



Upper Macungie Township
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FOR IMMEDIATE RELEASE
September 18, 2018

Clarification of Information Provided to the Citizens of Upper Macungie Township

On or about August 6, 2018, Mr. Ed Colón sent an e-mail to undisclosed recipients purporting to inform them of "a matter of public interest to the citizens of Upper Macungie Township." On September 6, 2018, many of his friends and neighbors attended the Board of Supervisors meeting to discuss the matters presented to them by Mr. Colón. The Board of Supervisors believes that Mr. Colón failed to provide critical information necessary to understand the matters he presented, and therefore, the Township would like to provide our residents with additional information in response to his allegations.

Mr. Colón:

"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)."

Board of Supervisors:

The members of the Command Staff are not represented by the Collective Bargaining Unit. They are Management employees of the Township and are not entitled to a collective bargaining agreement under Pennsylvania law. Following the expiration of the initial contracts/work agreements, the Township Manager offered each member of Command Staff a Memorandum of Understanding which outlined his compensation and benefits going forward. The Memoranda also described application of policies set forth in the Township's Handbook, which apply to management and non-management employees who are not represented by a collective bargaining unit. The Staff sought to negotiate the terms of the Memoranda provided.

Of critical significance, however, the expiration of the initial contracts/work agreements has no effect on the Command Staff's employment status. As officers employed by a Second Class Township, members of the Command Staff are covered by the Police Tenure Act (PTA), and they may only be removed from their positions for reasons set forth under the statute. Therefore, expiration of their contracts/work agreements does not mean their employment will be terminated. To the contrary, each has continued in his employment with the Township, with the exception of former Deputy Chief Joseph B. Wilson, who resigned to accept a position in the private sector.

Mr. Colón:

"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%."

Board of Supervisors:

When it initially created the Police Department in 2012, the Township took a conservative approach on items in the budget, including officer salaries, to be sure all costs were affordable and would not require a tax increase. As a startup Police Department, there were additional expenses other than labor. These costs included a newly constructed Police Building, office furnishings and supplies, fully outfitted Vehicles, uniforms, weapons, and other assets. Five years later, in 2017, as a result of the latest Collective Bargaining Agreement, the Supervisors increased the officers' wages to levels that are consistent with comparable departments in the Valley.

Likewise, in August of 2018, the Township raised Lieutenants' salaries to an amount 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. Consistent with salary increases provided to all other Township employees who are not represented by a bargaining unit, he received a 3% salary increase in January 2018.

For reference, the following are 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. Colón:

"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 contracts/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."

Board of Supervisors:

The initial contracts/work agreements were offered as part of the Police Department's startup; there was no guarantee that they would be renewed. The contracts/work agreements provided members of the Command Staff a 2% raise, or the raise given to the officers in the CBA to help establish the salary structure of the Department. However, the staff positions were hired prior to the hiring of any officers, without knowing the officer's wages or increases. While Mr. Colón uses the term "as done in the past," the situation to which Mr. Colón refers was actually a onetime occurrence as outlined in the expired contract/work agreement, and not 10, 20 or a 30 year practice.

The Township recognized the Lieutenant salary issue cited by Mr. Colón, and, as explained above, attempted to address the matter in 2017. However, Mr. Colón, on behalf of the Command Staff, advised the Township to forego the increase to the Lieutenant whose salary was closest to that of a Sergeant, Lieutenant Nickischer, and to give the increase to the Deputy Chief instead. In June of 2018, the salary matter was raised once again by a Sergeant who declined a possible promotion because of the Lieutenant salary. 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 Sergeant's 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.

Regarding vacation time, the officers' Collective Bargaining Agreement provides vacation time based on seniority. While some officers in the bargaining unit have more vacation than members of the Command Staff based on their seniority, there are also less senior members of the Command Staff that have more vacation than officers in the bargaining unit.

There are key differences between non-management officer and Command Staff positions in relation to use of sick and personal time. Specifically, officers are hourly non-exempt employees and are required to use vacation or sick time for scheduled hours taken off. Command Staff are salaried-exempt positions, so they do not receive overtime after 40 hours, but an hour or two late start, early quit or long lunch can help balance the time.

Personal Holidays: Police Staff – 5 days, PD CBA – 48 hours, Township Staff – 2 days

**Police have 3 less holidays than Township staff/Public Works employees, and are therefore provided extra personal time*

Mr. Colón:

*"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.**"*

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. Colón'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 Sewer fund balance of \$17,818,254, 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. Colón:

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

Board of Supervisors:

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

Mr. Colón:

“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.”

Board of Supervisors:

The Board recognized his service to the Department and wanted to formally recognize him.

Mr. Colón:

*“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.**”*

Board of Supervisors:

Many of the job responsibilities of the Deputy Chief overlap with 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 its Chief of Police should be able to evaluate their department's workload and properly delegate and assign work to their staff in order to find the most effective means of providing service, even if this means that the department head, manager or Chief has to take on additional work that falls within the scope of his/her position.

Mr. Colón:

"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."

Board of Supervisors:

The legal matters related to former members of the Berks-Lehigh Regional Police Department ("BLRPD") involve the Berks Lehigh Regional Police Commission ("BLRPC") and other former members of the Commission. Upper Macungie Township appealed the judgment awarded against it 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. Of critical significance, the Commonwealth Court agreed with the Township, and on October 17, 2018, it reversed the trial court's award of damages against the Township.

The Township disagrees that the UMTPD's reputation is in jeopardy. The Township is proud of its officers, their many accomplishments, and the service they provide to the Township, and never said anything to the contrary.

Mr. Colón:

"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."

Board of Supervisors:

The decision to not fulfill the position of Deputy Chief occurred in July of 2018. There is no evidence other than unsupported statements made by Mr. Colón that this decision has had any negative 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.

The 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.
 - *BOS: 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's position is 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
 - *BOS: The Township, at this point in time, is not prepared to approve the succession plan as submitted.*
- Apply the percentage raises to the Command Staff retroactive to January 1, 2017
 - *BOS: The Lieutenants' salaries have been made equal, and the salary is at least 5% above the Sergeants' base pay. Any other adjustments will be reviewed and considered during the 2019 budget process.*
- Apply commensurate leave (vacation, personal and sick) increases to the Command Staff
 - *BOS: The terms of the Collective Bargaining Agreement apply only to non-management officers. Command Staff are management employees and their vacation, personal, and sick leave time is provided in accordance with applicable Township policies.*
- 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.
 - *BOS: As an initial point of clarification, the judgment issued from the Court of Common Pleas in Berks County and the Township appealed the trial court's decision to the Commonwealth Court, not the State Supreme Court.*
 - *There seemed to be an understanding of the attendees at the September 6th Supervisors meeting that, in the lawsuit, officers who left the Berks Lehigh Regional Police Department and are now employed by the Upper Macungie Police Department sought payment for the difference in their wages. . This is not correct. The lawsuit sought the wages and benefits*

(dollar value) for the remaining year of the 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 employed by the Township. 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 participating municipalities, and, in a sense, went out of business. The Township's position is that there is no obligation for a dissolved agency to continue to pay employees wages and benefits, and that it is not "solely responsible" for any judgment. As mentioned above, the Commonwealth Court concluded that the trial court committed an error of law and abused its discretion by awarding damages against the Township.*
 - *It is unknown at this time whether the Berks Lehigh Regional Police Officers Association will appeal this decision. 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 +.
 - *BOS: An increase in the number of patrol officers was not part of 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.*
 - *A review of patrol officer staffing needs may be addressed as a budget item. Adding an officer is a great expense to the Township; for example, the salary and benefit cost for a patrol officer in 2018 was approximately \$152,558.*
 - **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.**
 - *BOS: The Township is in the process of updating the handbook; however, salaries and wages are not part of the handbook and will not be included.*

Board of Supervisors:

Another important point that needs to be addressed was the assertion by Elizabeth Collins during the Board of Supervisors' September 6, 2018 meeting that patrol cars do not carry AED's (Automatic External Defibrillators,) and that a resident may be alive today had the responding patrol car carried an AED. 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. If AED's are desired for those units, this matter may 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.
