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FACT FINDER'S REPORT
Before the
State Employment Relations Board
State of Ohio
May 5, 2000

STATE EMPLOYMENT
RELATIONS BOARD

MAY 8 10 37 AM '00

In the Matter of:

INTERNATIONAL UNION of
OPERATING ENGINEERS, LOCAL 20
AFL-CIO

Employee Organization

and

SOUTHWEST REGIONAL WATER
DISTRICT

Employer

Case No. 00-MED-01-0066

APPEARANCES:

For the Employee Organization:

John Gray, Business Manager, I. U. O. E. Local 20
Mike Heinrich, Bargaining Committee Member
Bob Settles, Bargaining Committee Member
John Cope, Bargaining Committee Member

For the Employer:

Donald L. Crain, Attorney, Frost & Jacobs LLP
Roger S. Gates, General Counsel, Southwest Regional Water District
Robert C. Hubbard, General Manager, Southwest Regional Water District

Fact Finder:

James L. Ferree

BACKGROUND:

The Employer, Southwest Regional Water District, is a statutory water district providing water to over 11,000 customers in western portions of Butler County, Ohio and adjacent areas. The Employer employs 20 production and maintenance employees in the collective bargaining unit, including plant operators, troubleshooters, crew leaders, equipment operators, and system maintenance employees; and 20 non-unit employees and managers. Unit employees have been represented by a union since the early 1980s, when the Employer was a private water cooperative and the United Paperworkers International Union Local 1967 was certified by the National Labor Relations Board. In 1992 the Employer transferred its operations to Southwest Regional Water District.

Subsequent to a representation election, on June 17, 1999 the State Employment Relations Board certified the International Union of Operating Engineers, Local 20, as the bargaining agent for the employees. Thereafter, the parties have met and bargained since August, 1999, using the services of a SERB mediator and reaching agreement in numerous areas. The Employer's final offer was rejected by the Union's members on February 20, 2000. On April 19, 2000 the Fact Finder attempted to mediate the dispute, without success, and the parties proceeded to present their evidence and arguments in a Fact Finding Hearing. The parties extended the deadline for the Fact Finder's Report to Friday, May 5, 2000.

ISSUES REMAINING AT IMPASSE:

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|---------------------------------------|---------------------------------------|
| 1. Union Security and Dues Checkoff | 12. Educational Assistance |
| 2. Management Rights | 13. Health Care |
| 3. Union Representation | 14. Life Insurance |
| 4. Hours of Work and Overtime | 15. Uniforms |
| 5. Temporary Job Assignments | 16. Paid Sick Days |
| 6. New and/or Changed Jobs; Transfers | 17. Job Classification and Wages |
| 7. Non-Bargaining Unit Work | 18. Successor Clause |
| 8. Subcontracting | 19. Duration, Changes and Termination |
| 9. Vacation | 20. Wage Schedules |
| 10. Holidays | 21. Longevity |
| 11. Stand-By Provisions | 22. Ratification Bonus |

CRITERIA:

Consideration was given to the criteria listed in Rule 4117-9-05 of the State Employment Relations Board:

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

There is no past collectively-bargained agreement between these parties, but they have referred to the most recent contract between the Employer and Paperworkers Local 1967 during their negotiations. The Employee Organization has presented evidence of the wages and benefits in collective bargaining agreements it has bargained with the cities of Hamilton, Middletown, and Fairfield, Ohio, and with Cincinnati State Technical and Community College and the Board of Education of the City School District of the City of Cincinnati, which it contends are other public employers doing comparable work. The Employer asserts that it is unique because the relatively sparse population it serves over a large area presents special circumstances and makes those jurisdictions not comparable to it for purposes of deciding the unresolved issues. The Union also presented evidence of wages and benefits enjoyed by the Employer's non-unit employees as an internal group of comparable employees. As noted below, the parties have stipulated that six issues may be resolved on the basis of proposals made in bargaining.

ISSUES AND RECOMMENDATIONS

Issue 1: Union Security and Dues Checkoff

The Employer proposed, in its pre-hearing submission, to adopt the language of the Union's initial proposal. The Union, in the Fact Finding Hearing, accepted this proposal. Accordingly, I will recommend that the Union's proposed language be included in the parties' collective bargaining agreement.

Findings of Fact:

The parties have stipulated that the Union's proposed language should be adopted.

Recommendation:

I recommend that the parties' agreement should include the following:

UNION CHECK OFF AND FAIR SHARE FEE

The employer shall deduct from the pay of each employee who is a member in good standing of the union or who has signed a dues authorization for such purpose, the amount of such dues, fees or assessment as the union shall advise the employer by timely written notice, are regularly and uniformly required by it as a condition or incident of membership, shall remit said amount to the union in a timely manner. Those employees representing the bargaining unit who do not become members of the union within the first thirty (30) days of permanent employment, shall pay to the union through the deduction of pay as set forth herein the fair share fee to reimburse the union for the cost of representation for collective bargaining purposes and for no other purpose. The treasurer of the union shall certify to the employer the amount of the fair share fee and that the fee is to reimburse the union for the cost of providing representatives for collective bargaining and no other purpose. Upon such certification by the union, the employer shall automatically and without requiring further authorization, deduct the amount of the fair share fee from the pay of each employee obligated to pay the fee and remit the fee to the union in the same manner as dues. The union shall indemnify and hold the employer harmless against any and all claims and forms of liability including costs of attorney fees incurred by the employer in defending against any such claim or arising out of the employee's deduction where employees pay union dues and fair share fees. Union assumes full responsibility for the disposition of the funds so deducted once the funds have been sent to the union.

Issue 2: Management Rights and Issue 7: Non-Bargaining Unit Work

These issues were linked during the Fact Finding Hearing. The Employer proposed to modify the previous collective bargaining agreement by adding language, italicized below, so the Management Rights article will read as follows:

MANAGEMENT RIGHTS

All rights of the Employer existing before the execution of this Agreement are retained by the Employer, except as expressly modified by this Agreement. Such retained rights include, but are not limited to the following: the general and overall management of the business and property, the direction of the work force, including the right to hire, promote, demote, layoff for lack of work or other legitimate reason, discharge and suspend for just cause, set reasonable work standards, the right to require employees to observe reasonable rules and regulations issued by the Employer, the right to determine the number, ability and

classification of persons employed by the Employer at any one time or place, the right to maintain order, economy and efficiency, the right to subcontract work, the right to determine the size, kind and location of the Employer's business or operations, the right to determine the methods, manner and means by which the Company's business and operations are to be performed, the right to supervise the work of its employees, *the right to investigate customer reports relating to the delivery of the District's services and to determine the appropriate response to deal with any problems discovered as a result of such investigation*, the right to establish work schedules and the right to make assignments and to make changes essential to the efficient operation of the Employer's business.

The Union proposed to retain the management rights language of the previous agreement, unchanged. The Union also proposed to adopt the previous contract's language on non-bargaining unit work, which reads as follows:

NON-BARGAINING UNIT WORK

The parties agree that Non-Bargaining Unit personnel shall be limited to performing Bargaining Unit work as set forth in this Article; in cases of emergency or unforeseen circumstances where failure to act promptly might result in harm or damage to personnel, plant or customer property, for the instruction or training or to prevent any unreasonable delay in customer service. Management will exhaust every reasonable effort in their attempt to utilize Bargaining Unit personnel to perform such emergency work described above where Bargaining Unit personnel are available and no unreasonable delay will occur. Non-Bargaining Unit personnel may be assigned to perform Bargaining Unit work at other times provided, however, Non-Bargaining Unit personnel will not be assigned to perform Bargaining Unit work at such times where the assignment of such work to Non-Bargaining Unit personnel would result in loss of overtime opportunities to the Bargaining Unit personnel or when the Bargaining Unit personnel are involuntarily not working. Non-Bargaining Unit personnel will not be assigned to Bargaining Unit work for the purpose of eroding the Bargaining Unit.

It is expressly agreed that Bargaining Unit work shall include such work as is directly related to operations and maintaining customer services. Management reserves the right to perform duties which customarily and historically belong to it and which are directly or indirectly related to system inspection, monitoring or examination for the purpose of evaluating or establishing operating procedures.

The Employer proposed the following new language to replace the first paragraph of the above language on non-bargaining unit work:

No non-bargaining unit employee shall be regularly assigned to perform work which has regularly performed by members of the bargaining unit. Non-bargaining unit employees may intermittently perform bargaining unit work in order to prevent personal injury, property damage or a significant delay in customer service, or when a bargaining unit employee is not reasonably available to perform the work. With advance notice to the Union, a non-bargaining unit employee may be temporarily assigned to perform bargaining unit work for training purposes.

Findings of Fact:

The parties are not far apart in their intentions for these articles, as revealed in their discussions at the Fact Finding Hearing. On balance, I believe both parties' needs can be accommodated by including the language in the Management Rights article of the previous contract and adding the new language proposed by the Employer (italicized above) and by retaining the entire language of the Non-Bargaining Unit Work article from the previous contract.

Recommendation:

It is recommended that the Management Rights article of the previous agreement be included in the parties' collective bargaining agreement, with the addition of the language proposed by the Employer. It is further recommended that the parties' contract retain the language of the previous agreement in the Non-Bargaining Unit Work article.

Issue 3: Union Representation

The Employer proposed the following article:

UNION REPRESENTATION

- A. The employer shall recognize stewards as union representatives for the purpose of administering a collective bargaining agreement and adjudicating grievances. The union representatives shall also be recognized for the purpose of administering the collective bargaining agreement. The union has the right to conduct this internal affairs during nonworking hours as deemed appropriate and free of any intervention by the employer.
- B. No steward or grieved employee shall leave his/her assigned work in order to conduct union business without prior approval from the immediate supervisor.
- C. The union staff representative shall be permitted reasonable access to work areas in order to conduct legitimate union business. Representatives

must secure permission from the department or his/her authorized representative in order to contact any employee on the employer's time.

- D. The union is permitted a reasonable number of stewards not to exceed two plus an alternate. The union will furnish the names of the stewards and officers acting in such a capacity to the employer at the time of their identification.
- E. The processing and setting of grievances under this article, and the conduct of contract negotiations, shall be conducted during nonworking hours, except when, by agreement of the parties, meetings are held during working hours.

Findings of Fact:

The Union accepted the above proposal, at the Fact Finding Hearing.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the above language in an article on Union Representation.

Issue 4: Hours of Work and Overtime

The Employer proposes to modify the prior contract by omitting certain portions and adding language, which is indicated by the italicized portions of the following:

HOURS OF WORK AND OVERTIME

The regular work day shall be eight (8) hours and the regular work week forty (40) hours, but this shall not in any event be construed as a guarantee of employment. *Nothing contained in this Agreement shall prohibit mutual agreement to a ten (10) hour work day. The pay period shall run from Sunday through Saturday.*

The term work day means an eight (8) [*or ten, if mutually agreed*] hour period, *containing* two (2) fifteen (15) minute paid breaks, *and a* one-half ($\frac{1}{2}$) hour paid lunch break. *If a longer work day is adopted, paid fifteen (15) minute breaks and a paid lunch break will still be provided.*

* * *

One and one-half ($1 \frac{1}{2}$) times the regular straight-time hourly rate shall be paid for all hours worked in excess of eight (8) [*or ten (10), if applicable*] hours in any work day or forty (40) hours in any work week. *Notwithstanding any other provision of this Agreement, Plant Operators shall be paid one and one-half (1 $\frac{1}{2}$) times the regular straight-time hourly rate for all hours worked on Sunday.*

* * *

The Union also proposes to modify the prior contract by omitting certain portions and adding language, which is indicated by the italicized portions of the following:

The regular work day shall be eight (8) hours and the regular work week forty (40) hours. This should not in any event be construed as a guarantee of employment. *Nothing contained herein shall prohibit the parties from mutually agreeing to a ten (10) hour work day. A ten (10) hour work day means an eight (8) or ten (10) hour period which shall include two 15 minute paid breaks together with one half hour paid lunch break to be taken at the job site. Regular work hours shall be from 8:00 A.M. to 4:00P.M. except during day light savings time when the work hours shall be from 7:00A.M. to 3:00P.M.*

* * *

One and one half times the regular straight time hourly rate shall be paid for all *active hours and pay status* in excess of eight (8) hours in any work day or forty (40) hours in any work week. One and one half times the straight time hourly rate shall be paid for all work performed on Sunday as such. *Active pay status shall be defined as all hours for which the employer receives pay such as vacation, holiday, sick leave; personal days, etc.*

* * *

Findings of Fact:

The parties agree to leave open the possibility of a future agreement to change from a standard eight hour day to a ten hour day. The only disagreement between the parties at the Fact Finding Hearing was whether the Plant Operators should receive overtime, in addition to premium pay, when Sunday work is in excess of 40 hours per week or eight hours per day (or ten, if the standard is changed). Distribution employees have never had premium pay for Sunday work, and none is proposed.

When Plant Operators occasionally worked overtime on Sunday in the past, the practice was to pay them time and one half, the Employer stated. There was no problem when Plant Operators' workweek was Monday through Friday, the Employer explained, but a new treatment plant runs fifteen hours per day, including Sundays.

The Union contends that the previous contract's language calls for time and one-half pay for "all work performed on Sunday as such" because the extra pay is for working on Sunday, whether it is overtime or not. The Union argues that Sunday work is paid at a higher rate because it is premium pay, similar to a shift differential or extra pay for work

done during a paid holiday, and not because it is overtime. The Union presented three exhibits showing contracts between the Union and area public employers which provide both overtime and premium pay on weekends (defined in one instance as the employee's first and second regularly scheduled days off). In each example, it is clear that "overtime shall not be pyramided," or premium pay applies only if the Saturday or Sunday work is part of the regularly scheduled workweek, not overtime work.

Both of the parties' proposals include the declaration, as the last sentence, "There shall be no pyramiding of overtime." It is clear to the Fact Finder that neither party now argues that Plant Operators should be paid triple or quadruple time if they work overtime on Sunday. The Employer's proposal to define the beginning and ending days of the pay period was not supported by any evidence justifying it, and in the absence of an agreement on this administrative detail, the Employer is free to define the work week as it sees fit, so I find it unnecessary to include it in the contract. The Union's proposal to restrict the Employer to standard work hours, which would change for daylight savings time, and its proposal to define "active pay status," were not supported by any compelling argument, and they are rejected, as well.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the following article:

HOURS OF WORK AND OVERTIME

The regular work day shall be eight (8) hours and the regular work week forty (40) hours, but this shall not in any event be construed as a guarantee of employment. Nothing contained in this Agreement shall prohibit mutual agreement to a ten (10) hour work day. The work day shall include two (2) fifteen (15) minute paid breaks, and a one-half (½) hour paid lunch break. If a longer work day is adopted, paid fifteen (15) minute breaks and a paid lunch break will still be provided.

An employee reporting for work in accordance with his established work schedule shall receive as a minimum four (4) hours pay at his regular hourly straight-time rate. The District shall not be obligated to pay an employee the minimum pay provided for in this paragraph if the employee is notified at least two (2) hours prior to starting time that no work is available.

One and one-half (1 ½) times the regular straight-time hourly rate shall be paid, as overtime pay, for all hours worked in excess of eight (8) in any work day, or ten (10) hours if agreed upon, or forty (40) hours in any work week. Notwithstanding any other provision of this Agreement, Plant Operators shall be paid one and one-half (1 ½) times the regular straight-time hourly rate for all hours worked on Sunday, as premium pay. There shall be no pyramiding of overtime, and employees will not earn both premium pay and overtime pay for the same hours worked.

When an employee's services are needed for overtime work and he notifies his supervisor immediately that he does not wish to accept the overtime work, he may be excused provided a qualified replacement can be found. Overtime shall be distributed as equally as possible among employees qualified to do the work.

Issue 5: Temporary Job Assignments, and Issue 17: Job Classification and Wages

These issues were linked during the Fact Finding Hearing. The Employer and the Union have agreed to eliminate the article, in the previous contract, regarding Temporary Job Assignments. They also agreed to alter the article on Job Classification and Wages by eliminating two job classifications, Crew Leader and Equipment Operator, and by creating a new set of pay ranges for the System Maintenance job classification, as follows:

JOB CLASSIFICATION AND WAGES

* * *

3. SYSTEM MAINTENANCE - All System Maintenance employees are required to obtain an Ohio Commercial Driver License (CDL).
 - a. System Maintenance (Range D) - The position requires a minimum of a Class II Distribution Operators License issued by the State of Ohio, and the capability to operate all of the District's excavating equipment.
 - b. System Maintenance (Range C) - The position requires a minimum of either:
 - i. A Class II Distribution Operators License issued by the State of Ohio; or
 - ii. A Class I Distribution Operators License and the capability to operate all of the District's excavating equipment.

- c. System Maintenance (Range B) - This position requires a minimum of either:
 - i. A Class I Distribution Operators License issued by the State of Ohio; or
 - ii. The capability to operate all of the District's excavating equipment.
- d. System Maintenance (Range A) - The position requires no license but it is strongly encouraged by the District to obtain for eligibility of increased pay opportunities within certain classifications or for meeting minimum requirements in other higher paying classifications.
- e. Crew Leaders - The Distribution Superintendent shall permanently designate a crew leader for each system maintenance crew, and shall assign another qualified employee to serve as a crew leader when needed to substitute during the absence, or unavailability, of a permanent crew leader. The permanent crew leader(s) regular straight-time rate shall be \$1.00 per hour greater than his/her applicable rate on the System Maintenance pay scale. A substitute crew leader shall receive a \$1.00 per hour pay increment (over and above his/her regular straight-time rate) for all hours of work assigned as a crew leader.

Findings of Fact:

The parties agreed that Equipment Operators would be paid as System Maintenance employees on the basis of their skills and abilities, rather than on the basis of which duties were assigned to them on a given day. Thus, a System Maintenance employee qualified for a particular pay band because he/she is licensed to operate heavy equipment will receive that band's rate of pay even if he/she is not assigned to operate that equipment on a particular day. The only issue remaining at the Fact Finding Hearing was the dollar an hour premium to be paid System Maintenance employees who are assigned to perform Crew Leader duties.

The Union argued that Crew Leaders will be disadvantaged by the Employer's proposal, and that the Employer will save money by eliminating the temporary reclassifications, so the Crew Leaders should get a dollar an hour more than the Employer proposes. The Employer stated that those employees who are designated as substitute

crew leaders will also receive a dollar an hour premium for the extra duties, so there is no inequity. I adopt the Employer's position.

Recommendation:

The parties' collective bargaining agreement should eliminate the article in the previous contract regarding Temporary Job Assignments. Their contract should include language which was in the previous contract's article on Job Classification and Wages, but that article should be modified by eliminating two job classifications, Crew Leader and Equipment Operator, and by creating a new set of pay ranges for the System Maintenance job classification, as proposed by the Employer in language set forth above.

Issue 6: New and/or Changed Jobs; Transfers

The Union proposed to include the language from the previous contract, which reads as follows:

**NEW AND/OR CHANGED JOBS AND TRANSFERS INTO
BARGAINING UNIT**

1. If a new classification or job covering work comparable to that done by employees covered by this Agreement is established at the District's Ohio/Indiana Operation, the District shall include such classification and or jobs into the Bargaining Unit. The classifications and rate of pay shall be listed in Exhibit A and made a part of this Agreement by reference.

2. The District shall negotiate with the Union for rates of pay on newly established classification and/or job, or substantially changed jobs within the Bargaining Unit. If the parties are unable to reach an agreement, then the District shall set a rate. If the Union is dissatisfied with the rate so set, then it shall be subject to the Grievance and Arbitration Procedure. The District may adjust the rate upward in the Grievance Procedure. If the Union does not agree with the rate set by the District, then it shall set a rate. If the rate is arbitrated, the arbitrator shall have authority to select only one of the two (2) rates. If the rate set by the arbitrator is greater than that established by the District, then it shall be retroactive to the date the job and/or classification was established.

3. Employees who transfer into the bargaining unit will begin at the entry level pay rate for their new classification. However, if the new classification rate is lower than the employee's previous non-bargaining unit classification rate, the employee will be entitled to receive his or her previous rate until such time as he or she would be entitled to a higher rate under normal progression through bargaining unit classification step schedules.

For purposes of vacation and retirement such an employee will be entitled to maintain original hire date seniority. For all other purposes, however, the employee's seniority date shall be the date of transfer into the bargaining unit.

If, after a 30 calendar day test period, it is determined, in the sole discretion of the District or the employee, that the transfer is not in the best interest of the District or the employee, the employee will, be returned to his or her previous position without loss of pay, benefits or seniority.

The Employer proposed to omit the first paragraph of this article in the previous contract and to retain the language of the remainder of the article, as it appears in the previous contract, but to expand the first sentence of paragraphed number 3 with a phrase shown below in italics:

Employees who transfer into the bargaining unit will begin at the entry level pay rate for their new classification *which most closely parallels their qualifications and experience.*

Findings of Fact:

At the Fact Finding Hearing, the Union questioned why the Employer felt it needed the phrase italicized above, and the Employer responded that it needs to decide where to place a new hire, and it needs the ability to start an experienced new hire at an appropriate level, in order to attract qualified applicants. The Union conceded that the Employer has a legitimate need to pay enough to attract candidates, but suggested other options such as eliminating the unpopular pay steps. The Employer responded that the pay steps are intended to pay employees for their experience, and the Employer needs the ability to hire new employees with skills, and to fit them in at an appropriate pay level. The Employer asserted that the language mirrors the current practice.

I am persuaded that the Employer's proposed new language should be adopted. Since it would be somewhat in conflict with the first phrase of the sentence, I will propose to modify the language, as shown below. No evidence was presented regarding the omission of the first paragraph of the language in the previous contract, and I will recommend that the language be included in the parties' collective bargaining agreement.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the language of the previous contract's article on "New and/or Changed Jobs and Transfers Into the Bargaining Unit," including its first paragraph, and that the first sentence of paragraph number 3 should be modified to read as follows:

Employees who transfer into the bargaining unit will begin at the pay rate for their new classification which most closely parallels their qualifications and experience.

Issue 8: Subcontracting

The Employer proposed to continue this language from the previous contract:

SUBCONTRACTING

It is and has been the policy of the District to make every effort to utilize its employees to perform work when they are qualified to do so, but the District reserves the right to contract out work it deems necessary according to the dictates of good business practice. Before Bargaining Unit work is subcontracted, the District will notify the Union and provide the Union an opportunity to discuss the purpose and affect of such subcontracting.

The Union proposed to continue the first sentence, above, and to change the remainder of the article to provide that the Employer will not lay off or reduce the hours of any bargaining unit members in exercising it subcontracting rights.

Findings of Fact:

At the hearing, the Employer explained that some areas of work need to be subcontracted regularly, such as new construction and expansion of the system when bargaining unit employees are loaded with work, yet in the winter the Employer looks for work to keep unit employees busy. The language of the previous contract, and the practice which has developed under it, have worked for the past twenty years, the Employer contends.

The Union recognizes the need to subcontract certain work, it said in the hearing, and it is not worried about intermittent use of subcontracting. The Union would like to prevent permanent subcontracting while unit employees are on layoff, as it has done with the language in three contracts which it submitted as exhibits. The Employer objected that the three exhibits are from large employers which are not comparable to the Employer.

Because there are only 20 employees in the unit, the Employer contended it has no flexibility in making work assignments.

In view of the lack of any evidence that the Employer ever subcontracted work when members of the bargaining unit were on layoff for lack of work, it appears that the Union's proposal is a solution in search of a problem. Absent a demonstrated need for the proposed restriction on the Employer's discretion, I am unwilling to recommend including the Union's proposal in the new contract. The second sentence of the previous agreement, on the other hand, appears to be a practical method of involving the Union in subcontracting issues, and I will recommend that it be retained.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the language of the Subcontracting article of the previous contract, as quoted above.

Issue 9: Vacation, and Issue 21: Longevity

The Employer proposed to continue the language of the previous contract, which has provided paid vacations up to four weeks for employees with twelve to twenty years of service, by adding the following:

5. An employee shall accrue 8 additional hours of vacation per year for years 20 through 24; maximum accumulation of five weeks (200 hours).

The Union proposes to add the following to the previous contract:

Bargaining unit employees shall accumulate an additional day of vacation for each year of service after fifteen (15) which shall not exceed five (5) additional days. Current employees who have accumulated more than fifteen (15) years of service with the employer may not accumulate more than two (2) additional vacation days in any one contract year.

The Union also proposed a new article on Longevity, which would add one percent (1%) to employees' wages "in a yearly longevity supplement."

Findings of Fact:

The Employer explained, in the hearing, that it was willing to make the concession of longer vacations for the more senior employees in the expectation that it would receive some consideration in return, in its opposition to the Union's proposal for longevity pay.

The Union observed that the Employer's vacation improvement would affect only

two of the twenty employees in the unit. The Union declared in its pre-hearing statement, that it “believes that a longevity supplement is fair inasmuch as the employer has incorporated a civil service pay step system which saves them considerable dollars in the early portion of an employee’s tenure. Most public sector agreements which contain pay step provisions also contain longevity supplement provisions for senior employees.” In support of its contention, the Union offered three exhibits containing contract language providing longevity pay to employees of the City of Hamilton, Cincinnati State Technical and Community College, and the City of Middletown.

The Employer responded that it does not believe that most employers have longevity pay, and that the Employer is not comparable with Hamilton and Middletown because Middletown enjoys a budget surplus, Hamilton does not provide standby pay, and neither Hamilton nor Middletown have sickness and accident coverage. Also, Hamilton’s water rates are lower than the Employer’s and their bonds have more favorable interest rates because Hamilton has a bigger customer base.

The Union responded that Hamilton and Middletown are neighboring systems with which the Employer must compete in the job market, and the Union’s proposal is not to match their benefits but to offer comparable benefits. The Union asserted that the Employer pays management salaries comparable to the other systems, and the Employer replied that its General Manager wears many hats and performs functions done by several managers in other systems.

To place the debate about compensating more senior employees in context, I note that the parties have agreed to continue the previous contract’s wage schedule, with as many as ten pay steps in each job classification (see Issue 17, discussed above). The first section of the article on Job Classification and Wages provides that an employee “shall be advanced to the next highest pay step on each successive anniversary date of his commencement of employment.” Thus, in the early years of an employee’s career, his increasing level of experience is rewarded by pay steps. As Employer Exhibit 10 reflects, ten unit employees will have served ten years by the middle of May, 2000, and presumably will not benefit from the pay steps during the term of the next contract. Two of these senior employees have served over twenty years and would benefit from the Employer’s

proposal to liberalize the paid vacations, and five of them would benefit from the Union's vacation proposal.

In the Fact Finder's opinion, it is up to the parties (who must live with the consequences) to bargain about, and possibly to adopt, new benefits such as longevity pay. It is not helpful for the Fact Finder to urge the parties to embark on uncharted waters if one or the other of them is reluctant to do so. Thus, a new element in the pay system such as longevity pay ought to be added only when both parties are committed to make it work, and I will not recommend it at this time. Paid vacations, on the other hand, are an established benefit which both parties feel can be expanded for the enjoyment of more senior employees. In recent years, an annual paid vacation of five weeks after twenty years of service is found in most collective bargaining agreements. I will recommend a new level of paid vacation benefits, beginning with an employee's twentieth year of employment.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the language of the Vacation article of the previous contract, with the following addition to the enumerated list of benefits:

5. Twenty or more years of service, five weeks (200 hours).

It is further recommended that the Union's proposed article on longevity pay not be included in the new contract .

Issue 10: Holidays

The previous collective bargaining agreement included the following:

HOLIDAYS

The following days shall be considered holidays:

- New Year's Day
- Martin Luther King's Birthday
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve

Christmas Day

New Year's Eve (one-half day*)

*The one-half day New Year's Eve holiday shall be converted to one (1) day of personal leave in years when New Year's Day falls on Saturday, Sunday or Monday.

Except for the New Year's Eve one-half day holiday, if any of the named holidays falls on a Saturday, the preceding Friday shall be considered the holiday for the purpose of this section. Except for New Year's Eve day, if any of the named holidays falls on a Sunday, the following Monday shall be considered the holiday for the purpose of this section.

Full-time employees, other than probationary and temporary employees, shall be paid for holidays not worked on the basis of eight hours pay at the employee's straight-time hourly rate. Parttime employees shall be paid on the basis of four hours pay at the employee's straight-time hourly rate.

In order to qualify for pay for holidays not worked, an employee must work the scheduled day before the scheduled day after the holiday unless his absence is because of vacation, injury or illness, or an excused absence under Article XV. A doctor's excuse for personal illness or injury may be required.

In addition to the holidays set forth above, employees who have been in the continuous service of the District for one year shall be entitled to two paid personal leave days each calendar year. At least 24 hours notice shall be given to the manager before taking a personal leave day except that one of the two personal leave days may be used without at least 24 hours notice in cases of extreme emergency such as a gas leak, fire or explosion, or other like or similar circumstance, provided that the request is given to the supervisor before the start of the employee's shift or if not possible, as soon as circumstances permit. This emergency personal day can be taken in a 4 hour increment provided the supervisor is so notified at the time the emergency personal day is requested. Permission to take an emergency personal leave day shall not be unreasonably denied.

An employee working any of the paid holidays shall be entitled to regular holiday pay, plus double time (2 times) for all hours worked.

Findings of Fact:

The parties agreed, at the Fact Finding Hearing, to include the foregoing language in their contract.

Recommendation:

It is recommended that the foregoing language regarding holidays be included in the parties' collective bargaining agreement.

Issue 11: Stand-By Provisions

The Employer proposes to include in the new collective bargaining agreement an article titled "Stand-By Provisions" from the previous contract, modified by language shown below in italics:

STAND-BY PROVISIONS

A minimum of two (2) employees shall be required to be on stand-by duty during nonworking hours to meet emergency situations during such hours. One of such employees must be authorized to operate the District's excavating equipment.

For purposes of this Article, the term "employee" shall be limited to those employees within the System Maintenance Classifications; provided, however, that:

- a. If there is an insufficient number of qualified employees within such classifications to fill the stand-by duty requirements, the General Manager shall assign other qualified bargaining unit members to perform such duty until sufficient qualified employees become available.
- b. If there are more qualified employees within such classifications than are needed for stand-by duty, excess employees may, on the basis of seniority, decline to participate in stand-by duty on a year-to-year basis.
- c. *For purposes of assisting with system monitoring and to provide needed technical assistance for specialized production and distribution problems, the Production Superintendent may assign a Troubleshooter to stand-by duty. Such assignments shall not occur more frequently than every other week. All provisions of this Article shall apply to a Troubleshooter while he is assigned to stand-by duty.*

Stand-By duty shall be assigned in weekly increments from the end of the normal workday on Friday to the end of the normal workday on the following Friday. The employees' yearly stand-by schedule shall be developed by the crew leaders for rotating stand-by duty for the period from April 15 to April 14 of each year after the vacation schedule is set. The schedule will be posted no later than April 10.

The stand-by duty assignments will conform to the vacation schedule set on April 1 to avoid conflicts. Changes to the stand-by schedule, after it is initially set, will be the responsibility of the employee. In the event an Employee requests to use vacation or personal leave days for a period in

which the Employee has been assigned stand-by duty, the employee has the responsibility to secure a replacement from another qualified employee, and if the employee is unable to do so, the request for vacation or personal leave days will be denied.

In the event that an Employee is unable to perform stand-by duty because of illness, the employee shall notify his/her crew leader or the supervisor on-call. The District retains the right to require a physician's statement under such circumstances.

Employees may be assigned stand-by duty in alternate weeks, and no employee shall be assigned to stand-by duty for successive weeks except under unusual and unforeseen circumstances, or where it is necessary due to illness, injury or vacation. Notwithstanding the above, an employee may voluntarily agree to the assignment to him of successive weeks of stand-by duty, provided such voluntary assignment does not involuntarily deprive any other employee of stand-by duty assignment. Employees may, with the approval of the manager and upon proper and timely notification to the answering service, substitute for each other while on stand-by duty, provided, however, that there shall be no duplicate payment for stand-by duty provided for in this Agreement when substitutions occur.

Company vehicles shall not leave District premises except for the purpose of performing District business. For regular work shifts (i.e., 8:00 A.M. to 5:00 P.M.) vehicles shall be charged out upon reporting to work, or upon leaving for a specific assignment and returned upon completion of work or the specific assignment. An employee on stand-by duty, upon receiving a call from management, supervision or the answering service, shall report to the plant to pick up the needed vehicle, tools and/or equipment. After the call is completed all vehicles, tools and equipment shall be returned to the plant. The District may assign a vehicle to any employee while he is on stand-by duty for a legitimate business reason. There shall be no discrimination and/or favoritism between members of the Bargaining Unit regarding the use of District vehicles and/or stand-by pay.

Upon ratification of this Agreement, each employee assigned to stand-by duty shall have an additional \$1.60, added to his straight-time hourly rate for each hour worked during the week he is assigned to stand-by duty.

Any employee called in to perform work outside of his regular schedule, including employees on stand-by duty assignment, shall receive a minimum of two hours pay at the applicable overtime rate or until the start of his regular shift, whichever first occurs. There shall be no duplication of the minimum call-in pay provided for in this paragraph where an additional service call is received within two hours of the time of the original call. The "two hour minimum" described above, shall not

apply to overtime which is merely an extension of the work day. An employee's call-in time shall be computed from the time he clocks in at the plant to the time he clocks out at the plant.

Compensatory time off, in lieu of overtime pay, will be available as an option to an employee the morning after a two (2) hour or more call out, provided that the call out occurred between the hours of 12:00 midnight and 6:00 am. and the employee reports for work by either 10:00 am, or noon at the latest the morning following the call out and the supervisor is notified of the use of such compensatory time at least one-half (½) hour prior to the start of the regular shift.

Findings of Fact:

The Employer's proposal in subparagraph c., above, recognizes that the computer based monitoring system requires 24/7 monitoring, which can be performed by a Troubleshooter when the Production Assistant is unavailable. The second proposed change would eliminate a flat \$84 per week compensation for employees assigned to stand-by duty, and convert that to \$1.60 per hour added to the employee's straight-time rate for all hours worked during the employee's stand-by week. Thus, the employee would earn \$64 per week even if he is never called in during his stand-by week, but any stand-by work which is performed on overtime (which the Employer contends is virtually all stand-by work) would be boosted by \$2.40 per hour over the previous overtime rate. Since there is a two-hour minimum for called-in work, the Employer believes that most employees on stand-by would receive at least \$20/week, on average, in additional overtime pay. The Employer asserts that the effect on these employees will be revenue neutral, at worst.

The Union agrees with the Employer's proposal, except for the amount of the hourly rate for stand-by duty, which it contends should be \$2.10 per hour. The Union reaches that rate by dividing the previous rate of compensation, \$84 per week, by 40 hours, which yields \$2.10 per hour. The Union bases its position on the proposition that overtime hours are not guaranteed.

The Employer contends that its proposal is revenue neutral, if employees on stand-by work enough overtime to earn \$20 per week in overtime pay, and it produced an Exhibit to support the presumption that stand-by employees, in fact, work that much overtime. I am persuaded that the conversion from a weekly to an hourly premium pay should be based on the assumption that no overtime will be paid, in light of the provision

that specifically provides compensatory time off, in lieu of overtime pay. Therefore, I will recommend that the Employer's proposal be included in the new contract, with the exception that the rate of pay will read \$2.10 instead of \$1.60 per hour.

Recommendation:

It is recommended that the Employer's proposed language for an article titled "Stand-By Provisions" be included in the parties' collective bargaining agreement, except that, where the hourly rate of \$1.60 was proposed, that rate should read, \$2.10.

Issue 12: Educational Assistance

The Employer proposed the following, which is a continuation of the article in the previous contract, with modifications indicated in italics:

EDUCATIONAL ASSISTANCE

Employees may, at their option, enroll in a course of vocational or academic study which shall have direct, immediate and recognizable benefits to the performance of the employee's present job and/or will qualify the employee for the performance of another job covered by this Agreement. With the prior approval of the manager, the District shall reimburse the employee for the tuition of such courses, and may reimburse the employee for any other costs and expenses associated with such courses.

With the prior approval of the manager, tuition and other educational costs provided for in this Article may be advanced to an employee. In all events, a reimbursement for any tuition or other costs under this Article shall be made only after evidence of satisfactory completion of the course with a passing grade, and any advancements shall be repaid, *by the employee, to the district* if such evidence is not presented *within thirty days after completion of the course. The District shall have the authority to deduct an amount from the employee's regular weekly paychecks which would be sufficient to repay such advancements in 12 equal weekly installments.*

The District will grant the necessary time off, with pay and expenses, to those employees who attend and complete the State License Examination when such certification is required in the performance of their duties, provided that the employee obtains at least a passing grade on the exam.

As a condition of receiving any advancement, or reimbursement, of tuition or other educational costs, or of receiving any paid time-off and expenses to take a State License Examination, the employee shall execute an agreement that he/she shall repay to the District:

- A. 100% of such sums received by him/her in the event he/she leaves the employment of the District within one year after the date of receiving such sums; or*
- B. 50% of all such sums received by him/her in the event he/she leaves the employment of the District more than one year but within two years after the date of receiving such sums.*

There shall be no discrimination and/or favoritism between members of the bargaining unit as to administration of the terms of this Article.

Findings of Fact:

The Employer wishes to continue the practice of encouraging its employees to pursue education which would have a benefit in the workplace, but it wishes to recover its costs if the employee quits before the District can benefit from the additional training. The Union said in the hearing that it would agree to the proposal, if employees receive other economic benefits in the Union's package.

In the experience of the Fact Finder, reimbursement provisions are not uncommon in connection with educational benefits. An employer has a legitimate interest in ensuring that its investment in its employees' education will also provide a benefit to the employer. I will recommend inclusion of the Employer's proposal in the contract.

Recommendation:

It is recommended that the Employer's proposal, above, be made a part of the parties' collective bargaining agreement.

Issue 13: Health Care

The Union proposed to continue the language of the previous agreement. The Employer proposed to modify it, replacing the phrase enclosed in brackets with one indicated in italics, below:

HEALTH CARE

Effective on or after March 1, 1996, and subject to the requirements of the Carrier, the District will provide the following benefits:

Comprehensive Major Medical Network coverage generally described herein, however, the particulars of such coverage shall be more fully described in other booklets and Plan documents furnished by the Carrier to the District and employees herein. Questions regarding

specific coverage issues are governed by Plan documents and determinations by the Carrier are final.

The District and the Union will, upon request of either party, meet and discuss any proposed change in the insurance carrier during the life of this agreement.

[Effective March 1, 1996, employees will contribute 5%] *Upon ratification of this Agreement, employees will contribute 6%* of the District's cost for health and dental insurance premiums, with such payments automatically deducted through payroll deduction; *such percentage shall increase to 7% on March 1, 2001, and to 8% on March 1, 2002.* The District agrees to establish a salary redirection plan, qualified under section 125 of the Internal Revenue Code, for purposes of such employee's contribution to health and dental insurance costs. In the event that such contribution should, during the duration of this Agreement, equal or exceed \$50.00 per month, the parties agree to meet and discuss options to reduce or contain such premium costs.

1. HEALTH INSURANCE SCHEDULE OF BENEFITS COMMUNITY CHOICE - COMPREHENSIVE MAJOR MEDICAL NETWORK

Comprehensive Major Medical Coverage for Hospital and Physician Services

Deductible - \$200 Individual/\$400 Family

Network Co-payment -- 90/10% of Eligible Expenses to: \$2000 Individual/\$4000 Family

Non-network Co-payment - 70/30% of Eligible Expenses to \$2000 Individual/\$4000 Family

Then 100% Each Calendar Year Up To \$2,000,000 Lifetime Maximum

Employee/Spouse and Employee/Child premium alternatives to Family Coverage

Physician Office Visits - \$10 Deductible

Prescription Drugs - \$5 Deductible

Human Organ Transplant Coverage;

Cost Management Included

2. SICKNESS AND ACCIDENT BENEFITS

The District shall further provide through the Carrier at no cost to the employee, the Sickness and Accident benefits generally described herein and through other booklets and documents furnished by the District and Carrier and incorporated by reference into this Agreement.

3. WEEKLY BENEFITS

Weekly Sickness and Accident equal to 70% of weekly base salary to a maximum of \$500. Benefits commence on the eighth day of an absence due to accident, illness, and/or hospitalization. These benefits continue for 52 weeks.

Findings of Fact:

The Employer contends that it provides outstanding health insurance, with only a 5% employee premium share. Despite a projected 20% increase in its health care premium, the Employer proposes a modest increase in the employees' share of 1% per year over the life of the contract. The Employer asserts that over 57% of public employees in Ohio contribute 10% or more to their health care premiums, so an increase from 5% to 8% over three years is not asking a great deal. The Employer absorbed increased costs in the past two years, and is looking at less expensive plans.

The Union recognized, at the hearing, that health care insurance costs are rising, and applauded the Employer's efforts to find alternatives. The Union would prefer to change insurance carriers or to have a plan omitting benefits which employees do not currently use, rather than put up with higher costs to the employees. The Employer's proposal, the Union contends, is not the best way to handle these costs.

The agreed-upon portion of this article provides, if the employee's monthly premium increases to \$50.00 per month, "the parties agree to meet and discuss options to reduce or contain such premium costs." This cap has been in effect throughout the past three years of the previous contract, and has been accepted by the parties for their new agreement. In my experience, the modest increases proposed by the Employer are not out of line, and the agreement to reopen the topic if employee contributions reach \$50.00 per month provides a reasonable protection against large increases, for the employees. I will recommend that the Employer's proposed changes should be adopted.

Recommendation:

It is recommended that the parties' new collective bargaining agreement include the language of the health care article in the previous agreement, as modified by the Employer's proposal, above.

Issue 14: Life Insurance

The previous contract included the following:

LIFE INSURANCE

The District shall further provide, through the Carrier, at no cost to the employee, the Life Insurance generally described herein and through other booklets and documents furnished by the District and Carrier.

LIFE INSURANCE

- A. Life Insurance equal to one times annual salary.
- B. Accidental Death and Disbursement equal to one times annual salary.

Findings of Fact:

The parties agreed, at the Fact Finding Hearing, to continue the above article. In the event that the term “disbursement” is intended to read “dismemberment,” it should be corrected.

Recommendation:

It is recommended that the parties’ collective bargaining agreement should include the above article on life insurance.

Issue 15: Uniforms

The Employer proposed the following:

UNIFORMS

In lieu of a clothing allowance, the District will provide 11 sets of uniforms (shirts and trousers) to employees and a cleaning service to maintain the same. Commencing December 1, 2000, and every two years thereafter, the District will provide a pair of insulated coveralls to each employee. A committee will be appointed to review uniform proposals and make recommendations concerning uniform selection to the General Manager.

Findings of Fact:

The Union, in its prehearing submission, agreed to the Employer’s proposal.

Recommendation:

It is recommended that the foregoing language be included in the parties’ collective bargaining agreement.

Issue 16: Paid Sick Days

The Employer proposes to adopt the Paid Sick Days article in the previous contract, with one change, shown here in italics:

PAID SICK DAYS

A. An employee who has accumulated sick leave may use a paid sick day for each day of absence due to personal illness, injury, or disability. Payment for sick leave shall be at the employee's regular hourly rate for an eight hour day for each day of absence for the first five days of sick leave used in any calendar year. The pay for sick leave days used in excess of five days per calendar year shall be at seventy percent (70%) of the employee's regular hourly rate, *provided, however, that if an employee presents a doctor's excuse for any of his/her first five days of sick leave during a calendar year, that day shall not count against the maximum of 5 days of 100% paid sick leave during that calendar year.* There shall be no duplication of sick leave benefits with any other disability income benefits provided by the District.

B. On the 1st day of January, and on January 1st of each year thereafter, each employee with more than one year of continuous service on that date shall be credited with ten days (80 hours) of sick leave. If an employee has not been employed for at least one year, then he shall be credited with 6.67 hours for each full month employed, as of January 1st.

C. Unused, credited sick leave may accumulate from year to year to a maximum of 180 days.

D. An employee who wants to take a paid sick day shall personally notify the distribution superintendent or the operations manager, before the start of his shift. If the employee is unable to contact either his supervisor or the operations manager before the start of his shift he shall leave a phone message with the Company's answering service before that time, giving the nature of the illness, injury or disability, and the approximate date he expects to return to work, if known, and shall make contact with either the distribution superintendent or operations manager on the first day of absence to discuss the reason for the absence and the expected return to work date.

E. For absences due to illness, injury, or disability in excess of three (3) successive scheduled work days, the employee shall present a doctor's excuse verifying the reasons for absence to qualify for sick pay.

F. An employee who has applied for other disability benefits and expects an unusual delay in receiving those benefits, may request from the *District* advancements of the same amount to prevent financial hardship. The employee, in return, will reimburse the District for all compensation advances as a result of the disability.

G. In order to receive credited sick leave pay, an employee shall complete, for each absence, an injury/illness report specifying the nature of injury or illness and attaching related documentation, if any. Falsification of such report or any reasons stated to support any report for sick leave shall be grounds for discipline, up to and including discharge.

H. When an employee has been absent due to illness or disability in excess of six separated absences in any calendar year, the employer may require satisfactory proof of illness or disability before a day of sick leave is paid. For purposes of this Article, a "separated absence" shall be defined as a nonconsecutive day or days of absence. For example: an employee who is absent on Monday, Wednesday and Friday of a normal workweek shall be charged with three (3) separated absences. An employee who is absent on Friday and the entire following workweek shall be charged with only one separated absence.

I. Notwithstanding the provisions of this Article, when an employee's absences meet the requirements necessary to qualify him for other disability benefits as provided by the District set forth in Article XXV, Sections 1 and 2 of this Agreement, he shall apply for those benefits and may draw no more sick leave directly from the *District* until those benefits are exhausted. In addition, an employee may not draw sick leave benefits for on the job injuries when workers compensation benefits are available.

Findings of Fact:

The Employer explained in its pre-hearing submission that the limit of 70% of the employee's normal hourly rate, after the first five days, had been developed to control abuse of sick leave. To soften the effect of this practice on employees who are genuinely sick, and can produce a doctor's excuse, any days covered by the doctor's excuse will be paid at the full rate and will not be counted against the five fully-paid sick days that year.

In its pre-hearing statement, the Union said it would accept the Employer's proposal, but that "employees have the right to maintain confidentiality regarding certain illnesses."

At the hearing, the Union contended that the standard for public employers is 15 paid sick days, and that employees of the District who are outside the collective bargaining unit receive more than five days. The Union asserted that employees have a legal right to confidentiality of their medical records, and employers tend to discriminate against employees who visit a psychiatrist. The Employer said an employee will still have five fully-paid sick days for which he/she need not submit a doctor's excuse, and other sick

days will still be paid at 70% if the employee uses more than five. The Employer said that it is willing to waive the five day limit when a note from a doctor is sufficiently detailed to show that the employee was actually treated, not just a rubber stamped excuse that the employee showed up at the doctor's office on a particular day.

In the final analysis, the Union accepts the language offered by the Employer and wants to predetermine whether an ambiguously-worded doctor's excuse will be acceptable to eliminate a day of absence from the five-day bank of fully-paid, unexcused absences. No collective bargaining agreement can possibly cover all possible contingencies which may arise during the course of its term, and the Union has offered no language which would accomplish its purpose. Since the parties are essentially in agreement on the Employer's proposal, I will recommend its inclusion in their contract.

Recommendation:

It is recommended that the language of the previous contract regarding Paid Sick Days, as modified by the Employer's proposal, above, should be included in the parties' collective bargaining agreement.

Issue 18: Successor Clause

The Employer proposed to retain the language of the previous agreement, except substituting the Union's Local Number (20) in place of the Paperworkers' Local Number (1967), to read as follows:

SUCCESSOR CLAUSE

In the event of the sale and/or transfer of the interest in the District or any portion thereof during the term of this Agreement, this Agreement shall continue in full force and effect and shall be binding upon the Union and its local 20 and any successor employer and would be obligated to bargain with the Union as Collective Bargaining Representatives of the employees. Such successor employer shall replace the District with respect to all rights and liabilities under this Agreement.

Findings of Fact:

The Union agreed, at the Fact Finding Hearing, to adopt the Employer's proposal.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the foregoing successor clause language.

Issue 19: Duration, Changes and Termination

The parties are in agreement that their contract should run for a term of three years, and that it should follow the form of the previous agreement, which read as follows:

DURATION, CHANGES, TERMINATION

1. This Agreement shall remain in full force and effect from March 1, 1996 through November 30, 1998 and from year to year thereafter, unless terminated in accordance with provisions outlined below. However, the across the board wage increases provided in the rate schedules shall be retroactive to December 1, 1995.

2. In the event that either party desires to change any provisions of this Agreement, it shall give written notice of such desire by Certified Mail to the other party not more than ninety (90) days nor less than sixty (60) days in advance of December 1, 1998 or any anniversary date thereafter.

3. The giving of notice, as provided above, shall constitute an obligation upon both parties to negotiate in good faith all questions at issue with the intent of reaching a written agreement prior to the anniversary date.

4. At any time after 12:01 A.M., December 1, 1998, or; any anniversary date thereafter, if no agreement on the questions at issue has been reached, the Agreement shall terminate.

5. The parties may by written mutual agreement between them extend this Agreement for a short duration while negotiations continue.

The Union proposes to retain the language in the first paragraph making pay increases retroactive. The Employer, however, proposes to change the first paragraph to read as follows:

1. This Agreement shall remain in full force and effect from the date of its ratification, by both the District's Board of Trustees and the Union, through January 31, 2003 and from year to year thereafter, unless terminated in accordance with provisions outlined below.

The Employer would change the date in the second paragraph from December 1, 1998 to January 31, 2003, and the date in paragraph 4 from December 1, 1998 to February 1, 2003.

Findings of Fact:

The Employer argued, in its pre-hearing submission, that it opposes a retroactive wage increase. Employees were given an increase for 1999 in January, 1999, and since

September the Employer has bargained diligently with the employees' new union. It contends that its proposals are generous, including economic benefits such as the Employer pick-up of the pension contribution, and that retroactivity is not warranted.

Although retroactivity, in the face of Employer opposition, is not available to a Conciliator in SERB conciliation proceedings, a Fact Finder is presumably free to recommend a retroactive economic benefit despite the Employer's unwillingness. In this case, however, I am recommending other economic benefits for employees, and retroactivity is less necessary for a fair outcome. On balance I am persuaded that the Employer's proposed changes to the previous contract language should be adopted.

Recommendation:

It is recommended that the language of the previous contract in the article on Duration, Changes and Termination should be included in the parties' collective bargaining agreement, except that the changes proposed by the Employer should be implemented.

Issue 20: Wage Schedules

The parties have agreed to some very basic changes in the compensation arrangement, one of which is discussed above as Issue 17, Job Classification and Wages. The Employer and the Union also agreed to collapse the wage increment steps and to enhance the entry level wages. The parties differ regarding the size of across-the-board wage increases. The Union proposes a 3% increase retroactive to December 1, 1999; and 3% increases effective on December 1, 2000 and December 1, 2001. The Employer proposes a 3% increase effective upon ratification of the agreement, and 2.75% increases effective on December 1, 2000 and December 1, 2001.

Findings of Fact:

The Union presented portions of a contract showing that operators at the City of Middletown Wastewater Treatment Plant will receive higher hourly rates over the next three years than the Employer has proposed, and another contract showing the same for several categories of employees of the City of Hamilton! Ohio during 1999 and 2000. The Union also submitted a table showing that non-bargaining unit employees and managers of the Employer have received increases which averaged 6% in 1999 and 5.9% in 2000.

The Employer responded that non-bargaining unit employees are not paid across-the-board increases, but are paid on the basis of individual merit, and that two of them received higher wages as a result of being promoted. The cities of Middletown and Hamilton are not comparable with the Employer because they are much larger and they have paper and steel mills which are larger users of water, as compared with the Employer's customer base. Nevertheless, the Employer observes, when step increases are taken into account, employees will receive an average increase of 7.65% in the first year, 4.49% in the second year, and 3.90% in the third year. As the Cincinnati Enquirer reported January 15, 2000, "core inflation," including prices on everything but food and energy, was only 1.9% in 1999, the lowest rate since 1965. Moreover, with the Employer picking up the cost of retirement contributions, employees will do very well. The Employer has been as generous as it can be, given the relatively high rates it already charges customers and its debt burden.

The Union replied that employees worked a significant amount of overtime because the Employer's entry rate is too low to attract new employees. Bargaining Unit employees have gone four months without a raise, losing $\frac{1}{4}$ % per month if the raise is 3% per year. The Union would not expect the Employer to match wage rates at Hamilton and Middletown, but the Employer needs to remain competitive with them in the job market. As to the Employer picking up the retirement system payments, the Union asserted that this benefit was given to employees in lieu of a wage increase in the past.

The Employer's rebuttal stated that its current wage rates are adequate to generate plenty of applications for job openings, and there has been no employee turnover. The Employer's ability to pay larger increases has to be an important consideration, also.

The parties both propose a 3% across-the-board wage increase for the first year, which I will recommend, effective upon ratification of the contract by both parties. For the second and third years, there is only a slight difference in their proposals, a mere quarter of a percent. On balance, the Fact Finder is satisfied that the Union has the better argument with respect to the future wage increases, and I will recommend 3% increments on January 1, 2001 and January 1, 2002.

Recommendation:

It is recommended that the following wage rates become effective upon ratification of the contract by both parties, and that each of these rates be increased by 3% on January 1, 2001 and again on January 1, 2002.

Plant Operators

	I	II	III
10	\$ 16.69	\$ 17.41	\$ 17.99
9	\$ 16.17	\$ 16.89	\$ 17.48
8	\$ 15.66	\$ 16.38	\$ 16.96
7	\$ 15.14	\$ 15.86	\$ 16.45
6	\$ 14.63	\$ 15.35	\$ 15.93
5	\$ 14.11		
4	\$ 13.60		

Chief Troubleshooter

	A	B	C
10	N/A	\$ 18.06	\$ 19.32
9	N/A	\$ 17.54	\$ 18.81
8	N/A	\$ 17.03	\$ 18.29

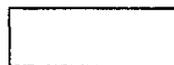
Troubleshooter

	A	B	C
10	N/A	\$ 16.88	\$ 17.63
9	N/A	\$ 16.32	\$ 16.88
8	N/A	\$ 15.73	\$ 16.32

System Maintenance

	A	B	C	D
10	\$ 15.03	\$ 15.31	\$ 15.72	\$ 16.08
9	\$ 14.51	\$ 14.79	\$ 15.20	\$ 15.56
8	\$ 14.00	\$ 14.28	\$ 14.69	\$ 15.05
7	\$ 13.48	\$ 13.76	\$ 14.17	\$ 14.53
6	\$ 12.97	\$ 13.25	\$ 13.66	\$ 14.02
5	\$ 12.45	\$ 12.73	\$ 13.14	\$ 13.53
4	\$ 11.94	\$ 12.22	\$ 12.63	\$ 13.03
3	\$ 11.42	\$ 11.70	\$ 12.11	\$ 12.53
2	\$ 10.91	\$ 10.88		
1	\$ 10.39	\$		

Add \$1.00 per hour to corresponding range for designated Crew Leader.



Employees hired after January 1, 1996 are not eligible for these steps.

General Maintenance		Temporary Employees	
10	\$ 11.65	4	\$ 7.33
9	\$ 11.13	3	\$ 7.11
8	\$ 10.62	2	\$ 6.76
7	\$ 10.10	1	\$ 6.41
6	\$ 9.59		
5	\$ 9.07		
4	\$ 8.56		

Issue 22: Ratification Bonus

The Union's prehearing submission proposed a \$400 ratification bonus for the eleven most senior employees in the unit and a \$100 bonus for all other employees. At the hearing, the Union amended its proposal to \$600 for the most senior eleven employees and \$350 for the more junior nine employees.

Findings of Fact:

The Union contended that a one-time payout, structured to even out the benefit to senior employees who have reached the top of their pay ranges, and junior employees who are still receiving step increases, is not out of line because it is not cumulative, and is good for both the Employer and the employees. The Employer opposed the notion of a bonus, and pointed out that the Union's proposal would cost \$9750.

It is not uncommon for contracts to include a ratification incentive to promote good will and to get a new bargaining relationship off to a good start. In recognition of the circumstances which have deprived these employees of a wage increase this calendar year, and which further deprived the more senior employees of a step increase, I will recommend adoption of the Union's final proposal.

Recommendation:

It is recommended that the parties' collective bargaining agreement include the following article:

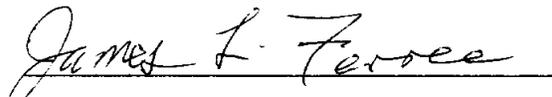
Ratification Incentive

Upon ratification of this Agreement by both parties, the eleven members of the bargaining unit with the most seniority will receive a one-time incentive payment of \$600, and the remaining employees in the unit will receive a one-time incentive payment of \$350. The Employer will endeavor to include these incentive payments in the paycheck for the pay period in which the ratification occurs.

TRANSMITTAL

This report regarding the findings of fact and recommendations on the unresolved issues is hereby transmitted to the Employer, the Employee Organization and the State Employment Relations Board.

Issued at Loveland, Ohio this fifth day of May, 2000.


James L. Ferree, Fact Finder