



Upper Macungie Township
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FOR IMMEDIATE RELEASE
September 19, 2018

Clarification of Information Provided to the Citizens of Upper Macungie Township

On or about August 6, 2018 Mr. Ed Colon sent information an e-mail to undisclosed recipients informing them of “a matter of public interest to the citizens of Upper Macungie Township. On September 6, 2018, many of those friends and neighbors attended the Board of Supervisors meeting to discuss the matters presented to them by Mr. Colon. The Board of Supervisors believes that the information provided by Mr. Colon failed to provide certain information necessary to accurately understand the information presented by Mr. Colon. Therefore, the Township would like to provide our residents with additional information in response to allegations presented by Mr. Colon. The following provides the initial assertions made by Mr. Colon followed by clarifications or rebuttals made by the Upper Macungie Township Board of Supervisors.

Mr. Colon:

“The Command Staff of the Upper Macungie Township Police Department (UMTPD), consisting of Chief Edgardo A. Colón, former Deputy Chief Joseph B. Wilson, Lieutenant Michael J. Sitoski and Lieutenant Peter V. Nickischer, have been without a contract/work agreement for nearly a year (expired August 20, 2017).”

Response by Board of Supervisors:

The members of the Command Staff are not members of the Collective Bargaining Unit and, as such, are considered Management employees of the Township and so regarded. Township employees do not have contracts or work agreements and are employed “at will.” Moreover, the members of the Command Staff are not entitled to a Collective Bargaining Agreement under Pennsylvania law. It is submitted that the members of Command Staff, were offered Memoranda of Understanding by the Manger but the offer was never accepted because it failed to meet the Staff’s requested terms. Lastly, because Management employees are not eligible for Collective Bargaining Agreements, there is no process for negotiating an Agreement.

Mr. Colon:

“The Officers of the UMTPD (Sergeants & below) negotiated a 5-year contract with the township in 2016 (2017-2021 contract). This contract was to bring the officers up to an equal salary range as compared to similar departments. With that contract, they received annual percentage salary increases of; 2017: 6.5%, 2018: 5.5%, 2019: 5.5%, 2020: 4.5% and 2021: 4.5%.”

Response by Board of Supervisors:

It is acknowledged that, as a startup police department there were additional expenses other than labor. The Township was conservative on the budget to be sure all costs were affordable and would not require a tax increase – remember the other option was the Pennsylvania State Police that would have cost Upper Macungie Township taxpayers nothing. These costs included a newly constructed Police Building, office furnishings and supplies, fully outfitted Vehicles, uniforms, weapons and other assets. In 2017, as a result of the latest Collective Bargaining Agreement, the Supervisors increased the officers’ wages to levels that are consistent with other comparable departments in the Valley. In August of 2018, the Lieutenants salaries were increased to an amount whereby they at a pay scale which is 5% above the Sergeants. It should be recognized that the Township attempted to provide these increases in 2017, but the Command Staff rejected the offers presented. The Chief’s current salary is \$102,232.00 and will not be getting the raises offered to the Police Bargaining Unit Employees. The Chief received a 3% salary increase in January 2018 which is consistent with all other non-bargaining Township employees.

For reference, the following provides current salaries of certain Township employees:

- *Sergeant - \$39.84/hour, \$82,865.20/year*
- *Lieutenant - \$41.83/hour, \$87,006.40/year*
- *Chief - \$102,232.00*
- *Director of Public Works - \$88,753.00*
- *Township Manager - \$112,611.20*

Mr. Colon:

“The Command Staff contracts/work agreements expired as stated above and a request was made to transfer the increases (the officers received) to the Command Staff as done in the past (per our initial contract/work agreements) and to maintain a commensurate, step-level separation in base salary between the ranks. This request was denied. Starting on January 1, 2019, a Sergeant in the Department will make more base salary than a Lieutenant. At this current time, there are eight (8) officers who are receiving more vacation time than the Command Staff. All officers receive more sick and personal time than the Command Staff.”

Response by Board of Supervisors:

The initial contracts/work agreements were offered as part of the department’s startup; the staff positions were hired prior to the hiring of any officers without knowing the officer’s wages or increases. There was no guarantee that the contracts/work agreements would be renewed. Staff was provided a 2% raise, or the raise given to the officers in the CBA to help establish the salary structure of the department. While Mr. Colon uses the term “as done in the past” it is submitted that the situation to which Mr. Colon refers was actually a onetime occurrence and not 10, 20 or a 30 year past practice.

The Township recognized the Sergeant Wage issue and, again, attempted to address it in 2017. However, the Chief/Staff did not advised the Township to forego the increase to Lieutenant Nickischer and to give the increase to the Deputy Chief instead. In June of 2018, the wage issue was raised once again by a Sergeant who declined a possible promotion because of wages. In July of 2018, the Township revisited the issue internally and, thereafter, the Township responded in August by increasing the Lieutenant's salary to a level that is 5% above the Sergeants base salary. Also note that Lt. Nickischer, the Lieutenant closest to the Sergeant's wage, received a 6.5% increase in January of 2017, a 3% increase in January of 2018 and another 3.1% increase in August of 2018.

It is admitted that some bargaining unit officers have more vacation based on their seniority than some members of the Command Staff. However, there are less senior members of the Command Staff that have more vacation than bargaining unit officers. Staff are salaried positions, so they do not receive overtime after 40 hours as hourly employees but an hour or two late start, early quit or long lunch can help balance the time. Hourly employees need to use vacation or sick for every hour taken off.

*Personal Holidays: Police Staff – 5 days, PD CBA – 48 hours, Township Staff – 2 days
Police have 3 less holidays than Township staff/PW – reason for extra 3 days

Mr. Colon:

“The township refused while stating **financial** reasons and continued to refuse to accept the additional proposals of the Command Staff while stating a desire for the Command Staff to fall under the employee handbook of the township, which does not include provisions for police personnel. Note: UMT ended the year in 2017 with a total fund balance surplus of **\$29,520,661.00.**”

Response by Board of Supervisors:

The Township is obligated, by statute, to prepare, submit and follow a budget annually. There are certain requirements with respect to the budget that the Township must follow, including the requirement of a balanced budget whereby expenditures cannot exceed revenues. The Supervisors are fiduciaries of the Township and cannot prepare an inaccurate budget. The Township strives to operate in a fiscally conservative manner that does not result in annual tax increases. When the Township started its Police Department, the Township stated that the Police Department would not result in a tax increase.

*With that as background, it submitted that Mr. Colon's claim of a \$29 million surplus is over simplified and inaccurate. The below represents excerpts from the 2017 Auditor's report for the **General Fund** –*

- *Actual Revenue **over** budgeted revenue was \$2,480,245*
- *Actual Expenses **under** budgeted expenses was \$2,179,226*
- *Net change of +\$4,659,471*

The Township currently maintains an unassigned general fund balance of \$14,266,458, however future costs of building a community center and/or an interchange will exhaust those reserves. The Township currently maintains a positive Sewer fund balance, however those funds are restricted to sewer expense such as I&I reduction, pump station upgrades, debt service for upgrades to the LCA Interceptor and other LCA improvements and maintenance of the system

The Township currently maintains a Refuse/recycling fund balance of \$2,453,467 however those funds are restricted and are reserved for recycling equipment and programs.

Again with certain funds being restricted, those funds are not available for general fund purposes – including police. There are other restricted funds, State Highway Aid, traffic, Local Services Tax, etc. with balances, as part of our reserves.

Mr. Colon:

“On June 18, 2018, Deputy Chief Joseph B. Wilson announced he would be departing the UMTPD to accept a job with the private sector.”

Response by Board of Supervisors:

Deputy Chief Wilson accepted a job in the private sector with a significantly higher salary that could not be matched at a municipal level.

Mr. Colon:

“On Thursday July 5, 2018 at the public Board of Supervisors Meeting, the township celebrated the departure of Deputy Chief Wilson by issuing him an official proclamation and a framed plaque of his likeness celebrating him as the inaugural Deputy Chief of Police and founding member of the Department.”

Response by Board of Supervisors:

The Board recognized Mr. Wilson’s service to the department and wanted to formally recognize him.

Mr. Colon:

“Finally, on Monday July 9, 2018, Chief Colón was informed (by the Township Manager) that the township will not be filling the Deputy Chief position while stating their belief the Department was “top heavy” and giving no specific explanation or ever providing any operational concerns or complaints concerning the Department. Chief Colón argued the importance of the Deputy Chief position in the Department and the harm eliminating the position causes the Department and UMT community In addition to keeping operational oversight of the Department in the Chief’s absence the Deputy Chief position is critical to the operation of the Department. Some of the Deputy Chief duties are, to manage the Accreditation process, constantly draft and review policies, assist with confidential Internal Affairs and overseeing all training (as the Department Training Manager) to include Use of Force, Sensitivity, Bias-Based Policing, Mental Health, Defensive Tactics and extensive Firearms and less-lethal training. Not filling the Deputy Chief position moves the status and standing of the Department backwards. **Command, supervision and training are critical components of law enforcement agencies today.**

Response by Board of Supervisors:

Many of the job responsibilities of the Deputy Chief overlap the job responsibilities of the Chief (job descriptions attached). The Township, at this time, is of the opinion that there should be enough depth in the Command Staff to allow for temporary command in the absence of the Chief. The Township Manager advised the Chief that he believed the Command Staff was top heavy - not the Board of Supervisors. The Township believes that its Department heads and managers as well as Chief of Police should be able to evaluate their department’s workload and properly delegate and assign the workload to their staff in order to find the most effect means of providing service even if this means that the Department Head, manager or Chief has to take on additional work that falls within his or her job description

Mr. Colon:

“Several members of the UMTPD are former members of the Berks-Lehigh Regional Police Department and have done an extraordinary job providing service to UMT, even while fighting legal battles with UMT for lost/reduced benefits and wages. This has had a smoldering effect on morale in the Department since 2013 as the ever-present feeling that the township does not care for the welfare of the police department personnel and its employees in general. In an effort to improve morale and reduce tensions with the township administration and former BLRPD officers, Chief Colón recommended (to the Board of Supervisors) that the township settle a recent legal decision won by the BLRPD officers. The township refused and admonished the Chief for advocating for the officers.

The UMTPD has been lauded dozens of times for various accomplishments, specialized community service & public safety programs and levels of service provided. It has worked hard to build & establish its reputation as a premium, progressive forward-leaning Accredited law enforcement agency in the greater Lehigh Valley. That reputation is in jeopardy and will continue to effect morale and effect the Department’s standing in this community. Over the last year, this unfair treatment to the Command Staff has had a demoralizing effect on the Department as a whole.”

Response by Board of Supervisors:

The legal matters involving former members of the BLRPD involve the Berks Lehigh Regional Police Commission and other former members of the Commission. The Township appealed the judgement awarded against Upper Macungie Township because it was contrary to the Agreement signed by the members of the BLRPC and the Township believes the decision was in error of law and that the trial judge abused his discretion in rendering his decision.

That being said, the Township is proud of the officers and the service they provide to the Township and never said anything to the contrary. [The issues brought to the Board were not regarding the bargaining unit but were specific to a certain few employees. It should be noted that the Police Officer’s Association twice rejected the Command Staff’s attempt to move back into the bargaining unit.]

Mr. Colon:

“So as to preserve the reputation and standing of the township administration, and because of an unrealistic optimism that these issues would be resolved, all of these noted issues were insulated from the citizenry of the UMT community. With the decision to NOT replace the Deputy Chief of Police position, thereby destructing the structure of the Department, this information is being shared with the general public as a matter of public interest.”

Response by Board of Supervisors:

The decision to not fulfill the position of Deputy Chief occurred in July of 2018. There is no evidence other than statements made by Mr. Colon that this decision has had any impact on the Department, let alone that this decision has “deconstruct[ed] the structure of the Department. Every police department is subject to its own command structure and there is not a uniform standard for such structure.

Command structures of other departments in the Lehigh Valley are provided as a reference.

Remedy Sought

- Immediately reinstate the Deputy Chief of Police position in the police department placing the Deputy Police Chief salary between the Chief and Lieutenant positions.
 - **Response by Board of Supervisors:** *The Department started with a Chief and 2 Lieutenants. The Deputy Chief was added to focus his efforts on obtaining the initial accreditation which has been accomplished. The Township is of the opinion that a Chief and 2 Lieutenant positions can maintain the accreditation and operate the Department effectively.*

- Approve the succession plan submitted by the Chief of Police
 - **Response by Board of Supervisors:** *The Township, at this point in time, is not prepared to approve a succession plan as submitted.*

- Apply the percentage raises to the Command Staff retroactive to January 1, 2017
 - **Response by Board of Supervisors:** *The Lieutenants salaries have been made equal and 5% above the Sergeants base pay, any other adjustments will be investigated during the 2019 budget process. The Township is not willing to increase staff wages at a rate equal to that of the Collective Bargaining Unit.*

- Apply commensurate leave (vacation, personal and sick) increases to the Command Staff
 - **Response by Board of Supervisors:** *If the Township were to do this, it would result in some of the Command Staff losing time off.*

- Take the positive step to pay the \$564,084.07 judgement against the township to the BLRPD officers. The township lost this lawsuit at a bench trial. They lost an appeal before the judge and lost an appeal to the Commonwealth Court. They are currently appealing to the State Supreme Court. I ask that this be settled to repair tensions and improve morale between Department officers and the township.
 - **Response by Board of Supervisors:** *It should first be noted that the award was from the Court of Common pleas in Berks County and the appeal is to be heard by the Commonwealth Court and not the State Supreme Court. There seemed to be an understanding of the attendees at the September 6th Supervisors meeting that the lawsuit was to provide the officers who left the Berks Lehigh Regional Police Department with the difference in wage between the Berks Lehigh and the Upper Macungie Township Department. The lawsuit is for the wages and benefits (dollar value) for the remaining year of their contract with the Berks Lehigh Regional Police Department – a year in which*

the Berks Lehigh Regional Police Department was not operational and the officers were salaried by the Township as officers. This lawsuit also involves individuals who opted to not join the UMTPD and/or that have since left the UMTPD.

- *The Berks Lehigh Regional Police Commission and its Department dissolved based on a motion and unanimous vote of all municipalities, and, in a sense, went out of business. The Township is of the opinion that the law provides that there is no obligation for a dissolved agency to continue to pay employees wages and benefits. The second issue in the lawsuit is that Upper Macungie Township is not “solely responsible” for any settlement; the regional agency dissolved therefore if there are any damages, under the Berks Lehigh Regional Police Department Dissolution Agreement, all member municipalities are responsible. The outcome of this suit will have an impact on labor and municipal contract law in Pennsylvania.*
- Add 4 officers to the total compliment of the police department to **34**. Initial recommendation in 2012 was 32. This is based on the growth of the township with industry, warehouses, a new school, increased commercial, residential and commuter traffic and an increase in residential population to 24,000 +.
 - **Response by Board of Supervisors:** *An increase in the number of patrol officers was not part of any discussions related to the Command Staff issues. With respect to hiring new officers, the Chief is responsible for presenting an annual budget to the Board of Supervisors for review and approval. Again, when the Department was started, the Township had a lot of other police related expenses and the Township provided as many officers as the Supervisors deemed appropriate considering productivity and fiscal responsibly. It is the Chief’s obligation to present a budget reflecting the total costs of the desired number of officers. The most recent budgets submitted by the Chief have not provided for costs and expenses representing the increase in officers.*
 - *Adding an officer is a great expense to the Township; a \$152,558/year staff person was. A new look at patrolmen needs could be addressed as a budget item.*
- Update the old (2007) employee handbook and addition of a chapter with specific provisions for the Command Staff. Chapter to include specified percentage increases above the rank of Sergeant.
 - **Response by Board of Supervisors:** *The Township is in the process of updating the handbook; however, salaries and wages are not part of the handbook.*

Clarification of assertion made during September 6, 2018 Board of Supervisors' Meeting:

Another important point that needs to be addressed was the assertion made by Elizabeth Collins during the September 6, 2018 Board of Supervisors' Meeting in which she stated that patrol cars do not carry AED's (Automatic External Defibrillators) and that a resident may be alive today had the patrol car responding to their emergency carried an AED. It is submitted that one of the responding patrol cars on the scene did have an AED and it was deployed by the officer in an attempt to revive the individual. Historically, not all patrol cars did carry AED's; however, AED's have been added to patrol vehicles since 2015 except for: the two K-9 vehicles, two detective vehicles and the command staff vehicles. AED's for those units can be addressed as part of the budget process.

End of Release

If you would like more information about this matter, please contact the Township Administrative Offices at 610-395-4892.