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**IN THE MATTER
OF
FACT FINDING
REPORT**

BETWEEN	CASE NO:01-MED-08-0707
International Brotherhood of Teamsters, Local 637 and the Muskingum County Engineer	FACT FINDER: JOHN S. WEISHEIT
	HEARING DATE(S): March 12-13, 2002
	AWARD ISSUED: April 22, 2002

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Jonathan Downes, Esq. Benjamin S. Albrecht, Esq. DOWNES, HURST & FISHEL	Susan Jansen, Esq. LOGOTHETIS, PENCE & DOLL

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

BACKGROUND

The International Brotherhood of Teamsters, Local 637, hereinafter referred to as the "IBT" and/or the "Union", and the Muskingum County Engineer, hereinafter referred to as the "Employer" and/or the "Engineer", have established a collective bargaining relationship through a representational election conducted by the State Employment Relations Board (SERB). The Union and Employer engaged in good faith bargaining for the purpose of attaining an initial collective bargaining agreement for employees of the Engineer in the job classification of Highway Maintenance Worker I, II, III, IV. There are about 21 employees in the bargaining unit. Being the initial agreement and the fact that no prior bargaining agent with an expiring labor agreement in place, the parties entered into collective bargaining of a major comprehensive contract.

On March 13-14, 2002, at the Muskingum County Engineer's office, Zanesville, Ohio, the parties convened for a Fact-Finding Hearing to present such testimony and evidence of fact related to unresolved issues. The parties requested the Fact Finder to assist the parties in mediation to resolve the matters remaining in dispute. While such efforts did attain resolution on some issues, it also provided an opportunity for the parties to clearly articulate positions in dispute. A number of the final positions of issues at impasse by the respective parties were modified in the course of mediation and were so introduced at the formal fact finding hearing. Prior to the official closing of the Hearing, each party indicated it had no additional evidence to submit on behalf of their respective party and further acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions. It was agreed that the Fact Finder Report would be issued on or before April 22, 2002. A copy of the award is to be Faxed to each party on the date of filing as well as a hard copy of the Award via overnight express, pursuant to SERB rules and regulations. The Hearing was then adjourned.

The findings, opinions, and recommendations stated in this report are based upon the facts introduced by the parties at the Hearing and used in keeping with procedures set forth under ORC 4117, applicable SERB policies and procedures, and commonly accepted procedures used by fact finders and applied in advisory interest arbitration.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements 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 public service or in private employment.

This Report is based on facts provided in document and testimony introduced at that time and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT¹

The following Articles, were tentatively agreed to between the parties prior to Fact Finding:

Article	Issue
1	Preamble & Recognition
2	No Strike/No Lockout
5	Contract Construction
7	Dues Deduction
8	Union Representation Bulleting Board
10	Grievance Procedure

Article	Issue
10	Work Rules
11	Labor-Management Meeting
13	Seniority
21	Court/Jury Time
23	Medical Examinations
27	Duration, Entire Agreement, Subsequent Negotiations, & Waiver

The following issues were tentatively agreed to at the Fact Finding Hearing:

Article	Issue
6	Management Rights
19/15	Layoff & Recall
27/22	Leaves of Absence
19	Holidays
---	Equipment Safety ²
27	Duration, Entire Agreement, Subsequent Negotiations, & Waiver

¹

Article numbers are those used by the parties. A single system had not been employed at the time of Fact Finding. The Fact Finder's recommendation is on content, not structure.

²

Withdrawn by the Union.

**SUMMARY OF THE RESPECTIVE POSITIONS
ON ISSUES AT IMPASSE**

The following is a list of Articles, in part and/or whole, unresolved at the Fact Finding Hearing, after mediation. The listing includes a brief statement of the respective party's final position on the subsection(s) remaining unresolved on the listed issue in dispute.

Employer	Issue	Union
Reject inclusion of this provision in the Agreement.	Article 4A Fair Share Fee	Include this provision in Agreement.
The Employer Proposes effect bargaining if the Employer determines to implement subcontracting due to lay off.	Article 7 Subcontracting Other terms in this Article agreed to.	The Union proposes snow and ice control work retained by bargaining unit employees and contracted out only in emergency situation, i.e. blizzard conditions.
No employee shall be disciplined except for cause. Propose sole & final appeal action to State Personnel Board of Review.	Article 11/15 Discipline & Personnel Records Sec. 15.5 Appeals of Discipline Other terms in this Article agreed to.	No employee shall be disciplined except for just cause. Propose sole and exclusive final appeal to arbitration pursuant to arbitration provision of the Grievance Procedure.

Employer	Issue	Union
<p>Sec. 21.4 Promotion Probation period of 120 days. Determined not satisfactory in position reduced to previous position and rate of pay without the right to grieve.</p>	<p>Article 12/21 Probationary Period</p> <p>Other Sections in this Article agreed to.</p>	<p>12.2 A newly promoted employee, not successful in promoted position reduced back to position and rate of pay held at time of promotion. No restriction of grievance procedure to appeal removal from the promoted position.</p>
<p>The Employer determines the review and testing process.</p> <p>Provide written notice to all applicants of the selection.</p> <p>Provides temporary assignments for up to 180 days.</p>	<p>Article 14 Job Posting</p> <p>14.6 Testing Methods</p> <p>14.7 Notice to Applicants</p> <p>14.8 Temporary Appointments</p>	<p>Issue not noted to be challenged by the Union.</p> <p>Provides for unsuccessful candidate(s) to receive verbal reason(s) why they were not selected.</p> <p>Employer right recognized to temporarily fill a vacancy, not to exceed 30 days.</p>

Employer	Issue	Union
<p>“Immediate family” limited to identified family members residing in the employee’s household or for whom the employee is the responsible care giver. Require minimum of 2 hour increment usage.</p> <p>Requires first use of sk lv accrued in current year. Then use of time previously accrued. Sk lv pay at base rate.</p> <p>2. “ ...accumulated sick leave after conversion as of November 1 each year <u>and use twenty-four (24) hours or less in the 12 month period prior to November 1 of the Year.</u>” Insert in provision.</p> <p>Concept in line with previous proposed changes of sick leave accrual.</p> <p>Provides up to a buy out of a portion or all accrued time. Related to previous proposed provisions</p> <p>Propose language identifying actions the Employer construes as abuse and basis for which disciplinary action may be imposed.</p> <p>Propose 3 days paid leave with limitations on family members defined. Allow 1 day leave for defined extended family member charged to sick leave.</p>	<p>Article 17 Sick Leave</p> <p>Usage</p> <p>Payment for Sk Lv used</p> <p>Annual Cash Conversion or Carry Forward at Year’s End</p> <p>Conversion of Sk Lv at Separation, Retirement or Death</p> <p>Sick Lv. Abuse</p> <p>Bereavement Lv.</p>	<p>Include the same identified family members without residency restriction.</p> <p>Propose minimum of 1 hour increment usage.</p> <p>Reject Employer proposal. Retain current practice/policy.</p> <p>2. Reject Employer proposal.</p> <p>Reject Employer’s proposal. Retain current practice/policy.</p> <p>Reject Employer’s proposal. Retain current practice/policy, in structure.</p> <p>Reject inclusion of this provision contending State Law covers this issue.</p> <p>Funeral Lv. Provides use of up to 5 days for paid lv. to be charged against accrued sk lv.</p>

Employer	Issue	Union
Terms agree with Union position.	Article 18. Disability Leave	Terms agree with Employer position.
<p>Proposed inclusions, not agreed to: Prior Employer approval for use.</p> <p>Employer right to require employees to use 40 hours vacation time during fair week.</p> <p>Reject Union proposal regarding OT computation factor for vacation</p> <p>Require the use of a minimum of 80 hours vacation during the course of the year.</p>	Article 20 Vacation	<p>Proposed inclusions, not agreed to: Prior service public sector work time application to vacation accrual.</p> <p>Excludes PT employees from vacation.</p> <p>Include Overtime to compute vacation time accrual.</p> <p>Reject the minimum vacation annual time use.</p>
Propose employee pay 20% of premium for CY 2002 and an amount determined in the succeeding years of the Agreement.	Article 23 Health Insurance Other language provisions of this Article agreed to.	Employees to pay 10% of the premium cost.
<p>Mandatory OT may be due to emergencies.</p> <p>Reject Union proposal.</p>	Article 24 Hours of Work/OT Minimum call-in Pay	<p>Reject inclusion of "emergencies" as cause to implement mandatory OT.</p> <p><u>Call-in Pay</u> Minimum of 4 hours for call-in during scheduled time off.</p>

Employer	Issue	Union
Revise wage schedule to a single rate for all current employees. Varied rates of pay increases Establish a two-tier wage pay schedule...New hires initially at a lower rate increasing to equal rate by end of the contract.	Article 25 Wages Agreement in concept with other terms in this Article	Retain current pay structure with fixed rate increases in 2002 and 4.5% increase the 2 nd and 3 rd years of the Agreement. Reject Employer proposal.
Increase restriction regarding use of the leave.	Article 26 Personal Leave	Reject the Employer proposal.

DISCUSSION & DETERMINATION

General

The unresolved economic issues, though addressed issue by issue as required under ORC 4117, were given due consideration regarding totality of cost. Economic impact was reviewed in context of cost estimates, comparables and other information deemed relevant and introduced by the parties at the Fact-Finding Hearing. This resulted from the manner in which costs were derived and inaccuracy in the number of employees used in figuring cost computations. "Ability to pay", as is generally considered applicable in the collective bargaining, is not a factor in this instant case. Economic positions, in general, reflect concerns of appropriateness, comparables, and perceived value and worth.

A number of positions proposed by each party reflect significant variation from prior practice and procedure. It is recognized that entering into a collective bargaining relationship, certain practices and procedures will function better with significant modification. The recommendations introduced in this Report gives serious weight based on the concept that this Agreement is an ever growing reflection of interaction between the parties. Such a basic

concept is reflected by the very fact that the Ohio Legislature, in adopting the public sector collective bargaining law, restricted the term of contract duration to three years. Growth and periodic review is considered healthy. Not all concerns or issues will be resolved in the course of a single round of contract negotiations. It is determined a key element in the initial agreement between the parties should address terms giving the parties the tools and framework with which to establish an on-going positive working relationship. It is also considered appropriate to provide adequate time for the parties to have due consideration on terms that will direct long range effect and change to matters proposed for change.

All supporting documents, introduced into the record by the parties, were reviewed and given appropriate consideration in the course of reaching conclusions and recommendations. Organizational format, as footnoted previously, is not a part of the Fact Finder's recommendation. It is recognized that, being this is an initial contract between the parties, each party entered bargaining used its own numbering system.

FACT FINDER'S DETERMINATIONS & RECOMMENDATIONS

Issue by Issue

Issue	Discussion/Determination
<p style="text-align: center;">Article 4A Fair Share Fees</p>	<p>The issue of Union financial security is a fundamental principal directly related to the Union's obligation to represent. The representative democratic process was exercised, in this case, and the majority members of the bargaining unit voted for union representation in matters of negotiations. All members are to be represented and will be entitled to rights and benefits resulting from such a relationship. Legal safe-guards of redress are provided under ORC 4117. Contract terms addressing internal rights of bargaining unit members need to be incorporated in the Agreement.</p>

<p>Article 4A Fair Share Fees cont'd</p> <p>Recommendation</p>	<p>It is considered the inclusion of bargaining unit members' obligation to share in the cost of representation is to the Union what expanded provisions of management rights are to the Employer.</p> <p>It is also noted that a fair share fee provision is not foreign in other bargaining units under the general operation of the County.</p> <p>A review of the final position presented by the Union at the Fact Finding Hearing, dated 11/15/01, appears to include the reasonable rights and restrictions generally associated in a properly Fair Share Fee provision.</p> <p>It is recommended that the Fair Share Fee proposal of the Union, dated 11/15/01 be included in the Agreement as Section 4.2.</p>
<p>Article 7 Subcontracting</p> <p>Recommendation</p>	<p>This significance of terms governing subcontracting provision cannot be overstated. However, it is considered considerably more discussion on this matter is called for between the parties before including language addressing specific area limitations into the terms of an agreement.</p> <p>The parties have agreed to the creation of a Labor-Management Committee. This is considered an appropriate starting point for problem-solving discussion to precede the contractual terms of any issue specific language on this subject.</p> <p>It is recommended that Subcontracting be included in the Agreement, as set forth in the Employer's proposal dated 3/13/02 with the following change in the last paragraph:</p> <p>"In the event the Employer determines a need to initiate subcontracting that may affect the normal work load or employment of bargaining unit employees, the Employer shall provide the Union a minimum of thirty (30) days notice before taking any implementing action. The parties shall meet and consider proposed methods, procedures, or alternatives, within ten (10) days, if the Union so requests."</p>

<p>Article 15/11 Discipline & Personnel Records</p>	<p>The parties have agreed to all terms in this Article except for two provisions: 1. Discipline is for “cause” or “just cause”; and 2. the final and binding authority in resolving disciplinary disputes. The Employer proposes the use of the Ohio State Personnel Board of Review (SPBR) and the Union proposes the contract provided grievance procedure ending in final and binding arbitration.</p> <p>The parties have tentatively agreed to a Grievance Procedure to be included in the Agreement. The procedure cites its purpose is to resolve any disputes arising from the terms of the Agreement. It provides, as its last step of appeal, final and binding arbitration. This is the normally accepted means of resolving alleged violation of contractual terms in a collective bargaining agreement.</p> <p>Inherent with grievance arbitration are commonly accepted practices, rules and procedures applied when interpreting disputed application and/or interpretation of contract terms and provisions. Included in this forum are long commonly applied principles regarding disciplinary matters. One such issue in this list relates to the interpretation and application of the term “cause” or “just cause”. It is further recognized that the parties have greater influence in obtaining the final voice in such disputes using the grievance procedure, as already reduced to tentative agreement. The rationale is not persuasive to include a second dispute resolution procedure into the contract when the parties have, in good faith, entered into tentative agreement to the procedure more commonly applied in labor agreements.</p>
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<p>Article 11/15 Discipline & Personnel Records cont'd Recommendation</p>	<p>It is recommended Article 15. Discipline & Personnel Records be included in the Agreement as set forth in the Employer's proposal dated 3/12/02, with the following changes:</p> <p>Section 15.5 Grievances arising from disciplinary action, as set forth in this Agreement, shall be subject to appeal in keeping with the terms of the Grievance Procedure.</p>
<p>Article 12/21 Probationary Period Recommendation</p>	<p>The parties have agreed to all terms of this Article except for the right of an employee to grieve a probationary removal from a promotion to a higher classification.</p> <p>A key element in this matter rests on an understanding of which party bears the greater burden of proof in such cases. The intent of the following recommendation provides that the Union bears the initial burden of proof. If the claim is substantiated that the removal is disciplinary in nature, the burden then transfers to the Employer.</p> <p>It is recommended that Article 12/21 Probationary Period be included in the Agreement as set forth in the Union Proposal Modified dated 3/11/02, with the addition of the following Section:</p> <p>Sec. __.4 Appeals of a Promotional Probationary Employee An employee removed from a promotional position during the period of probation, shall have the right to grieve the reduction. The Union shall bear the initial burden of proof that the reduction in position was in violation of terms of the Agreement. If the Union argues and prevails that the reduction was for disciplinary reason(s) or was arbitrary and/or capricious, the burden will transfer to the Employer.</p>
<p>Article 14 Job Posting</p>	<p>Most sections of this Article have been agreed to between the parties. Issues in dispute includes:</p> <ul style="list-style-type: none"> * Posting period of vacancy. The Employer proposes 5 days & the Union proposes 16 days. * Responsibility for testing or review procedures of applicants. The Employer proposes to retain its sole right while the record does not indicate any challenge on this point by the Union.

<p>Article 14 Job Posting cont'd</p>	<p>* Notice of Applicant(s). The Employer proposes notification to all applicants of the selection. The Union proposes, in addition to notification of the selection, an unsuccessful applicant's right to seek and receive information regarding how to improve chances of selection for future promotion.</p> <p>* Temporary filling of vacancy. The Employer proposes a maximum of 180 days and the Union proposes a maximum of 30 days.</p> <p>The parties have indicated agreement on Sections 14.1, 14.2, 14.4, and 14.5.</p> <p>The time period recommendations are made to reflect what is considered appropriate to accommodate the stated concerns of the parties.</p> <p>The Union proposals, Section 14.6-Notice to Applicants, and Section 14.9 -Training, is determined deserving of further discussion by the parties. They are not considered provisions of a priority dictating inclusion in this Agreement.</p>
<p>Recommendation</p>	<p>It is recommended that Sections 14.1, 14.2, 14.4, 14.5, 14.6, and 14.7 as set forth in the Employer's proposal dated 3/13/02 be included in the Agreement.</p> <p>It is recommended that Section 14.3 be included as stated in the Union's last proposal submitted at Fact Finding with the following change: " ... a notice of vacancy shall be posted for seven (7) working days at headquarters and each outpost."</p> <p>It is recommended that Section 14.8 Temporary Appointments, as written in the Employer's last proposal, dated 3/13/02, be included in the Agreement with the last sentence to read: "Such temporary assignments shall not exceed ninety (90) days..."</p>

<p>Article 17 Sick Leave</p> <p>Recommendation</p>	<p>The Union proposal tends to reflect the current sick leave policy of the Employer. The Employer's proposal reflects a number of reductions in computation of accrual and use. A review of the facts, introduced at the Fact Finding hearing, support the cost saving contention. The Fact Finder is not persuaded that changes, proposed by the Employer, are supported at this time. The number of factors involved in this issue needs further dialogue between the parties. Limited recommendations are made regarding this subject.</p> <p>It is recommended that Article 17-Sick Leave, be included in the Agreement as last proposed by the Union and dated 3/11/02, with the noted changes:</p> <p>Section 17.1, paragraph one, is recommended to read: "An employee earns .0575 hours of sick leave for each hour worked."</p> <p>The remainder of Section 17.1 as proposed.</p> <p>Section 17.2 shall be included, with the first two sentences in paragraph one to read: "Sick leave will be charged a minimum unit of one hour. All sick leave used will be at the employee's base rate of pay at time it is used."</p> <p>The remainder of Section 17.2 as proposed</p> <p>Section 17.3 shall be included as proposed.</p> <p>Section 17.4 shall be included as proposed.</p> <p>Section 17.5 shall be included as proposed.</p> <p>Section 17.6 shall be included as set forth in the following: "Any abuse of sick leave, including, but not limited to, falsification of sick leave document and/or records, shall be subject to disciplinary action. Enforcement of this Article shall be in a fair and uniform manner."</p>
<p>Article 18 Disability Leave</p> <p>Recommendation</p>	<p>The parties' last proposals on this issue reflect the same language.</p> <p>It is recommended to include the Article 18 as the final proposal reads as submitted by the Employer and the Union.</p>

<p>Article 20 Vacation Leave</p>	<p>The parties are in agreement, at least in principle, with most of the provisions in this Article. References to part-time employees are not part of the bargaining unit. It is considered proper that only rights, privileges, benefits, and responsibilities of bargaining unit members be addressed in the Agreement.</p> <p>It has been a long-standing practice to require bargaining unit employees to take 40 hours of vacation leave during the week of the Muskingum County Fair.</p>
<p>Recommendation</p>	<p>It is recommended that Article 20-Vacation Leave, be included in the Agreement as proposed by the Employer, dated 3/13/02, inclusive of the modifications stated herein:</p> <p>Section 20.1 shall be included as proposed by the Employer.</p> <p>Section 20.2 shall be included as proposed by the Employer.</p> <p>Section 20.3 shall be included as proposed by the Employer, with the deletion indicated in the following:</p> <p>“ ... convert up to one hundred twenty (120) hours annually to cash at their base rate provided employees utilize a minimum of eight(80) hours vacation during the course of the year. Annual cash conversions shall be...”</p> <p>Section 20.4 shall be included as proposed by the Employer.</p>

<p>Article 23/25 Health Insurance</p> <p>Recommendation</p>	<p>It is recognized that health insurance premiums can significantly affect Employer costs for benefits. It is also noted that the County has found common ground on resolving this matter with other bargaining unit employee groups. The cost to the Employer of this recommendation is taken into consideration not only on this issue but also on the cost for wage increases.</p> <p>It is recommended that Section 25.1, as set forth in the Employer's proposal dated 3/12/02, be included in the Agreement.</p> <p>Section 25.2-Premiums shall read as follows: Employees selecting the Employer provided insurance plan shall pay 10% of the premium cost for either individual or family coverage and the Employer will pay 90% of the premium for the duration of this Agreement.</p> <p>Section 25.3-Alternate Provider shall read: If the Employer desires to explore the purchase of an alternate health insurance plan, the Employer shall first notify and allow input from the Union.</p>
<p>Article 24 Hours of Work/OT</p> <p>Recommendation</p>	<p>The parties reflect agreement on the terms in Section 24.1, 24.2, 24.3, and 24.4.</p> <p>The proposed changes in terms and conditions of employment, including issues related to compensatory time would be best left to future negotiations with the parties retaining current practice in this Agreement.</p> <p>It is recommended that Article 24-Hours of Work and Overtime, be included in the Agreement.</p> <p>Section 24.1, 24.2, 24.3, 24.4 be included as stated in the Employer's last proposal dated 3/13/02.</p> <p>Section 24.5 shall be included as stated by the Employer, with the following changes:</p> <p>"An employee may elect to take compensatory time off in lieu of pay. Compensatory time will be used at a rate equal to overtime pay. Total compensatory time may be accrued for every hour worked over forty (40) hours in the work week to a maximum of one hundred sixty (160) overtime hours actually worked. If an employee exceeds the maximum accumulation, the employee shall be paid for this additional overtime. Use of compensatory time is subject to Employer approval, in keeping with at least three (3) working day advance request. Compensatory time shall be used in a minimum of eight (8) hour increments.</p>

<p>Article 25 Wages</p>	<p>Upon review of the respective positions regarding wages, it is determined the Employer's proposal involves too many change factors to put into action at this time. As noted in the previous item, it is determined and recommended to retain current practice and allow the parties appropriate time to consider the full impact and ramifications of significant changes in major terms and conditions of employment. The proposed change is complex with elements impacting other terms and conditions of employment. In language or intent, each party seeks significant concept change.</p> <p>Relevant factors considered to the issue finds the cost estimates of the insurance premium rate to equate to a 2% wage increase. Current wage levels are found lower to comparable pay of similar employees in the geographical area of the State.</p>
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**Article 25
Wages
Recommendation
cont'd**

Article 25-Wages and Benefits should be included in the Agreement as set forth in the following:

Section 25.1 Wages

The wages schedule for employees shall be the following for the duration of the Agreement:

Wage Classification	Hourly Rate of Pay		
	2002	2003	2004
HW4	\$14.25	\$14.75	\$15.25
HW3	14.00	14.50	15.50
HW2	13.75	14.25	14.75
HW1	13.00	13.50	14.00

A. Implementation Dates

1. 2002 wage will be effective the first full pay period following the date the parties sign the Agreement.
2. 2003 wage will be effective the first anniversary of the signing of this Agreement.
3. 2004 wage will be effective the second anniversary of the signing of this Agreement.

B. New hires will be paid the scheduled rate of the wage classification employed less \$0.50 from first day worked through completion of the probation period.

C. An Employee designated Road Foreman, will receive an additional \$0.35 to his/her current rate of pay. Such assignment is at the discretion of the Employer. An employee designated to cover for regular Road Foremen for a period of five (5) days or more shall receive the additional pay herein provided. Designation of Road Foreman shall not be conducted in an arbitrary or capricious manner.

Section 25.2 Longevity

Upon the completion of five (5) year service to the Employer, an employee will receive an additional \$ 0.10 per hour worked. For each year of service thereafter the employee will receive an additional \$ 0.05 per hour worked.

RECOMMENDATION

It is recommended that all items of tentative agreement prior to, or at, the Fact-Finding Hearing be included in the Agreement as are the Recommendations included in this Report. This includes the sections and/or subsections of articles containing unresolved sections and/or subsections and subject to the Fact-Finder's recommendation set forth in the Report.

The following constitutes the issue by issue recommendations to be included in the Agreement:

Article	Recommendation
Article 4-A Fair Share Fee Recommendation	It is recommended that the Fair Share Fee proposal of the Union, dated 11/15/01 be included in the Agreement as Section 4.2.
Article 7 Subcontracting Recommendation	<p>It is recommended that Subcontracting be included in the Agreement, as set forth in the Employer's proposal dated 3/13/02 with the following change in the last paragraph:</p> <p>"In the event the Employer determines a need to initiate subcontracting that may affect the normal work load or employment of bargaining unit employees, the Employer shall provide the Union a minimum of thirty (30) days notice before taking any implementing action. The parties shall meet and consider proposed methods, procedures, or alternatives, within ten (10) days, if the Union so requests."</p>
Article 11.5/15 Discipline & Personnel Records Recommendation	<p>It is recommended Article 15. Discipline & Personnel Records be included in the Agreement as set forth in the Employer's proposal dated 3/12/02, with the following changes:</p> <p>Section 15.5 Grievances arising from disciplinary action, as set forth in this Agreement, shall be subject to appeal in keeping with the terms of the Grievance Procedure.</p>
Article 12/21 Probationary Period Recommendation	<p>It is recommended that Article 12/21 Probationary Period be included in the Agreement as set forth in the Union Proposal Modified dated 3/11/02, with the addition of the following Section:</p> <p>Sec. __.4 Appeals of a Promotional Probationary Employee An employee removed from a promotional position during the period of probation, shall have the right to grieve the reduction. The Union shall bear the initial burden of proof that the reduction in position was in violation of terms of the Agreement. If the Union argues and prevails that the reduction was for disciplinary reason(s) or was arbitrary and/or capricious, the burden will transfer to the Employer.</p>

Article	Recommendation
<p>Article 14 Job Posting Recommendation</p>	<p>It is recommended that Sections 14.1, 14.2, 14.4, 14.5, 14.6, and 14.7 as set forth in the Employer's proposal dated 3/13/02 be included in the Agreement.</p> <p>It is recommended that Section 14.3 be included as stated in the Union's last proposal submitted at Fact Finding with the following change: " ... a notice of vacancy shall be posted for seven (7) working days at headquarters and each outpost."</p> <p>It is recommended that Section 14.8 Temporary Appointments, as written in the Employer's last proposal, dated 3/13/02, be included in the Agreement with the last sentence to read: "Such temporary assignments shall not exceed ninety (90) days ..."</p>
<p>Article 17 Sick Leave Recommendation</p>	<p>It is recommended that Article 17-Sick Leave, be included in the Agreement as last proposed by the Union and dated 3/11/02, with the noted changes:</p> <p>Section 17.1, paragraph one, is recommended to read: "An employee earns .0575 hours of sick leave for each hour worked."</p> <p>The remainder of Section 17.1 as proposed.</p> <p>Section 17.2 shall be included, with the first two sentences in paragraph one to read: "Sick leave will be charged a minimum unit of one hour. All sick leave used will be at the employee's base rate of pay at time it is used. "</p> <p>The remainder of Section 17.2 as proposed</p> <p>Section 17.3 shall be included as proposed.</p> <p>Section 17.4 shall be included as proposed.</p> <p>Section 17.5 shall be included as proposed.</p> <p>Section 17.6 shall be included as set forth in the following: "Any abuse of sick leave, including, but not limited to, falsification of sick leave document and/or records, shall be subject to disciplinary action. Enforcement of this Article shall be in a fair and uniform manner."</p>
<p>Article 18 Disability Leave Recommendation</p>	<p>It is recommended to include the Article 18 as the final proposal reads as submitted by the Employer and the Union.</p>

Article	Recommendation
<p>Article 20 Vacation Leave Recommendation</p>	<p>It is recommended that Article 20-Vacation Leave, be included in the Agreement as proposed by the Employer, dated 3/13/02, inclusive of the modifications stated herein:</p> <p>Section 20.1 shall be included as proposed by the Employer.</p> <p>Section 20.2 shall be included as proposed by the Employer.</p> <p>Section 20.3 shall be included as proposed by the Employer, with the deletion indicated in the following:</p> <p>“ ... convert up to one hundred twenty (120) hours annually to cash at their base rate provided employees utilize a minimum of eight(80) hours vacation during the course of the year. Annual cash conversions shall be...”</p> <p>Section 20.4 shall be included as proposed by the Employer.</p>
<p>Article 23/25 Health Insurance Recommendation</p>	<p>It is recommended that Section 25.1, as set forth in the Employer’s proposal dated 3/12/02, be included in the Agreement.</p> <p>Section 25.2-Premiums shall read as follows: Employees selecting the Employer provided insurance plan shall pay 10% of the premium cost for either individual or family coverage and the Employer will pay 90% of the premium for the duration of this Agreement.</p> <p>Section 25.3-Alternate Provider shall read: If the Employer desires to explore the purchase of an alternate health insurance plan, the Employer shall first notify and allow input from the Union.</p>
<p>Article 24 Hours of Work Overtime Recommendation</p>	<p>It is recommended that Article 24-Hours of Work and Overtime, be included in the Agreement.</p> <p>Section 24.1, 24.2, 24.3, 24.4 be included as stated in the Employer’s last proposal dated 3/13/02.</p> <p>Section 24.5 shall be included as stated by the Employer, with the following changes:</p> <p>“An employee may elect to take compensatory time off in lieu of pay. Compensatory time will be used at a rate equal to overtime pay. Total compensatory time may be accrued for every hour worked over forty (40) hours in the work week to a maximum of one hundred sixty (160) overtime hours actually worked. If an employee exceeds the maximum accumulation, the employee shall be paid for this additional overtime. Use of compensatory time is subject to Employer approval, in keeping with at least three (3) working day advance request. Compensatory time shall be used in a minimum of eight (8) hour increments.</p>

Article	Recommendation																								
<p>Article 25 Wages Recommendation</p>	<p>Article 25-Wages and Benefits should be included in the Agreement as set forth in the following:</p> <p>Section 25.1 Wages The wages schedule for employees shall be the following for the duration of the Agreement:</p> <table border="1" data-bbox="573 457 1230 709"> <thead> <tr> <th data-bbox="573 457 735 514">Wage Classification</th> <th colspan="3" data-bbox="862 457 1084 489">Hourly Rate of Pay</th> </tr> <tr> <th data-bbox="573 514 634 546">Year</th> <th data-bbox="776 514 837 546">2002</th> <th data-bbox="963 514 1024 546">2003</th> <th data-bbox="1166 514 1227 546">2004</th> </tr> </thead> <tbody> <tr> <td data-bbox="573 577 634 609">HW4</td> <td data-bbox="764 577 849 609">\$14.25</td> <td data-bbox="951 577 1036 609">\$14.75</td> <td data-bbox="1141 577 1226 609">\$15.25</td> </tr> <tr> <td data-bbox="573 609 634 640">HW3</td> <td data-bbox="776 609 837 640">14.00</td> <td data-bbox="963 609 1024 640">14.50</td> <td data-bbox="1166 609 1227 640">15.50</td> </tr> <tr> <td data-bbox="573 640 634 672">HW2</td> <td data-bbox="776 640 837 672">13.75</td> <td data-bbox="963 640 1024 672">14.25</td> <td data-bbox="1166 640 1227 672">14.75</td> </tr> <tr> <td data-bbox="573 672 634 703">HW1</td> <td data-bbox="776 672 837 703">13.00</td> <td data-bbox="963 672 1024 703">13.50</td> <td data-bbox="1166 672 1227 703">14.00</td> </tr> </tbody> </table> <p>A. Implementation Dates</p> <ol style="list-style-type: none"> <li data-bbox="667 772 1349 835">4. 2002 wage will be effective the first full pay period following the date the parties sign the Agreement. <li data-bbox="667 835 1471 898">5. 2003 wage will be effective the first anniversary of the signing of this Agreement. <li data-bbox="667 898 1409 961">6. 2004 wage will be effective the second anniversary of the signing of this Agreement. <p>B. New hires will be paid the scheduled rate of the wage classification employed less \$0.50 from first day worked through completion of the probation period.</p> <p>C. An Employee designated Road Foreman, will receive an additional \$0.35 to his/her current rate of pay. Such assignment is at the discretion of the Employer. An employee designated to cover for regular Road Foremen for a period of five (5) days or more shall receive the additional pay herein provided. Designation of Road Foreman shall not be conducted in an arbitrary or capricious manner.</p> <p>Section 25.2 Longevity Upon the completion of five (5) year service to the Employer, an employee will receive an additional \$ 0.10 per hour worked. For each year of service thereafter the employee will receive an additional \$ 0.05 per hour worked.</p>	Wage Classification	Hourly Rate of Pay			Year	2002	2003	2004	HW4	\$14.25	\$14.75	\$15.25	HW3	14.00	14.50	15.50	HW2	13.75	14.25	14.75	HW1	13.00	13.50	14.00
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Where a difference is found between what is stated under "Discussion" versus what is written under "Recommendation", the language set forth in the Recommendation shall prevail.

If not otherwise expressly addressed, modified, or deleted by the parties, or addressed and expressly recommended by the Fact-Finder, such terms should not be included in the Agreement.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **24 pages**, inclusive of this page, and recommendations contained herein, are made in this matter of this Award by the below signed Fact Finder.

All matters presented before the Fact Finder and not specifically addressed or given a recommendation for inclusion or exclusion in the Agreement, such issues, while given full and proper consideration, are not recommended for inclusion in the Agreement.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the **City of Galion**, in the **County of Crawford**, in the **State of Ohio**, this date of **April 22, 2002**.



John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

**BETWEEN
LOCAL 637
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS
and the
MUSKINGUM COUNTY
ENGINEER**

CASE NO: SERB 01-MED-08-0707

was served to the below named parties at the stated addresses

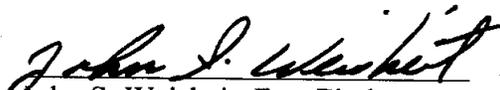
Ms. Susan D. Jansen
LOGOTHETIS, PENCE & DOLL
111 W. First St. -Suite 1100
Dayton, OH 45402

Mr. Jonathan J. Downes
DOWNES, HURST & FISHEL
300 S. Second St. - 2nd Floor
Columbus, OH 43215

by Facsimile & U.S. Postal Service mailed, overnight express, on April 22, 2002

*Copy of this Award was submitted U. S. Postal Service by First Class Mail to Dale Zimmer,
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213,
on April 22, 2002.*

*I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping
with ORC 4117 and related SERB Rules and Regulations.*


John S. Weisheit, Fact Finder April 22, 2002
Date