage increases proposed by the Union.

The Union also proposes a mechanism for providing for employee contributions if the premium exceeds \$1,450, which mechanism otherwise mirrors the Township's proposal in that regard. The Union calculated this \$1,450 amount as the midpoint between the current Township premium for the family of \$1,500 and for husband and wife of \$1,381.

With respect to Section 6, the Union proposes that the payment of the Township toward medical expenses be retained at \$1,400 per employee as the deductible and the out-of-pocket expenses for the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) equal \$1,500. The Union points out that the employees received a \$3,000 toward medical expenses over and above their employer provided health care benefits in 2005. That payment was reduced in 2006 to \$2,500 and in 2007 to its current rate of \$1,400.

Township's Position:

With respect to Section 2, the Townships medical plan, Highmark/HHIC, is a generous plan. The employees pay no premium contribution for a medical benefit plan that has no deductibles, no Out-of-Pocket payment requirements for the employee, and a \$10 co-payment for doctor visits. The Township has no objections to the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) as a stand alone medical plan, however the same has been tied to the Union's other proposals which are not acceptable to the Township.

With respect to the potential transfer of the Road Department employees to the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1), as no request has been made by the Union to Highmark for the migration of the Road Department employees to that plan, the Township has no verification from Highmark that the change would impact that plan or would impact the Highmark/HHIC plan for the remaining two employees of the Township. The Township surmises the migration of the two or potentially three employees to such a large plan as the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) would not have a significant impact on the premium rates, but the Township has not been so advised by Highmark.

The Township points out that the Township currently requires no premium contribution from the employees. The Township is concerned about potential future increases. It proposes that if the medical benefit premiums increase over 10% in any one year or 25% cumulatively, the Parties would meet to seek agreement on reducing the premium costs and, failing agreement, the Township can require payment through payroll deduction.

In addition, the Township provides each employee with a total of \$1,400 per year toward medical costs which are not covered by the current plan. The Township proposes to phase out that payment during the term of this Agreement due to the history of increasing medical benefit costs. The Township supports this position by pointing out that the Township absorbed a 15% increase in premiums effective April 1, 2010, and a 9% increase in premiums effective April 1, 2011.

Recommendation of the Fact Finder:

With respect to Section 2, it is recommended that the Union's proposal be adopted. The Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) will require a substantially smaller premium payment by the Township. With respect to Section 6, it is recommended that the Township's contribution to medical costs for each employee continue.

It is recommended that the pertinent provisions of Article XV read as follows:

Medical Insurance. The current Medical plan as administered through the Operating Engineers Local #66 Welfare Fund, (Highmark PPO Plan 1) or equivalent will remain in effect for the duration of the agreement. The cost of coverage will be paid by the Township. If the employee is absent due to layoff, sickness, or accident, the Township will pay the coverage outlined in this Article for six (6) months.

The Township reserves the right to substitute medical insurance coverage at any time provided notice is given to the employees of their intention to do so. It is agreed that substitute coverage may be put in place for the coverage currently in existence as long as the substitute coverage has similar or better coverage provided to the employees.

The Township will provide the medical plan for each full-time employee and their dependents subject to the following:

The Township will pay the full monthly premiums for the cost of said program for eligible, enrolled such employees in 2011. If contributions from payroll are required, the Township agrees to implement a Section 125 Plan to make such deductions on a pre-tax basis as soon as practical.

In the event that premiums for health and prescription coverage or ever exceed ten percent (10%) in any one year over the rate of one-thousand four hundred fifty (\$1450.00) dollars, the parties agree to reopen only Article XV (Insurance Benefits), Section 2, of the Agreement and meet and agree (1) to change the coverage's, co-pays, plan carrier, etc., and/or to implement or increase deductibles in order to reduce premiums below ten percent (10%) increase of the above-mentioned (\$1,450.00) in any one year. (2) To implement or increase the dollar amount of employee contribution toward premiums.

If the parties cannot agree upon one of these alternatives or changes within sixty (60) days of receipt of notice of such occurrence, the Township may require each participating employee to pay through payroll deductions the (additional) dollar amount over which the premiums exceed ten percent (10%) of the above-mentioned cap (\$1,450.00) in any one year.

Any change in program or coverage or other term(s) of the plan which may be implemented unilaterally by the carrier do not require the consent of the Union.

.....

Section 6. The \$1,400 per employee per year reimbursement for costs not covered by the plan will remain for the life of the current Agreement.

ARTICLE XIX - PENSION PLANS, Section 2

Union's Position:

The Union proposes that the Township contribute to the Operating Engineers Central Pension Fund, a defined benefit plan, on behalf of employees covered by the CBA, in the amount of \$0.50 per man-hour paid to employees in 2010, and in the amount of \$0.75 for the same in 2012 and 2013. The Union asserts that the Township now contributes 10% of the employees' gross yearly base wage - without overtime - to a PMRS pension plan. The amount of state reimbursement covers the cost of these payments and the Union argues that the Township should pay out of its own funds toward a pension plan. In addition, the Union states that it wishes to supplement the Township's defined contribution plan with the Operating Engineers Central Pension Fund defined benefit plan.

Township's Position:

The Township has a pension plan through a PMRS defined contribution plan which is available to the employees and which the Township proposes stay in place. The Township opposes providing the employees with an additional pension plan through the Operating Engineers Central Pension Fund. The Township points out that the state reimbursement may not be counted on in the future, given the economy.

Recommendation of the Fact Finder:

The Union's proposal is not recommended as the parties have agreed to the continuation of, and inclusion of in the Agreement, the PMRS defined contribution plan to which the Township contributes 10% of the annual base salary of the employees. There

was no evidence provided that the PMRS pension plan was somehow inappropriate or inadequate. The Union's argument that the state reimbursement is approximately equivalent to this amount and that the Township does not "feel it" in terms of the PMRS contribution is not a compelling reason to require contribution by the Township to another pension plan.

ARTICLE XIX - FAVORED NATION

Union's Position:

The Union proposes that any benefit extended to any employee or group of employees also be extended to the bargaining unit members.

Township's Position:

The Township opposes inserting into the Agreement the Favored Nation clause. The Township does not have any other bargaining units in the Township. Aside from the Roads Department, the Township employs two other employees, a secretary, and code enforcement person who is part time and also handles insurance. Further, the Township asserts that the Township has the right to preserve its right to keep certain terms and conditions of the Union workers separate from the non-Union workers.

Recommendation of the Fact Finder:

The Union's position is not recommended in view of the overall recommendations in this Fact Finding Report.

ARTICLE XXVI - DURATION OF AGREEMENT

Union's Position:

The Union proposes that the CBA become effective on January 1, 2010.

Township's Position:

The Township proposes that the CBA become effective upon ratification by the Union and approval of the Board.

Recommendation of the Fact Finder:

The parties have represented that they are in agreement that the term of the initial CBA would end December 31, 2013. The only disagreement is on the effective date of the CBA, which is essentially whether the terms of the CBA will be retroactive to January 1, 2010. It is recommend that the terms of the CBA be effective upon ratification and approval. It is recommended that the language of this provision is as follows:

This Agreement shall become effective upon ratification by the Union and approval of the Board of Supervisors at a public meeting thereafter, and shall be binding upon the parties hereto until December 31, 2013, and thereafter from year to year unless either party shall notify the other in writing at least sixty (60) calendar days prior to the expiration of this Agreement, or any extended term of this Agreement, of an intention to terminate this Agreement.

This concludes the Report of the Fact Finder.

Respectfully submitted,

Pittsburgh, PA
October 12, 2011

Michael D. McDowell, Esq.
Fact Finder