

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of Impasse Between :  
 :  
International Union of Operating Engineers :  
Local 66 :  
 :  
and :  
 :  
Donegal Township (Washington County) :

PERA-F-23-107-W

**FACT-FINDING REPORT AND RECOMMENDATIONS**

Appearances

For IUOE Local 66

Joshua Bloom, Esq.  
IUOE Local 66  
111 Zeta Drive  
Pittsburg, PA 15238

Also:

Lawrence Cardillo III

For Donegal Township

Phillip J. Binotto, Jr. Esq.  
Vorys Sater Seymour & Pease LLP  
500 Grant Street, Suite 4900  
Pittsburg, PA 15219-2502

Also:

James Bauer  
Edward Shingle  
Randy Polan

## **BACKGROUND**

On June 20, 2023, the undersigned was appointed as Fact-Finder by the Pennsylvania Labor Relations Board (Board) pursuant to Section 802 of the Public Employee Relations Act, Act 195 of 1970 (Act). The issue of fact-finding pertains to a Collective Bargaining Agreement between Donegal Township (Township) and the International Union of Operating Engineers, Local 66, (Union) with an ending duration date of December 31, 2022.

Upon appointment the undersigned contacted the Parties via conference call to initiate the fact-finding process. In accordance with the Act, each party filed its written statement of the issues in dispute within the requisite five (5) days. The matter concerns an impasse between the Union and Township relating to the employees that are defined collectively as the “road crew”, which consists of three to four employees.

The Parties have participated in the collective bargaining process, which has resulted in tentative agreements on many issues. However, major economic issues which include wages, healthcare, and pensions, as well as several issues related to management of Township business and performance of bargaining unit work remain at impasse.

An evidentiary hearing was scheduled and held on July 10, 2023, via Zoom video conference at which time the Parties had full opportunity to present evidence, examine and cross-examine witnesses in support of their respective positions. Each party submitted numerous exhibits as part of their evidentiary presentation. The Parties also provided testimony as to the underlying rationale for their proposals, as well as their rejection of the opposing proposals.

## OVERVIEW

Donegal Township is located in Washington County, Pennsylvania, with a population of approximately 2,389 as of the latest census report. The Township is governed by a Board of Supervisors consisting of three (3) duly elected individuals. Pursuant to the information contained in the Township's presentation, it has an annual operating income budget of \$537,000, which is funded by a combination of real estate and local income tax. There is also revenue derived from PA Act 13, Liquid Fuels Tax, but the allocation of this revenue is limited by state law.

The International Union of Operating Engineers, Local 66, is the duly appointed bargaining representative for the above referenced Township employees.

The Township points to its small population size and limited budget necessitating its proposals that seek to control costs through cost-sharing of healthcare expenses, eliminating compensatory time and the use of subcontracting when the need arises. In exchange, it proposes what it views as a fair wage increase.

The Union asserts that the recent economic climate of high inflation and increase living expenses of its membership requires a commensurate increase in wages. Conversely, it understands the increased burden of healthcare costs on the Township and is amenable to cost-sharing provided that the employees receive a fair wage increase in line with similarly sized municipalities. It also has a concern that many of the operational decisions and proposals of the Township may negatively impact the size and viability of the bargaining unit. The Union points to the subject matter of numerous grievances and labor disputes during the prior collective bargaining agreement as the rightful basis for these concerns. In this regard, the Union seeks to have more input to operational decisions concerning scheduling, call-outs, performance of bargaining unit work by non-bargaining unit employees and subcontracting.

The recommendations that follow are based upon the evidence presented and the insight gained from the testimony, which include:

- Expired Collective Bargaining Agreement
- The testimony and exhibits presented at the hearing, including tentative agreements as they relate to open issues and the respective written responses to each party's submission of issues in dispute.
- Comparison of the competing proposals
- The fiscal condition of the Township and ability to undertake recommendations impacting its limited finances.
- Information presented for comparable municipalities and employee compensation contained therein.

- Each individual issue based on its individual merit and how it fits into the framework of the current collective bargaining agreement. However, economic issues may be considered by their collective impact in order to provide fiscally sound recommendations.
- A fair and equitable agreement for the employees serving and maintaining the roads and other infrastructure within the Township.

*The Recommendations that follow constitute the settlement proposals upon which the parties are now required to act as directed by PLRB regulation and statute. A vote to accept the report does not constitute agreement with, nor endorsement of the rationale contained therein. Rather, it represents only an agreement to resolve the issues by adopting the Recommendations. The parties are directed to review the report and within ten (10) days, notify the PLRB of their decision to “accept” or “reject” the Recommendations. The report will be released to the public if not accepted by one or both of the parties. A failure to respond equates to a “reject” vote.*

## **OPEN ISSUES**

Article 6 Call Out Time  
Article 8 Seniority  
Article 9 Wages, Overtime and Holidays  
Article 12 Holidays  
Article 15 No Strikes, Lock Outs or Slow Downs  
Article 16 Insurance Benefits  
Article 21 Pension Plan  
Article 25 Zipper Clause (New)  
Article 26 Duration (Renumber)  
Article ## Favored Nation (New)

## **DISCUSSION AND RECOMMENDATIONS**

### **ARTICLE 6 – CALL OUT TIME**

#### **Union Position:**

The Union proposes to change the current language whereby the emergency call out list is established solely by the Union Steward. This is a change from the current language that requires agreement between the Township and the Union Steward.

#### **Township Position:**

The Township believes that it needs to have input into the call out process.

#### **Recommendation and Rationale:**

Maintain the current language. The contract does not contain any parameters regarding how the call out list is derived. Because the call out will result in additional compensation as well as a potential inconvenience to employee's off-duty time there should be a fair and equitable process. To avoid inconsistent application of this provision the Parties should establish a monthly list to distribute call-outs akin to equal distribution of overtime. The specifics are best attained through discussion between Union and Management.

### **ARTICLE 8 SENIORITY**

#### Section 3.

#### **Township Position:**

The Township proposes to add language that would segregate employees by job classification / grade for the purposes of layoff. The Township states that since it has the right to determine the best qualified person as the Group Leader irrespective of seniority

during the promotion process, it would be counterproductive to lose this higher-level position when there is a downturn in the workload necessitating a layoff.

**Union Position:**

The Union wants to keep the current language maintaining overall seniority. The Union believes that providing the Group Leader with what is in effect super seniority allows the Township to show favoritism to one employee.

**Recommendation and Rationale:**

While the Union's concern regarding favoritism is legitimate, the potential for favoritism is already present in the selection process. If the Union believes that a more senior qualified candidate was bypassed for a promotion it can grieve that aspect. However, once the position is legitimately filled, if there is a downturn in the workload, there still is a need to have someone oversee the remaining employees. Therefore, maintain the current seniority system with the caveat that the recommendation for Section 5 is implemented.

Section 5.

**Township Position:**

The Township proposes a change in language to permit it to hire a person apart from the current Board of Supervisors as Road Master. The Township asserts that whether the Road Master is a current Supervisor, or another individual is a distinction without a difference because the position is outside of the bargaining unit.

**Union Position:**

The Union proposes language that would remove the exclusive right of the Township in hiring a Supervisor as Road Master and instead would require an agreement with the Union. The Union is concerned that an independent Road Master will be utilized to eliminate the Group Leader.

**Recommendation and Rationale:**

Adopt the Township proposal with the following understanding.

Although a job description for the Group Leader has not been submitted, it appears that the utilization of the Group Leader by the Township is more of a management function than a foreman type position, which is why the Township wishes to retain these qualifications in the event there is the need for a reduction in the workforce. Normally, the function of a higher-level bargaining unit employee would be to offer direction and coordination while performing assignments as determined by management. The Group Leader should be limited to this function.

Currently, the position of working Road Master is permitted with the proviso that filling the position will not impact the size of the bargaining unit, affect earnings, or cause a layoff. From a practical standpoint, given the protections for the bargaining unit employees from losing overtime opportunities or being laid-off it would not matter who the individual is that fills the position. It also would not appear that adding an additional full-time employee to the payroll is feasible given the Township's limited financial resources. Due to the limited size of the workforce the duties of the Road Master could be performed on a part-time basis.

Likewise, the Road Master position as the primary supervisory position to perform traditional management functions such as scheduling, assignment of work and overtime, approval of time-off, handle disciplinary matters. Given the small size of the Township, the Road Master could be used under the current (and proposed) contract language to fill-in for bargaining unit personnel that are out on sick time, vacation, or other personal absences.

## **ARTICLE 9 – WAGES, OVERTIME, AND HOLIDAYS**

### Section 1.

#### **Union Position:**

Replace the term Group Leader with Union Steward for the purpose of schedule change agreement.

Add new language that provides for a 10-hour workday, 4 days per week (Monday through Friday) upon the mutual agreement of the parties.

#### **Township Position:**

The Township did not take a specific position on this issue.

#### **Recommendation and Rationale:**

Maintain the current language as it pertains to schedule changes. The Group Leader acts as an operational supervisor and is likely in the best position to understand the needs of the business.

Adopt the Union's proposed language for 10-hour days. The language merely authorizes the ability of the parties to make this change upon mutual agreement in the future should there be a consensus between the Parties.

Section 2. – Compensatory Time

**Township Position:**

Adopt a new Section 2.c. that eliminates the prior agreement and past practice of compensatory time. The Township believes that the prior use of compensatory time has been abused and utilized to pyramid overtime. Also, the use of compensatory time has been at the whim of the employees and at many times with little prior notice. Since the Fair Labor Standards Act permits compensatory time only upon mutual agreement, the Township no longer wishes to accede to this past-practice.

**Union Position:**

The parties have a tentative agreement to specifically exclude compensatory time as time worked for purposes of calculating overtime. The Union asserts that this tentative agreement will remedy the Township’s concern of abuse. In addition, the parties have a long-standing practice of using compensatory time that has been upheld by prior labor decisions.

**Recommendation and Rationale:**

Maintain the use of compensatory time in accordance with the tentative agreement of not counting compensatory time as time worked. Follow the current provisions on scheduling compensatory time as set forth in Article 9, Section 1, because the taking of compensatory time on a “whim” as posited by the Township can unduly disrupt operations due to the small number of employees. Compensatory time if managed properly can be mutually beneficial, saving overtime costs for the township and providing time-off for employees when workload permits. Given the small size of the Township a cap at less than the FLSA authorized maximum of 240 hours should be adopted to limit the amount of time off. Lastly, any unused compensatory time should be paid out at the end of the calendar year so as not to accrue with wage increases.

Alternatively, banked compensatory time could be used in lieu of a lay-off. The Township indicated that many times during the winter months there is a temporary lay-off of employees due to a lack of work. If this option is adopted the FLSA authorized maximum of 240 hours can be maintained.

Section 2 and 3. - Overtime

**Union Position:**

The Union proposes to require overtime pay after 8 hours per day and including call-outs.

**Township Position:**

The Township did not specifically address this topic.



**Recommendation and Rationale:**

Maintain the current language. The practical aspect of overtime is that if an employee works more than 8 hours in a day and then works the entire regular workweek they will receive the same amount of overtime pay. This would also be consistent with the Parties' agreement on not counting compensatory time and vacations as time worked for purpose of overtime.

Section 7.

**Township Position:**

The Township proposes an annual wage increase for three years of 3% per year to begin on August 1, 2023 (no retroactivity) and increase each August 1. The Township believes that this is a fair increase considering the generous "Cadillac Plan" health benefits that the employees receive. The Township cites its limited budget and comparable compensation utilizing PSAT reports in Washington County. However, the Township did indicate that relief on the cost of healthcare benefits could result in a higher wage increase.

**Union Position:**

The Union proposes across-the-board annual wage increases of 5%, 4.5%, 4% retroactive to January 1, 2023, and continuing each January 1, thereafter. The Union cites the recent runaway inflation and compensation for similar jobs in comparable sized municipalities in support of its request. Also, the Union points to the tentative agreement on sharing healthcare costs.

**Recommendation and Rationale:**

Utilizing the tentatively agreed to new four level position scale, adopt an across-the-board wage increase of 3% (retroactive January 1, 2023)\*, 4% January 1, 2024, and 4% January 1, 2025.

The Parties indicated that all Township positions will now require a CDL. Therefore, the position of truck driver would be the relevant comparator when reviewing the wage comparators. The Parties indicated that all employees would be at a Level III, with the exception of the Group Leader, which would now be Level IV. A 3% increase in the first year would place the Level III position slightly above the Township's comparators and slightly below the Union's comparators.

Road Department Wage Rates				
	Current / Proposed	1/1/23	1/1/24	1/1/25
Annual Percentage Increase		3.00%	4.00%	4.00%
Class I	\$16.34	\$16.83	\$17.50	\$18.20
Class II	\$19.00	\$19.57	\$20.35	\$21.17
Class III	\$25.39	\$26.15	\$27.20	\$28.29
Class IV	\$27.65	\$28.48	\$29.62	\$30.80

\*(related to healthcare recommendation)

## ARTICLE 12 – MANAGEMENT RIGHTS

### Section 1.

#### **Township Position:**

The Township maintains that it must be fiscally responsible to the taxpayers of Donegal Township. Therefore, if certain services can be performed with the same or better efficiency and at a lower cost, it should be permitted to utilize subcontracting as a means to accomplish this goal. The Township proposes to eliminate current language in the Management Rights clause which currently prohibits the use of subcontracting if it would eliminate jobs or negatively impact the bargaining unit. The Township proposes new language that would permit subcontracting after performing a cost benefit analysis.

#### **Union Position:**

The Union is opposed to the unfettered subcontracting language and points to this proposal as part of its perceived anti-union animus on the part of the Township Supervisors.

#### **Recommendation and Rationale:**

Maintain the current language. The proposed Township language could decimate the bargaining unit through unfettered subcontracting and is a legitimate concern of the Union. The employees exercised the right to join a labor organization as authorized by Pennsylvania law and this must be respected.

Notwithstanding, the current language permits the Township to engage in subcontracting on a limited basis, i.e., during emergencies such as snowstorms or for projects beyond the qualifications of the current road department. This language provides for the Township to manage temporary increases in workload without increasing the size of the workforce. The Township can also engage in mutual aid as provided for in Article 15.

## **ARTICLE 15 – NO STRIKES, NO LOCKOUTS OR SLOWDOWNS**

### Section 2.

#### **Union Position:**

The Union wishes to eliminate language that provides for the management and means of performing work that is vested with the Township.

#### **Township Position:**

There was not any information contained in the submission for this proposal.

#### **Recommendation and Rationale:**

Maintain the current language. The method and means of performing work in a management right not subject to mandatory bargaining. The Township's silence on this proposal indicates that it does not wish to engage in voluntary bargaining on this issue.

## **ARTICLE 16 – INSURANCE BENEFITS**

### Section 3.

#### **Township Position:**

The Township seeks employee contributions to premium cost to offset the rising costs of healthcare. It proposes annual contributions of 10%, 12%, 15% over the life of the contract. The Township further wants the employees to pay all deductibles and co-pays. Lastly, the Township proposes to eliminate employee opt-out and incentivized monetary payments.

#### **Union Position:**

During the hearing the Union had suggested that the following proposal was tentatively agreed to. The employees would contribute 7.5% of premium costs over the life of the contract as well as paying 50% of all deductibles and 100% of co-pays.

Further, the Union asserted that the current opt-out provision is a cost savings to the Township since the Township would be paying the premium cost anyway.

**Recommendation and Rationale:**

This matter appears to be mostly resolved. Therefore, the proposed language by the Township should be rejected and the tentative agreement as summarized in the Union’s position above be adopted, with the caveat that the Plan design remains substantially similar and employee contributions are deducted from payroll. The Township should have the latitude to shop different Plan providers to initiate cost savings provided that the Plan design as set forth in the standard Summary of Benefits is maintained.

Maintain the current opt-out. If an employee who would otherwise leave the Plan is forced to stay on, the Township will be paying 92.5% of premium costs plus 50% of any deductible. The current opt-out provision will still save the Township 62.5% of what it would otherwise pay to the Plan premium as well as saving its portion of the deductible when the Plan is used. This is a cost saving to the Township.

Section 6.

Maintain the current optional dental plan. Dental health is shown to positively impact overall health.

Section 8.

Adopt Township language to recognize employees are now contributing to healthcare premiums. Add caveat that the Township is required to submit employee contributions deducted from employee payroll.

**ARTICLE 21 – PENSION**

**Township Position:**

The Township proposes eliminating the additional \$0.50 /man hour paid into the pension plan for each employee. The Township proposes that each employee contribute voluntarily to the pension plan an amount as he/she determines.

**Union Position:**

The \$0.50 pension contribution was negotiated in lieu of wages in the last contract. The elimination of this would essentially be a reduction in wages.

**Recommendation and Rationale:**

Maintain the current language. The Union is correct that, absent a corresponding increase to wages, this language would amount to a reduction in wages. The Township did not raise any administrative burden associated with facilitating the payment to the Union pension fund.

## **MISCELLANEOUS:**

### **New Article – Favored Nation**

#### **Union Position:**

The Union proposes to adopt language that would alter terms and conditions of employment automatically if other groups of employees have more favorable terms.

#### **Township Position:**

This language already exists for healthcare and opposes any expansion.

#### **Recommendation and Rationale:**

Do not adopt “favored nation” language. Each collective bargaining agreement exists on its own merits. During bargaining each party makes compromises on certain terms and conditions in exchange for others. These types of “me-too” provisions lead to disputes over what is considered more favorable, which ultimately leads to more litigation. The Union has already posited that there are numerous unresolved labor disputes.

### **New Article – Zipper Clause**

#### **Township Position:**

The Township proposes to add a “zipper clause” to limit additional bargaining or past practices.

#### **Union Position:**

The Union is opposed to a “zipper clause” because it asserts that all past practices cited during negotiations involved grievances and arbitrations over clear contract language.

#### **Recommendation and Rationale:**

Do not adopt “zipper clause”. For the same rationale as “favored nation” clauses, zipper clauses tend to lead to additional litigation. The Parties should be free to bargain over the life of the contract as new issues may arise. There must be a clear and unmistakable intent to waive the right to bargain over an issue or past-practice. If there is an arbitration or court decision that determines a certain term or condition of employment, whether derived through a past practice or otherwise, it should be specifically addressed during bargaining. The Township is within its right to raise a past-practice and notify the Union of its intent to bargain over it so that it is, or is not, provided for in any subsequent contract. However, using a “zipper clause” as a catch-all for the unknown will likely lead to more labor disputes.

## ARTICLE 26 – DURATION OF AGREEMENT

### **Township Position:**

The Township's written proposal indicates an agreement for the years 2023 through 2026. It also proposes that the continuation language be shortened from year-to-year to month-to-month.

### **Union Position:**

The Union offered no specific objection to the Township proposal.

### **Recommendation and Rationale:**

Adopt a new Collective Bargaining Agreement effective January 1, 2023, through December 31, 2025. The current CBA expired on December 31, 2022. Although the Township's proposal has an end year of 2026, the Parties wage proposals are for 3 years. Therefore, the duration should be consistent with the wages increases.

Adopt the Township's proposed month-to-month extension language.

## ALL OTHER MATTERS

Any and all other proposals not specifically addressed in this Fact-Finding Report are recommended to be *withdrawn*, with the exception of those tentative agreements previously agreed to before the commencement of fact-finding, which are recommended to be *adopted*.

July 24, 2023

Respectfully submitted,



---

John T. Marchetto, Esq.  
Fact-Finder