STATE EMPLOYMENT
RELATIONS BOARD

2005 JAN 10 A 11: 46

**IN THE MATTER OF ARBITRATION**
**BETWEEN**

| | | |
|---|---|---|
| **THE OHIO TURNPIKE COMMISSION** | ) | **CASE NOS. 04-MED-09-0922** |
| | ) | **04-MED-09-1010** |
| | ) | |
| **AND** | ) | **FINDINGS** |
| | ) | **AND** |
| | ) | **RECOMMENDATIONS** |
| **TEAMSTERS LOCAL UNION NO. 436** | ) | |

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE UNION**

**Basil W, Mangano, Esq.**

**FOR THE COMMISSION**

**David J. Millstone, Esq.**

## SUBMISSION

This matter concerns fact-finding proceedings between the Ohio Turnpike Commission (hereinafter referred to as the Commission) and Teamsters Local Union No. 436 (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on December 16, 2004.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The parties agreed that seven issues remained for this fact-finder's consideration as more fully set forth in this report. The parties further agreed that current contract language would be retained with respect to all other items.

The parties' Agreement governs two bargaining units. One unit consists of all full-time Toll Collectors and Maintenance employees. The other unit consists of part-time Toll Collectors. There are approximately 603 employees in the full-time unit and 391 employees in the part-time unit. This fact-finder in rendering the following findings of fact and recommendations on issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

## 1. WAGES

The Union proposes a 5% wage increase for every bargaining unit employee in each year of the contract. For part-time employees, the Union proposes extending the pay schedule to ten steps and adding a weekend premium of one dollar per hour for Saturday work and two dollars per hour for Sunday work. Further, the Union proposes a $.52 per hour equity pay increase for Maintenance II employees in the first year of the contract. In addition, the Union requests an additional $.20 per hour increase for tool allowance for mechanics. The Union also seeks to eliminate current language on temporary assignments and replace it with a requirement that any employee working in a higher classification receive the pay of that higher classification.

The Commission proposes that hourly rates for all full-time employees be increased by $.20 per hour in each year of the contract. With respect to part-time employees, they would receive the same wage increase with the increases occurring after the completion of every 750 hours of service. The Commission does not propose any change in the current temporary assignment provision of the Agreement.

The Union contends that the Commission is financially capable of funding its wage proposal of 5% in each year of the Agreement. There has never been a dispute that the Commission does not have the ability to pay for the increases proposed by the Union. Moreover, the proposed wage increases are consistent with what other turnpike employees have received in nearby states. The Union points out that in several respects

the wages are higher for turnpike workers in Illinois and Massachusetts than they are here. With respect to part-time bargaining unit employees, the Union points out that a pay adjustment is necessary in order to bring their wages more into line with those of full-time Toll Collectors. It is for that reason the Union has proposed a new part-time wage schedule which would extend pay increases to 5,700 hours. Finally, the Union maintains that the proposed wage increases are necessary in order to maintain the employees' standard of living given recent increases in the Consumer Price Index.

The Commission contends that its 2% across-the-board wage proposal is reasonable considering that its total revenues have decreased over the past three years. During that same time, its operating expenses have continued to increase. The Commission objects to the Union's proposal of 5% increases per year which would cost an excess of $12 million dollars over the life of the contract. The Commission notes that in comparison to other public employees in northern Ohio, Union members continue to enjoy higher salaries for comparable work. Moreover, bargaining unit member wages are comparable to or even in some cases higher than the wages earned by the counterparts in Indiana and Pennsylvania. With the wage increase proposed by the Commission, it would make Ohio's Toll Collectors the highest paid with those on contiguous toll roads. Finally with respect to part-time employees, the Commission notes that its new schedule with additional steps provides them with an opportunity to advance faster and get increases sooner.

ANALYSIS – After carefully reviewing the evidence and arguments presented by the parties, this fact-finder recommends that there be a 3.5% wage increase for all full-time bargaining unit employees in the first year of the Agreement, a 3.0% increase in the second year, and an additional 3.0% wage increase in the third year of the Agreement. This fact-finder would also recommend that there be an additional equity pay increase provided to Maintenance Worker Classification II employees. This fact-finder would recommend that the Maintenance Worker II employee groups be combined over the term of the contract with those of Maintenance Worker III which will give the lower pay groups additional equity increases in each year of the Agreement. Such equity pay increases are justified in order to bring the Maintenance Worker Classification II employees' wages into line with that paid to full-time Toll Collectors by the third year of the Agreement. With respect to part-time Toll Collectors, this fact-finder recommends wage increases in the amount of 3.5% per year with the implementation of a new pay schedule which would include additional interim steps to the top pay grade. Such pay increases for part-time Toll Collectors are warranted in order to bring their wages more into line with that of full-time Toll Collectors. Moreover with the additional interim steps on the new schedule, it will permit them to increase their pay at a faster rate.

This fact-finder would also recommend an additional $.15 per hour for a tool allowance for mechanic employees. However this fact-finder finds that there was

insufficient basis established for the Union's weekend premium pay proposals for part-time employees. Likewise, there was no justification shown for eliminating the current language on temporary assignments.

The recommended wage increases for full-time Toll Collectors and Maintenance employees would be in line with average increases provided to other public employees in northern Ohio. It would also be similar to the kind of wage increases provided to the bargaining unit employees under the parties' current Agreement. During the past three years, full-time employees have received across-the-board increases averaging 3.9% in 2002, 3.75% in 2003, and 3.6% in 2004.

Moreover in recommending wage increases of 3.5%, 3.0% and 3.0% for full-time Toll Collectors and Maintenance employees this fact-finder has taken into consideration their pay in comparison to that received by other turnpike workers in neighboring states. With the recommended wage increases proposed here, the average rate for Ohio's Toll Collectors would exceed $20 per hour which would make it higher than that paid to similarly situated employees in Pennsylvania or Indiana. It should be noted that Pennsylvania's recent contract settlement provided for $.55 per hour increases in pay years one and two, as well as a $.50 increase in pay per hour in year three of the contract. The recommended increases for the bargaining unit here would represent approximately $.70 per hour increases in each year of the Agreement.

With respect to part-time employees, the 3.5% wage increases recommended herein is warranted so as to make their wages more compatible with full-time wages. The

new schedule will also allow the part-time employees to advance faster on the schedule and get increases sooner. This fact-finder has further determined that there was justification established for an equity pay adjustment for Maintenance Workers II's. It is recommended that these bargaining unit employees be provided with additional increases in each year of the Agreement so that their wages are brought into line with those of the full-time Toll Collectors. Finally, this fact-finder would also recommend an additional $.15 per hour increase as a tool allowance for Maintenance Workers. The evidence supports such a tool allowance provision.

This fact-finder finds from the financial evidence presented that the Commission has the ability to fund the recommended wage increases out of currently available revenue resources. The evidence showed that although revenues have decreased slightly in recent years, the Commission has continued to operate on a fiscally sound basis.

## RECOMMENDATION

It is the recommendation of this fact-finder that for full-time employees there be general Wage increases of 3.5% in the first year of the Agreement, 3.0% in the second year, and 3.0% in the third year of the Agreement. It is further recommend that Maintenance Worker Classification II employees be provided with an additional equity

pay adjustment. With respect to part-time employees, this fact-finder would recommend general wage increases of 3.5% in each year of the Agreement based upon a new schedule. An additional $.15 per hour tool allowance for mechanics is also recommended. This fact-finder does not recommend the Union's weekend premium pay proposal for part-time employees. It is further recommended that the current language regarding temporary assignments be retained. The wage increase recommendation rendered herein is more fully set forth in Attachment A.

## ATTACHMENT A

44.1 The ~~biweekly salaries of full-time nonsupervisory toll collectors and the~~ hourly wage rates for full-time nonsupervisory employees in the maintenance department ***and toll department***, in effect ***upon the later of ratification by the Union and approval by the Commission or*** January 1, 200***5***, including Level 1, defined as being "New Hire ~~Six (6) Month~~ Probationary Period," after a minimum of six (6) months in ~~this level~~ ***Level 1***, ~~be~~ ***who are*** retained and advanced to Level 2, are as follows:

## Toll Collections Department

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ |
|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** |
| Toll Collector TC011 | $16.74 | $18.53 | $19.67 | $20.58 | $20.95 |

## Maintenance Department

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ | ~~54 Mos~~ |
|---|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** | **Level 6** |
| M.W. Class II MW221 M.W. Class II MW218, MW220, MW225, MW230, MW235, MW236, MW240, MW280 | $16.43 | $18.22 | $19.34 | $20.17 | $20.63 | |
| M.W. Class III MW325, MW327, MW329, MW341 | $16.62 | $18.41 | $19.55 | $20.42 | $20.75 | |
| M.W. Class IV MW425, MW428, MW433, MW442 | $17.35 | $19.22 | $20.41 | $21.50 | $21.94 | |
| M.W. Class IV-A (Technicians) M4A24, M4A54, M4A64, M4A74, M4A84, M4A94, M4A97 | $17.55 | $19.44 | $20.65 | $21.69 | $22.19 | |
| M.W. Class V MW555, MW565, MW575, MW585, MW595, MW598 | $17.75 | $19.69 | $21.12 | $22.19 | $22.64 | |
| M.W. Class VI MW626 | $18.92 | $20.98 | $22.52 | $22.93 | $23.41 | |
| Div. Stores Clerk DSC23 | $19.38 | $21.50 | $22.83 | $23.92 | $24.97 | $26.10 |
| Asst. Division Stores Clerk DSC24 | $17.32 | $19.17 | $20.36 | $21.29 | $22.22 | $23.16 |
| Maintenance Clerk MTC26 | $13.55 | $14.95 | $15.88 | $16.49 | $17.18 | $17.98 |

Level increases are automatic and based upon longevity one year between each level from ***Level*** 2, through Level 5 or 6.

44.2 The ~~biweekly salaries of full-time nonsupervisory toll collectors and the~~ hourly wage rates for full-time nonsupervisory employees in the maintenance department ***and toll department***, in effect January 1, 200***6***, including Level 1, defined as being "New Hire ~~Six (6) Month~~ Probationary Period," after a minimum of six (6) months in ~~this level~~ ***Level 1***, ~~be~~ ***who are*** retained and advanced to Level 2, are as follows:

**Toll Collections Department**

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ |
|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** |
| Toll Collector TC011 | $17.24 | $19.09 | $20.26 | $21.20 | $21.58 |

**Maintenance Department**

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ | ~~54 Mos~~ |
|---|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** | **Level 6** |
| M.W. Class II MW221 M.W. Class II MW218, MW220, MW225, MW230, MW235, MW236, MW240, MW280 M.W. Class III MW325, MW327, MW329, MW341 | $17.12 | $18.96 | $20.14 | $21.03 | $21.37 | $17.12 |
| M.W. Class IV MW425, MW428, MW433, MW442 | $17.87 | $19.80 | $21.02 | $22.15 | $22.60 | |
| M.W. Class IV-A (Technicians) M4A24, M4A54, M4A64, M4A74, M4A84, M4A94, M4A97 | $18.08 | $20.02 | $21.27 | $22.34 | $22.86 | |
| M.W. Class V MW555, MW565, MW575, MW585, MW595, MW598 | $18.28 | $20.28 | $21.75 | $22.86 | $23.32 | |
| M.W. Class VI MW626 | $19.49 | $21.61 | $23.20 | $23.62 | $24.11 | |
| Div. Stores Clerk DSC23 | $19.96 | $22.15 | $23.51 | $24.64 | $25.72 | $26.88 |
| Asst. Division Stores Clerk DSC24 | $17.84 | $19.75 | $20.97 | $21.93 | $22.89 | $23.85 |
| Maintenance Clerk MTC26 | $13.96 | $15.40 | $16.36 | $16.98 | $17.70 | $18.52 |

Level increases are automatic and based upon longevity one year between each level from ***Level*** 2, through Level 5 or 6.

44.3 The ~~biweekly salaries of full-time nonsupervisory toll collectors and the~~ hourly wage rates for full-time nonsupervisory employees in the maintenance department ***and toll department***, in effect January 1, 2007, including Level 1, defined as being "New Hire ~~Six (6) Month~~ Probationary Period," after a minimum of six (6) months in ~~this level~~ ***Level 1***, ~~be~~ ***who are*** retained and advanced to Level 2, are as follows:

**Toll Collections Department**

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ |
|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** |
| Toll Collector TC011 | $17.76 | $19.66 | $20.87 | $21.84 | $22.23 |

**Maintenance Department**

| | | ~~6 Mos~~ | ~~18 Mos~~ | ~~30 Mos~~ | ~~42 Mos~~ | ~~54 Mos~~ |
|---|---|---|---|---|---|---|
| | **Level 1** | **Level 2** | **Level 3** | **Level 4** | **Level 5** | **Level 6** |
| M.W. Class II MW221 M.W. Class II MW218, MW220, MW225, MW230, MW235, MW236, MW240, MW280 M.W. Class III MW325, MW327, MW329, MW341 | $17.76 | $19.66 | $20.87 | $21.84 | $22.23 | |
| M.W. Class IV MW425, MW428, MW433, MW442 | $18.41 | $20.39 | $21.65 | $22.81 | $23.28 | |
| M.W. Class IV-A (Technicians) M4A24, M4A54, M4A64, M4A74, M4A84, M4A94, M4A97 | $18.62 | $20.62 | $21.91 | $23.01 | $23.55 | |
| M.W. Class V MW555, MW565, MW575, MW585, MW595, MW598 | $18.83 | $20.89 | $22.40 | $23.55 | $24.02 | |
| M.W. Class VI MW626 | $20.07 | $22.26 | $23.90 | $24.33 | $24.83 | |
| Div. Stores Clerk DSC23 | $20.56 | $22.81 | $24.22 | $25.38 | $26.49 | $27.69 |
| Asst. Division Stores Clerk DSC24 | $18.38 | $20.34 | $21.60 | $22.59 | $23.58 | $24.57 |
| Maintenance Clerk MTC26 | $14.38 | $15.86 | $16.85 | $17.49 | $18.23 | $19.08 |

Level increases are automatic and based upon longevity one year between each level from ***Level*** 2, through Level 5 or 6.

Article 45 – Part-Time Wages (Part-Time)

45.1 The hourly rates for part-time toll collectors will be as follows:

| ~~Effective Date~~ | ~~Level 1~~ | ~~Level 2~~ | ~~Level 3~~ | ~~Level 4~~ |
|---|---|---|---|---|
| ~~Effective with the first pay period beginning on or after March 1, 2002~~ | ~~$11.92~~ | ~~$12.48~~ | ~~$13.06~~ | ~~$13.67~~ |
| ~~February 1, 2003~~ | ~~$12.62~~ | ~~$13.18~~ | ~~$13.76~~ | ~~$14.37~~ |
| ~~February 1, 2004~~ | ~~$13.32~~ | ~~$13.88~~ | ~~$14.46~~ | ~~$15.07~~ |

| ***Effective hours*** | ***Hire*** | ***750 hours*** | ***1500 hours*** | ***2250 hours*** | ***3000 hours*** | ***3750 hours*** | ***4500*** |
|---|---|---|---|---|---|---|---|
| ***2/1/05*** | ***$13.79*** | ***$14.08*** | ***$14.37*** | ***$14.67*** | ***$14.97*** | ***$14.29*** | ***$15.60*** |
| ***2/1/06*** | ***$14.27*** | ***$14.57*** | ***$14.87*** | ***$15.18*** | ***$15.49*** | ***$15.82*** | ***$16.15*** |
| ***2/1/07*** | ***$14.77*** | ***$15.08*** | ***$15.39*** | ***$15.71*** | ***$16.03*** | ***$16.37*** | ***$16.72*** |

***Advancement from one level to the next is based upon completion of the hours shown for that level.***

~~45.2 Advancement from one level to another is based upon completion of at least one thousand five hundred (1500) hours in level to advance to the next, as follows:~~

~~a. Level 1 0 hours to 1500 hours;~~
~~b. Level 2 1501 hours to 3000 hours;~~
~~c. Level 3 3001 hours to 4500 hours; and~~
~~d. Level 4 Over 4500 hours~~

## 2. HEALTH INSURANCE

The Commission has proposed three options for the medical insurance plan one of which is to be without cost to the employees. The employees are to pay the difference in the premium costs between the option provided at no cost and that of the two Commission offered healthcare plans.

The Union proposes that the current plan of Plan A be retained at no cost to the employees. Under the Union's proposal, if a bargaining unit employee selects to take Plan B instead of Plan A, they would be entitled to a bonus of $250 per year. The Union also proposes language whereby the Commission could not increase any employee cost sharing, including deductibles, co-payments or co-insurance without the written consent of the Union. The Union further proposes that part-time employees have the right to purchase health insurance once they have worked 600 hours in the previous year.

The Commission contends that it must find a way to contain the rising cost of healthcare. Since 1999, the Commission has seen its cost of health insurance increase from 4.7 million dollars to an estimated cost of 8.6 million dollars in 2004. After a consultant's review and recommendation, the Commission adopted a Triple Option Plan which allows employees to choose a lower level of coverage at no cost, or opt for middle or high level coverage by paying a portion of their premiums. The Commission submits that there has been a national trend of requiring employees to share in the cost of health insurance. Likewise in Ohio in 2003, 70% of the State's public sector employers required their employees to pay a portion of family coverage premiums. On average,

Ohio public sector employees pay approximately $103 per month for family coverage. Based on the Ohio trends, the Commission's health insurance proposal contains lower employee premiums and deductibles than the average public sector health plan.

The Union contends that the Commission has not demonstrated a need for healthcare cost sharing. While other employers may find it difficult to maintain health insurance plans without some contribution towards premiums from its employees, the Commission's annual reports show that there is no need for such employee contribution towards healthcare costs here. Moreover, the Union points out that in negotiations in 2001, it agreed to a two tier system whereby new employees would pay a percentage of healthcare capped at $150 for family coverage. As a result, as the Commission hires new employees, its healthcare costs will decrease. Finally, the Union notes that employee contributions towards healthcare costs generally are not found in neighboring turnpike contracts.

ANALYSIS – This fact-finder after reviewing the evidence and arguments presented regarding the healthcare issue has decided to recommend that two options for medical insurance be offered to the employees, namely Plans A and B with the latter being provided without cost to the employees. If the employee elects coverage under Plan A, it would be reasonable to provide that they pay the difference in the premium cost between Plan B which is to be provided at no cost and Plan A. This fact-finder would not recommend the Union's new maintenance of benefits language or its request that part-

time employees be allowed to purchase health insurance after working 600 hours. There was insufficient basis established to support the adoption of these new Union proposals.

Under the recommendation for a change in healthcare benefits plans offered to bargaining unit employees, it must be emphasized that full-time employees will be given the opportunity to chose Plan B at no cost. Plan A which will also be offered to the employees essentially represents the current medical plan. The PPO Plan B would include changes for co-insurance, office visit co-pay, deductibles and co-insurance maximums, as well as out of pocket maximums versus the current plan. However, this fact-finder believes that the in-network Plan B benefits are reasonable and in line with those which are commonly found in other public sector agreements. Moreover, it should be noted that Plan B benefits are similar to those which are provided to Pennsylvania turnpike workers who also are not required to contribute towards premium costs. If the employees wish to continue with current plan benefits under PPO Plan A, they can do so by paying the difference in monthly premiums which currently for family coverage would amount to approximately $66 per month. Again if the Commission employees do not want to pay a premium share, they have the option of a lower benefit plan similar to Pennsylvania's, which is Plan B. This fact-finder does not recommend the Union's proposal that part-time employees be offered health insurance coverage. Likewise, this fact-finder would not recommend the Union's new proposed 30.6 Provision.

In recommending that employees contribute towards health insurance premiums for Plan A coverage, this fact-finder has taken into consideration several factors. First,

the Commission did establish that there was a need to contain the rising cost of health insurance. Since 1999, the Commission has seen its cost for health insurance increase from 4.7 million dollars to an estimated 8.6 million dollars in 2004. Over the past five years, the cost for health insurance has increased by about 81%. Therefore, there was justification established for the adoption of the new health insurance plans for bargaining unit employees.

This fact-finder has also taken into consideration both the statewide and national trends that have more employees contributing towards health insurance premiums. In Ohio, it was established that 70% of public sector employees are required to pay a portion of family coverage premiums with contributions averaging about $103 per month. The recommendation this fact-finder is making in the instant matter is also more favorable than the plans offered by other Ohio public employers in northern Ohio. Likewise, the State of Ohio's contract with OCSEA which covers Ohio Department of Transportation workers, who are the most comparable state employees to those in the bargaining unit here, requires a premium share currently of 10% which will increase to 15% effective July 1, 2005. Such premium sharing being required by the state for ODOT workers is greater than that which is being recommended herein for Plan A coverage. Further justification for employee premium contributions for Plan A coverage is shown by the fact that there have been enhancements made to both vision and dental coverage.

This fact-finder has further determined that it would be reasonable to allow employees to opt for Plan B coverage without contributing towards insurance premiums.

If bargaining unit employees change coverages from the current Plan A to Plan B, it will achieve cost savings for the Commission. Under Plan B, there is an 80% co-insurance, a $600 family deductible, and $15 office co-pay. Under the current Plan A, co-insurance is established at 90% for in-network, with a $300 deductible for family coverage and no co-pay for office visits. It is apparent therefore that even without employee contribution towards premiums for Plan B coverage, the Commission will achieve a certain amount of health insurance savings. It should be reiterated that Plan B coverages are almost identical to that offered to Pennsylvania turnpike workers. Those employees also do not have to contribute towards premiums for such coverage.

Finally, this fact-finder finds that there was no basis established for adoption of its new Maintenance Benefits language proposal. Likewise, there was insufficient evidence produced to support its new proposal to allow part-time employees the right to purchase health insurance after they have worked 600 hours in the previous year.

## RECOMMENDATION

It is the recommendation of this fact-finder that the Health Insurance Provision be changed so that employees are offered two options, Plan A and B, with Plan B being provided at no cost to the employee. If employees opt to be covered under Plan A, they are to pay the difference in the premium cost between the no cost option Plan B and that of Plan A. The new Healthcare Provision which is being recommended herein is more fully set forth on Attachment B.

## ATTACHMENT B

### ARTICLE 30 – HOSPITALIZATIONS, SURGICAL AND MAJOR MEDICAL BENEFITS AND DENTAL AND VISION CARE COVERAGE (FULL-TIME)

30.1 All regular full-time employees of the Commission receive, effective the first day of the month following completion of thirty (30) days of active service, ~~hospitalization, surgical and major~~ ***a*** medical ***insurance plan that includes*** dental, ***prescription drug*** and vision care ~~insurance~~ benefits.

30.2 These benefits are furnished to specified dependents of an employee as well. ~~; and the entire coverage is without cost to the employee, except those employees who begin coverage after the execution date of this Agreement shall be responsible for payment, by payroll deduction, of ten percent (10%) of the premium, not to exceed Seventy-Five Dollars ($75.00) per month for single coverage and One Hundred Fifty Dollars ($150.00) per month for family coverage. This exception will not apply to individuals who are employed by the Commission on the date of execution, but have yet to complete thirty (30) days of active employment, provided they elect coverage as soon as they become eligible.~~ ***There shall be two options for a medical insurance plan, one of which shall be without cost to the employee. Employees shall pay the difference in the premium costs between the option provided at no cost and the other Commission offered plans with employee premium payments to be made by payroll deduction. The option offered at no cost to employees will be the Option known as Plan B that is in effect at the Commission on January 5, 2005.***

30.3 The details of the coverage are explained in a booklet entitled "Ohio Turnpike Commission Employee Benefit Plan." ~~The coverage shall include cost containment provisions and will provide open panel PPO coverage with a comprehensive deductible.~~

30.4 Employees eligible for ~~health~~ ***medical*** insurance who decide to opt for no coverage shall be paid Seventy-Five Dollars ($75.00) per month. This option is available for any employee who provides proof of insurance from an alternate source.

30.5 The Commission will establish a cafeteria plan under Internal Revenue Code ("IRC") Section 125, which is intended to permit employees to elect to be eligible for the cash payment of Seventy-Five Dollars ($75.00) if the employee

does not elect the coverage. The terms of the cafeteria plan shall be determined by the Commission, and the Commission shall be permitted to interpret and operate it as the Commission shall deem necessary for compliance with IRC Section 125 and applicable regulations (including proposed regulations) and rulings thereunder. To the extent required for compliance with IRC Section 125, the Commission may also provide for restrictions on the timing of the benefit elections of employees and dependents under the health insurance plan.

## ARTICLE 31- GROUP LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE (FULL-TIME)

31.1 Each full-time employee is entitled to ~~participate in the~~ group life insurance ***of $50,000 with*** ~~program provided by the Commission at no cost to the employee. All that is necessary is the submission of an application on forms provided. The insurance furnished is more fully described in the booklet entitled "Ohio Turnpike Commission Employee Benefit Plan," and amounts vary from Eighteen Thousand Dollars ($18,000.00) up, depending upon the earnings of the participating employee~~. ~~A~~ ***a*** double indemnity feature is included for accidental deaths. ~~Hence, an employee having Eighteen Thousand Dollars ($18,000.00) of life insurance has Thirty-Six Thousand Dollars ($36,000.00) of coverage for accidental death as described in the policy.~~ In addition, benefits are provided for dismemberment, and, in the event the employee becomes totally and permanently disabled before age sixty (60), the insurance remains in effect, even though the total disability necessitates termination of employment. ***Details of the benefit are included in the Certificate of Coverage, a copy of which is provided to all employees.***

31.2 The insurance provided is not affected by workers' compensation and is in addition to anything payable because of an on-the-job injury.

31.3 This policy is available without medical examination, and in the event an employee leaves employment with the Commission, he/she may convert the policy, or any portion thereof, without medical examination.

~~31.4 The details of this coverage are fully set forth in the booklet previously referred to, and this booklet should be carefully studied by every employee.~~

## 3. HOURS OF WORK (FULL-TIME TOLL COLLECTORS)

The Union proposes that all full-time Toll Collectors are to work a five day, every weekend off schedule. The weekend is to be defined as Saturday and Sunday. The Commission proposes language which it claims reinstates the schedule for full-time employees previously in place under the current Agreement prior to January 2004. Under the Commission's proposal, twenty-five percent of all full-time Toll Collectors at each installation would have two weekends off or at a minimum, a portion of a weekend off.

The Union contends that it merely wants to continue the Monday through Friday schedule for full-time Toll Collectors which the Commission implemented in January 2004. The Union maintains that such a schedule for full-time Toll Collectors has improved employee morale and as a result should be retained. Moreover, the Union disputes the Commission's claim that there have been operational difficulties caused by the Monday through Friday schedule.

The Commission argues that the Monday through Friday schedule which it implemented on a trial basis for its full-time Toll Collectors has caused severe operational and financial difficulties. The Commission points out that on many occasions it has been difficult to find sufficient part-time staff available to fill-in at certain plazas on the weekends. In addition, the Monday through Friday schedule for full-time Toll Collectors has caused a substantial jump in overtime costs associated with the unwillingness of part-time employees to accept weekend work. The Commission maintains that its proposal

presents a workable alternative to the Monday through Friday schedule proposed by the Union.

ANALYSIS – This fact-finder would recommend that the parties retain current contract language with respect to the full-time Toll Collector's Hours of Work Provision. That is, Section 37.9 of the Agreement should be retained which provides that Toll Collectors are entitled to two weekends off in each twenty-eight day schedule. The provision further provides that at least one weekend off shall be a Saturday and Sunday. This fact-finder finds that this provision is reasonable and should be retained.

With respect to the Union's proposed Monday through Friday schedule, this fact-finder finds that it has created operational and financial problems for the Commission. As indicated, the Monday through Friday schedule has been in place for most interchanges for approximately the last twelve months. It was previously established to this fact-finder by the Commission that the Monday through Friday schedule created operational difficulties because there were insufficient part-time staff available at least with respect to certain plazas to fill-in on some weekends. It was also established that the Monday through Friday schedule directly resulted in a substantial increase in overtime costs associated with the unwillingness of part-time employees to accept weekend work. This fact-finder recognizes the Union's claim that the Employer has not exercised its right to discipline part-time employees for failing to report on weekends, but even if such measures were taken by the Commission it would fail to alleviate all of the financial and operational concerns raised by the Employer with respect

to the Monday through Friday schedule. Because of the difficulties created by the Monday through Friday schedule for the Commission, this fact-finder would not recommend the adoption of the M-F schedule for full-time Toll Collectors proposed by the Union.

This fact-finder also finds that there was no basis established for adoption of the Commission's proposal regarding hours of work for full-time Toll Collectors. As indicated, under the Commission's proposal twenty-five percent of all full-time Toll Collectors at each installation would have two weekends off or a portion of a weekend off. This would be opposed to the current provision found under Section 37.9 which provides that Toll Collectors are entitled to two weekends off in each twenty-eight day schedule. There was no justification established by the Commission for the elimination of this provision.

Therefore, this fact-finder would recommend that the current contract language be retained with respect to full-time Toll Collector's hours of work. That is, Section 37.9 as well as the other provisions under Article 37 are to be retained without any change.

## RECOMMENDATION

It is the recommendation of this fact-finder that the Hours of Work Provision for Full-Time Toll Collectors should be retained without any change as set forth on Attachment C.

## ATTACHMENT C

### ARTICLE 37 – HOURS OF WORK (TOLL) (FULL-TIME)
### RELEVANT SECTIONS – 37.5, 37.6, 37.8 AND 37.9

### CURRENT CONTRACT LANGUAGE

37.5 The work schedule of full-time toll collectors shall be posted fourteen (14) days prior to its inauguration at each toll installation, and once posted, no employee's schedule shall be changed without the consent of the employee. To the extent possible, all lane assignments shall be rotated equitably on a daily basis.

37.6

a. Schedules at each toll installation shall reflect fixed hours of work. At least twenty-five percent (25%) of the scheduled lines, but not less than two (2) lines, at each installation shall provide at least two (2) weekends or portion of a weekend off during the twenty-eight (28) day schedule. (A weekend day is defined as Friday, Saturday, Sunday and for first shift only, Monday.)

b. Toll collectors at each interchange will be given the opportunity to bid on their preferred schedule based upon their seniority. The exact starting times shall be available for review before bidding on the schedule begins. The periods to be bid will be from the first twenty-eight (28) day schedule beginning in January until the end of the first twenty-eight (28) day schedule ending in January the succeeding year. Bidding will normally be made approximately eight (8) weeks prior to the start of the schedule and shall be posted by November 1 of each year. In the event a schedule is rebid under paragraph (e), after September 1, a new schedule shall not be bid for the upcoming year. When bidding on preferred schedules, toll collectors at the interchange will bid on all openings based on seniority. Bidding will continue until all available lines have been taken.

c. Collectors shall bid on schedules within the next scheduled work shift after notification of their turn to select.

d. After bidding on the preferred schedule has taken place, any openings will be filled effective at the beginning of the next twenty-eight (28) day schedule by bidding at the location, and any vacancy thereafter will be filled either by an employee bid or by a new hire.

e. If there is a change in a schedule at an interchange, the schedule will be rebid.

37.8 No more than thirty-four percent (34%) of all lines Turnpike wide may be rotational pursuant to Side Letter A.

37.9 Beginning with the schedule effective in January 2004, toll collectors shall be entitled to two (2) weekends off in each twenty-eight (28) day schedule. At least one (1) weekend shall be a Saturday and Sunday. One (1) weekend may be a Friday and Saturday. For first shift only, one (1) weekend may be a Sunday and Monday.

## 4. HOURS OF WORK (PART-TIME TOLL COLLECTORS)

The Union proposes certain modifications to the procedure for call out work for part-time Toll Collectors. Under its proposal, the system is changed from a rotational one to a seniority system. With certain exceptions noted, the Union also seeks to retain the current bidding procedure. The Commission proposes certain modifications to the part-time Toll Collector scheduling procedure. It has introduced language whereby part-time employees would be encouraged to accept work assignments which would be distributed in an equitable manner with seniority still being recognized.

The Union contends that its proposed modifications to Article 40 are reasonable. It provides that call out opportunities are to be assigned by seniority. The Union submits that its proposal also serves to address the Employer's economic concerns relating to increased overtime costs resulting from the Monday through Friday schedule. Under its proposal, part-time employees would be eligible for overtime on weekends.

The Commission contends that current contract language has caused unnecessary administrative as well as financial problems. The Commission argues that its proposal provides for an equitable distribution of work for part-time Toll Collectors while at the same time ensuring that the operational needs of the turnpike are met. It notes for example that its proposal divides the number of shifts relatively equally among part-time Toll Collectors at their respective plazas, but also allows for bidding on available shifts to proceed by seniority. Finally, the Commission states that its proposed

provisions are similar to those contained in bargaining agreements of comparable employees including that of the Pennsylvania Turnpike.

ANALYSIS – This fact-finder would recommend certain modifications to the current Part-Time Toll Collectors Hours of Work Provision. It was established that the current contract language has caused unnecessary administrative and financial problems for the Commission. For example, the current contract does not provide for any penalty for part-time employees who simply refuse to bid on shifts or refuse to work when called upon to fill hours. As a result, supervisors have difficulty trying to find part-time coverage for all shifts. This problem as well as other operational difficulties should be alleviated to some extent by the recommended changes in the Part-Time Hours of Work Provision.

It is also apparent that the proposed changes in contract language would be beneficial to both the Commission as well as its part-time and full-time employees. The Commission will be able to better control its overtime expenditures in the Toll Department as a result of the changes. The part-time employees also benefit from the proposed changes in that they will be given a greater opportunity to work with a more equitable distribution of hours and earnings. It is also evident that full-time Toll Collectors benefit from the proposed language in that the burden of filling their days off would be shifted to the pool of part-time employees. As a result, it would be less likely that the full-time employees would be forced to come in and work on their days off.

Finally, it should be noted that the changes which are recommended herein would result in provisions which are similar to those contained in bargaining agreements covering comparable employees. For example, the most recent negotiations between the Pennsylvania Turnpike Commission and its Teamsters Union reflects new language that addresses part-time staffing issues. Like the Pennsylvania contract, the proposed changes here would assign shifts in inverse seniority order. Also like the Pennsylvania Turnpike agreement, the changes would encourage part-time staff to bid and make themselves available by incorporating potential discipline for refusal to work. In all respects, the recommended changes which this fact-finder has determined should be adopted by the parties appear to be reasonable and warranted.

## RECOMMENDATION

It is the recommendation of this fact-finder that the following Article 40, Hours of Work (Part-Time Toll Collectors), be adopted by the parties as set forth in Attachment D.

## ATTACHMENT D

**Article 40 (Hours of Work Part-time Toll)**

40.1 Current Contract Language

40.2 **Call Out Lists.** There shall be two (2) lists of part-time toll collectors for call out. One list will be for weekends ~~and holidays~~, and the second list shall be for remaining weekdays. Part-time toll collectors must sign at least one of the call out lists. Opportunities to change from one list to the other or to be removed from a list will be

provided once every three (3) months. Part-time collectors may be added to a list at any time. ***Call out opportunities shall be assigned by seniority.***

40.3 **Call Out Work.** When the Commission determines call out work is available for part-time toll collectors, the part-time toll collectors will be called ***out by seniority calling out the part-time collector who will not be put into overtime status by the call out. If no part-time toll collector, including voluntary part-time loaner collectors accepts the call-out, then part-time toll collectors who will be put into overtime status will be called out, and then full-time employees. If no full-time employees accepts the call-out, the Commission can force the call-out by rotation in reverse seniority.*** ~~from the applicable call-out list(s) on a rotation based on seniority. If a part-time collector is unavailable, fails to answer a call, works, or cancels accepted call-out hours, it will be considered a turn on the rotation. If an employee is unable to perform the call out work because the employee is already scheduled to work on that day or has responded to a prior call out for the same day, it will not be considered a turn on the rotation, and the employee will not be eligible for a call out on that day. Nothing in this Article precludes the Commission from calling part-time collectors who are not on a particular call out list after all on that list have been called for a part-time toll collector call out.~~ ***When the call-out is more than 72 hours before the beginning of the shift, the part-time toll collector will have at least four hours to call back. When the call-out is more than two weeks before the beginning of the shift, the part-time toll collector will have at least eight hours to call back.***

**40.4 Excuse From Work.** An employee may request being excused from scheduled work or call out work if, absent an emergency situation, at least three (3) weeks in advance a written request is given to the Toll Plaza Supervisor where the work is scheduled and there are available collectors to fill the needs of the Commission. When excused, it will count as the part-time collector=s turn for either call out or scheduling. ~~No more than four (4) such requests,~~ ***The requests shall not exceed a total of three weeks*** ~~may be made by a part-time toll collector~~ in a calendar year ***in not less than one week increments and an additional three (3) days that can be in individual day increments***. No more than twenty percent (20%) ~~or a minimum of two (2)~~ ***rounded to the highest whole number*** of the part-time toll collectors at any installation may be excused from work at the same time. Part-time toll collectors ~~absent for three (3) consecutive months shall be terminated.~~ ***who work less than an average of two shifts per week in a calendar quarter shall be subject to termination of employment.***

40.5 Current Contract Language

40.6 Current Contract Language

***40.7 Bidding Procedure***

*Step 1:* *The OTC will post 28 day schedules with available shifts for part-time bidding. Each part-time employee starting with the most senior will be able to bid on available shifts. The maximum number of hours that may be selected in the first round of bidding shall be 32 hours in any one workweek and not more than eight hours in any one work day. First round selections must be made within eight hours of notification. Notification shall include calling the primary telephone number the employee has provided to the Commission and leaving a message at the number or leaving a notice on a pager or cell phone the employee has provided the OTC.*

*Step 2:* *If there are any remaining shifts available after the first round of bidding, each employee, starting with the most senior, will be able to select any remaining shifts that do not exceed the maximum limitations. The maximum limitations are 40 hours in any workweek with no consecutive workweeks with 40 hours and not more than eight hours in any one work day. Second round selections must be made within four hours of notification.*

*Step 3:* *If there are any remaining shifts available after the second round of bidding, shifts will be offered to voluntary part-time loaner collectors.*

*Step 4:* *If there are any remaining shifts available after the third round of bidding, the remaining shifts will be offered to full time collectors using the overtime provisions set forth in section 38 of the CBA. Shifts refused by full-time collectors will be offered as overtime work to part-time collectors.*

*Part-time collectors who cannot make a timely first round selection will be permitted to make selections at the end of the first round and part-time collectors who cannot make a timely second round selection will be permitted to make selections at the end of the second round.*

*40.8 Refusals. Employees who fail to either bid on at least six shifts, if six shifts are available, in a 28 day schedule or who refuse a call out that would take the employees shifts to at least six during a 28 day schedule will be charged with one refusal for each shift of less than six. Employees who refuse a call out or fail to respond when called out will be charged with a refusal for each such instance. Refusal of shifts will result in the following action:*

| | |
|---|---|
| *5 refusals in a rolling twelve month period:* | *Verbal Reprimand* |
| *10 refusals in a rolling twelve month period:* | *Written Reprimand* |
| *15 refusals in a rolling twelve month period:* | *Termination of Employment* |

## 5. SIDE LETTER C (RE: PART-TIME BIDDING ON FULL-TIME POSITIONS)

The Commission proposes that 80% of all offers of employment to fill a vacant full-time Toll Collector position be made to existing qualified part-time Toll Collectors. Under the Commission's proposal, the part-time employee must have worked 800 hours for the two years immediately preceding the date of application for the full-time position. The Union basically proposes that current contract language be retained with respect to Side Letter C.

ANALYSIS - This fact-finder has determined that the Commission's proposal regarding Side Letter C should be adopted. It represents an improvement over current contract language which provided that three-quarters of all offers of employment to fill a vacant full-time Toll Collector position would be made to existing qualified part-time Toll Collectors. Again under the recommended change to Side Letter C, the parties would agree that 80% of such offers to fill full-time Toll Collector positions would be made to qualified part-time Toll Collectors under certain conditions. This fact-finder finds therefore that in all respects, the proposed change to Side Letter C made by the Commission appears to be reasonable and should be adopted.

## RECOMMENDATION

It is the recommendation of this fact-finder that Side Letter C be modified as proposed by the Commission and as more fully set forth in Attachment E.

## ATTACHMENT E

**SIDE LETTER C**
**FROM THE OHIO TURNPIKE COMMISSION**
**TO THE**
**TEAMSTERS LOCAL UNION NO. 436,**
**AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS**
**RE: PART-TIME BIDDING ON FULL-TIME POSITIONS**

The parties agree that ***eighty percent (80%)*** ~~three-quarters (3/4)~~ of all offers of employment to fill a vacant full-time toll collector position (those vacant after members of the full-time bargaining unit have bid) will be made to existing qualified part-time toll collectors.

In order for a part-time toll collector to be deemed "qualified" for the purposes of being made an offer of full-time employment ***as a toll collector***, the following conditions must be satisfied:

~~(1) the part-time toll collector must be at the top step of the part-time toll collector schedule;~~

~~(2)~~*(1)* for the two years immediately preceding the date of application for the full-time position, the part-time employee must have worked ***eight hundred (800)*** ~~one thousand (1000)~~ hours in each of those years; and

~~(3)~~*(2)* the part-time toll collector has not received any disciplinary suspension for a period of one (1) year dating backward from the date of application for the full-time position.

For the purposes of calculating the ~~three-fourths~~ ***eighty percent (80%)*** rule, when no part-time employee bids on the full-time position, that position shall not be considered in reaching the ultimate calculation.

## 6. SNOW AND ICE SCHEDULE

The Commission proposes language which would permit it to use partial crews or patrols to respond to winter weather conditions. The Union proposes to retain current language which pursuant to an arbitration decision rendered in October 2003 prohibits the Commission from utilizing partial crews to keep the roadways clear of snow and ice.

The Commission contends that it never intended to waive its longstanding ability to utilize patrols when it entered into the current Agreement. At the previous arbitration proceeding, it was shown that the Commission had confirmed with the Union that the snow and ice language in the current contract would not preclude the Commission's ability to utilize patrols. The Commission submits that it has used patrols to address snow and ice issues dating back to its inception almost fifty years ago. The Commission emphasizes that its inability to utilize patrols has resulted in inefficiency and adverse operational problems. As a result of the arbitrator's decision, the Commission can no longer bring in two or three employees to respond to a potential dusting of snow. Instead, the Commission must bring in all twelve or so crew members at either the midnight (B) crew or noon (A) crew. When this occurs, the Commission is left scrambling to create "busy work" for those individuals who are not responding to the snow and ice situation.

The Union contends that the patrols pose a safety danger to bargaining unit employees. The Union disputes the Commission's claim that the parties understood that the current language would not prohibit the use of partial crews or patrols. The Union

claims that the arbitrator's decision was correct and that the language which the parties adopted in the current Agreement clearly prohibits the use of such patrols for snow and ice removal. Moreover, the Union argues that patrols cause disruption in the lives of bargaining unit members.

ANALYSIS – This fact-finder has determined that the current Snow and Ice Schedule Provision should be retained without any change. At the fact-finding hearing, compelling arguments were presented by both parties with respect to their relative positions regarding the snow and ice schedule language. The Commission certainly presented a strong case for the use of patrols indicating that they would be more efficient and an effective manner for handling snow and ice situations. Apparently prior to the arbitrator's ruling in October 2003, the Commission had utilized such partial crews or patrols on a regular basis for clearing snow and ice on the turnpike roads.

However, the Union also presented legitimate reasons as to why the use of patrols could cause several problems for bargaining unit members. First as attested to by several witnesses, there is a concern regarding the safety of a partial crew. This is especially so considering the increase in truck traffic which has recently occurred on the turnpike. There were other concerns expressed by the employees regarding the adverse effects on their personal lives which they would experience by the utilization of partial crews by the Commission.

Therefore taking into consideration the various arguments presented by the parties, this fact-finder has decided that it would be in the best interest of everyone

concerned that the current contract language regarding the snow and ice schedule be retained without any change. That is, the current procedure which has been followed since the arbitrator's ruling in October 2003 with respect to utilizing full crews to respond to winter weather conditions shall remain in effect.

## RECOMMENDATION

It is the recommendation of this fact-finder that the current Snow and Ice Schedule language set forth in Article 34.11 be retained without any change.

**SNOW AND ICE SCHEDULE – Current language, no change.**

## 7. LAYOFF

The Commission proposes a change in the current language which would remove the requirement that the Commission layoff all part-time Toll Collectors prior to any full-time Toll Collectors. Under the Commission's proposal, full-time Toll Collectors would have the right to bump the least senior part-time employee at any toll installation. The Union opposes any change in current contract language.

The Commission argues that the current language seriously jeopardizes its ability to function if a layoff becomes necessary. Part-time employees play an integral role in filling the necessary time slots required at the various gates. As a result, to layoff all part-time Toll Collectors prior to any full-time Collectors creates an operational impossibility. The Commission further requests that layoffs occur within the affected toll installation and within the work unit affected in the maintenance section. The Commission notes that under its proposal full-time Toll Collectors would be able to bump less senior part-time employees in any toll installation.

The Union contends that it is only reasonable to retain current contract language which requires that all part-time Toll Collectors be laid off first. The Union maintains that the Commission's proposal would allow it to layoff full-time employees and convert its workforce solely to one of part-time employees. The Union emphasizes that the parties agreed to the layoff procedure during the last negotiations which is found under the current provision. According to the Union, there was no justification established for a change in that language.

ANALYSIS – This fact-finder has reviewed the various arguments presented by the parties. In doing so, he has concluded that the current provision does need some modification, but not to the extent requested by the Commission. In that regard, this fact-finder would recommend that all probationary part-time employees at the affected toll installation be laid off first. Then a procedure would be established whereby full-time employees at each affected toll installation would be laid off by seniority.

This fact-finder has determined that there was insufficient basis established for laying off full-time employees first as proposed by the Commission. The parties previously agreed upon the current language which requires the Commission to first layoff all part-time employees. This fact-finder would agree that there is a need to revise the language of Section 7.10(a) to reflect that layoffs are to occur "at the affected toll installation" rather than turnpike-wide as the current language indicates. The "by installation" layoff procedure would better serve both the Commission as well as the employees' involved in that they would have bumping privileges at their particular toll installation.

Likewise with respect to the layoff of Maintenance employees, this fact-finder finds that the current provision appears to be reasonable. It would however be appropriate to modify the Maintenance employees' layoff section so that they too would be laid off within their work unit. Of course, seniority would be retained with respect to layoffs.

## RECOMMENDATION

It is the recommendation of this fact-finder that the Layoff Provision be modified as follows as more fully set forth below:

## LAYOFF

Amend Sections 7.10, 7.13 and 7.14 to read, as follows:

7.10 In the event a layoff becomes necessary, the following shall apply:

In toll:

a. All probationary part-time employees at the affected toll installation shall be laid off first;

b. Then, non-probationary part-time employees by reverse seniority at the affected toll installation;

c. Then, full-time toll employees by seniority who volunteer for the layoff;

d. Then, all probationary full-time employees at the affected toll installation shall be laid off;

e. Then, full-time employees at the affected toll installation by reverse seniority.

In maintenance:

***Among all maintenance employees in the work unit where the layoff will occur:***

1. All probationary employees shall be laid off first;

2. Then, non-probationary employees by seniority, who volunteer for the layoff; and

3. Then, non-probationary employees by ***reverse*** seniority.

## 8. MAINTENANCE WORK ASSIGNMENTS

The Commission proposes a change in the current contract language which requires it to make all work assignments in Maintenance by seniority. The Commission proposes to eliminate this particular contractual provision. The Union proposes to retain current language but with the addition that affected employees may be reassigned by seniority.

The Commission argues that the current contract language represents an unnecessary restriction on its right to assign and direct its workforce. In addition, the Commission maintains that assigning work by seniority has caused inefficiency and in some instances posed a safety risk to employees as well as those who use the turnpike. The Commission further opposes the Union's proposed language which would create additional inefficiency and compromise its management rights without good reason.

The Union argues that the current language actually addresses all of the concerns raised by the Commission. As Union Representative Gary Taboni stated, the Commission is permitted under the current language to make a work assignment in Maintenance without following seniority if the employees involved are not sufficiently skilled to do a particular assignment or if it would imperil the safety of other employees. The Union however requests that if employees are reassigned as a result of an equipment breakdown or other unforeseen conditions, such reassignment is to be made by seniority.

ANALYSIS – This fact-finder would recommend that current language be retained without any change. There was insufficient basis established for either of the parties proposals to modify the current provision. With respect to the Commission's proposal to eliminate the language found under 36.1, this fact-finder would note that the Union has indicated that it recognizes the Commission's right to deny a job assignment by seniority if the employee does not have sufficient skills to do a particular assignment or if it would imperil the safety of others. There was an indication that there have been some instances where assignments by seniority have created potential problems for the turnpike. At the hearing, Mr. Taboni clearly indicated that the language set forth under Section 36.1 stating that the "turnpike shall make a reasonable effort" in effect permits it to make a work assignment in Maintenance without following seniority if the assignment could jeopardize the safety of others or the most senior employee simply lacks the skills necessary to perform a particular assignment. This fact-finder would have to agree with Mr. Taboni's assessment that Section 36.1 does permit the Commission to make certain work assignments in Maintenance for the reasons indicated without following seniority. Therefore, this fact-finder finds that there is no reason to delete Section 36.1 as proposed by the Commission.

Likewise, there was no basis established by the Union for its request that affected employees are to be reassigned by seniority. It was shown that there are equipment breakdowns or other unforeseen conditions which occur at the job site. In such instances, certain employees may be reassigned by management. This fact-finder

finds that there was insufficient basis established to justify restricting management's right to reassign employees under such situations. As a result, the Union's proposal that affected employees be reassigned by seniority is not being recommended.

It should be noted that there are actually two sections of the Collective Bargaining Agreement which are involved with respect to this particular issue. As indicated, one of those sections is 36.1 which requires the Commission to make a reasonable effort to permit all work assignments in Maintenance to be awarded by seniority. The other applicable provision is found under Section 7.9 which also refers to work assignments being made by seniority. This fact-finder is recommending that each of the provisions be retained without any change.

## RECOMMENDATION

This fact-finder recommends that the current Work Assignments by Seniority Provision, namely Sections 7.9 and 36.1 be retained without any change.

## WORK ASSIGNMENTS BY SENIORITY (MAINTENANCE)

Sections 7.9 and 36.1 – Current language, no change.

## CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

**JANUARY 5, 2005**

**JAMES M. MANCINI, FACT-FINDER**

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January 5, 2005

Dale A. Zimmer
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213

RE: Case Nos. 04-MED-09-0922 & 04-MED-09-1010
The Ohio Turnpike Commission
-and-
Teamsters Local Union No. 436

Dear Mr. Zimmer:

Enclosed herewith is a copy of my conciliator's Award in the above referred to matter.

Thank you.

Very truly yours,

James M. Mancini

James M. Mancini

JMM:em
Enclosure

JAMES M. MANCINI
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