

HAND DELIVERED

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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING : SERB Case Numbers: 09-MED-09-0867 ~~8-28~~ *Kew*
 : 09-MED-09-0868
 BETWEEN THE :
 :
 CITY OF PICKERINGTON, OHIO, : *09-MED-09-0867*
 : *0868*
 :
 Employer : Date of Fact-Finding Hearing:
 : May 19, 2010
 AND THE :
 :
 :
 FRATERNAL ORDER OF POLICE, :
 CAPITAL CITY LODGE #9, : Howard D. Silver
 : Fact Finder
 Union :

FACT FINDER'S REPORT AND RECOMMENDED LANGUAGE

APPEARANCES

For: Fraternal Order of Police, Capital City Lodge #9, Union

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For: City of Pickerington, Ohio, Employer

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2010 JUN -9 A 8:30
STATE EMPLOYMENT RELATIONS BOARD

This matter came on for fact-finding hearing at 10:00 a.m. on May 19, 2010 at the city of Pickerington's Police Department, 1311 Refugee Road, Pickerington, Ohio 43147. Both parties were

afforded a full and fair opportunity to present evidence and arguments in support of their positions. The fact-finding hearing concluded at 1:45 p.m. on May 19, 2010.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board, including Ohio Administrative Code section 4117-9-05. Both parties have carried out their respective obligations in filing with the fact finder and each other the pre-hearing information required by Ohio Revised Code section 4117.14(C)(3)(a) and Ohio Administrative Code section 4117-9-05(F). The latest collective bargaining agreement between the parties was in effect from December 18, 2006 through December 14, 2009.

RECOMMENDATION OF ALL UNOPENED AND TENTATIVELY AGREED ARTICLES

The fact finder recommends that the parties include in their successor collective bargaining agreement all of the Articles in the parties' most recent collective bargaining agreement that remained unopened during the bargaining of the parties' successor Agreement. The fact finder recommends that the language of these unopened Articles be included in the parties' successor Agreement unchanged. These Articles include:

Article 1 - Agreement

Article 3 - Lodge Rights and Representation

Article 4 - Lodge Security

Article 5 - Non-Discrimination

Article 7 - Arbitration
Article 8 - Internal Investigations
Article 9 - Management Rights
Article 10 - Probation Periods
Article 15 - Work Rules
Article 19 - Working Out of Rank
Article 20 - Uniforms and Equipment
Article 21 - Tuition Reimbursement
Article 25 - Bereavement Leave
Article 29 - Health and Physical Fitness
Article 31 - No Strike/No Lockout
Article 32 - Waiver in Case of Emergency
Article 33 - Entire Agreement.

The fact finder recommends that all of the language changes tentatively agreed by the parties for inclusion in the parties' successor Agreement be included in the parties' successor collective bargaining agreement. The language tentatively agreed for inclusion in the parties' successor Agreement includes the following:

Article 2 - Recognition - Section 2.2
Article 6 - Grievance Procedure - Section 6.6, Step 1
Article 12 - Labor/Management Meetings - Section 12.2(H)
Article 13 - Layoffs/Job Abolishments - Section 13.2
Article 14 - Assignments and Seniority - Section 14.1
Article 16 - Promotions - Section 16.8

Article 23 - Holidays/Personal Days - Section 23.5
Article 26 - Injury Leave - Section 26.3
Article 27 - Military Leave/Jury Duty - Sections 27.1
and 27.2
Article 28 - Family Leave - Sections 28.1 - 28.12
Article 30 - Miscellaneous Provisions - Section 30.3
Article 34 - Duration/Amendment - Contract term -
December 29, 2009 to December 23, 2012

UNRESOLVED ARTICLES

The Articles that remain unresolved between the parties are:

Article 11 - Discipline and Records
Article 14 - Assignments and Seniority
Article 17 - Compensation/Hours of Work
Article 18 - Insurance
Article 22 - Vacation
Article 24 - Sick Leave

FINDINGS OF FACT

1. The parties to this fact-finding process, the city of Pickerington, Ohio, the Employer, and the Fraternal Order of Police, Capital City Lodge #9, the Union, beginning in the fall of 2009, have engaged in good faith bargaining about a successor collective bargaining agreement.
2. The parties participated in a mediated bargaining session on April 5, 2010.

3. The most recent collective bargaining agreement between the Employer and the Union was effective December 18, 2006 through December 14, 2009.
4. This fact-finding procedure addresses two bargaining units: a bargaining unit comprised of eighteen full-time sworn police officers below the rank of sergeant, SERB case number 2009-MED-09-0867; and a bargaining unit comprised of five full-time sworn police officers with the rank of sergeant, SERB case number 2009-MED-09-0868.
5. The city of Pickerington, Ohio is a public employer pursuant to Ohio Revised Code section 4117.01(B).
6. The Union is the exclusive representative of both bargaining units pursuant to Ohio Revised Code sections 4117.01(E) and 4117.05.

DISCUSSION AND RECOMMENDED LANGUAGE

Article 11 - Discipline and Records

The parties bargained proposed changes to sections 11.2 and 11.3 of Article 11, Discipline and Records. The Union seeks to maintain the language of section 11.2 and change the language of section 11.3 that addresses predisciplinary procedures. The Employer proposes the deletion of section 11.2 except for its first sentence and proposes the maintenance of current language within section 11.3.

The fact finder recommends the maintenance of current language within Article 11, sections 11.2 and 11.3 in the parties' successor collective bargaining agreement. Both parties presented legitimate bases for their proposals but in the absence of agreement about these changes or a compelling reason for a change, the current language in the parties' predecessor Agreement is recommended for inclusion in the parties' successor Agreement.

The fact finder recommends two small changes to the language of section 11.3 to make the language grammatical and understandable. These changes include a period at the end of the sentence: ``. . . The City Manager may designate a hearing officer to conduct a predisciplinary hearing.'' The language following this sentence is recommended to read: ``The member shall be notified of the date and time of the hearing at least forty-eight (48) hours in advance.''

Recommended language - Article 11 - Discipline and Records

Sections 11.1 and 11.2 - Maintain current language.

Section 11.3. Predisciplinary Hearing. Whenever the Employer determines that member may be suspended, reduced in pay or rank or removed for disciplinary reasons, the Employer shall notify the member in writing of the charges against the member, the nature of the discipline being contemplated and generally the explanation of the Employer's evidence supporting the allegations and provide the member with the opportunity for a predisciplinary hearing. The City Manager may designate a hearing officer to conduct a predisciplinary hearing. The member shall be notified of the date and time of the hearing at least forty-eight (48) hours in advance. An employee who is charged, his or her Lodge representative or Lodge attorney may make a request for a continuance. The request shall not be unreasonably denied.

The member shall have an opportunity to respond orally or in writing to the charges at the hearing, and may be accompanied by a Lodge representative or Lodge attorney during such response. The member's representative shall have the right to call witnesses and cross-examine witnesses.

A written report will be prepared by the Hearing Officer and forwarded to the member. The Employer will decide what discipline, if any, is appropriate.

Prior to the disposition of the pre-disciplinary hearing, the member may be placed on administrative leave with pay. The decision whether to place a member on administrative leave shall be made solely by the Employer.

Sections 11.4 - 11.11 - Maintain current language.

Article 14 - Assignments and Seniority

Both parties agreed to the deletion of the first paragraph of section 14.1 that refers to assignments to be made in the years 2007 and 2008. The fact finder recommends the deletion of this language.

The fact finder also recommends the deletion of a clause in section 14.1 that rewards the bargaining unit member who achieves the highest annual performance evaluation score with a preference in bidding on annual shift assignments. The fact finder was told that such a reward encourages bargaining unit members to strive for higher performance evaluation scores, but the fact finder was also told of the cynicism engendered in the bargaining unit by the process employed to determine the highest performance evaluation score. The fact finder believes that competition among bargaining unit members is best left to the bargaining unit members. A competition sponsored primarily from outside the

bargaining unit and resisted by the bargaining unit is not recommended.

The fact finder also recommends the inclusion of new language in the last paragraph of section 14.1 that refers to the assignment of a mounted officer, an assignment made at the discretion of the Chief of Police.

Recommended language - Article 14 - Assignments and Seniority

Section 14.1. Filling of Patrol Assignments. All patrol assignments (including non-rotating consecutive days off) shall be posted annually between November 1 and November 15 for the following year. Members may submit their requests for shifts based on seniority during this period. Once a member has completed his or her initial probationary period, he or she shall be eligible to participate in the annual bidding for patrol assignments. Patrol shift assignments shall be made on the basis of seniority with the member having the highest seniority being given the first choice of a patrol shift assignment. Seniority will be determined in accordance with the provisions of Sections 14.2 through 14.6 of this Agreement.

Should any patrol shift assignment vacancy occur during the year, the Chief retains discretion to fill the opening by assigning the least senior member.¹

The patrol shift assignment for a member assigned as a K-9 Officer and a member assigned as a Mounted Officer shall be made at the discretion of the Chief.

Sections 14.2 - 14.6 - Maintain current language.

Article 17 - Compensation/Hours of Work

Both parties have agreed to a zero wage increase for the first year of their successor Agreement, an Agreement that is

¹ The predecessor Agreement in Article 14, section 14.1 contains an extraneous "the" between the words "to" and "fill." The fact finder recommends the deletion of this extra "the."

tentatively agreed to begin December 29, 2009. This is a substantial concession and the bargaining unit is to be commended for this sacrifice grounded in the reality of present economic circumstances.

What remains to be recommended are the wage increases for the second and third years of the parties' successor collective bargaining agreement. The Union proposes a three percent wage increase in each of the second and third years of the successor Agreement. The Employer proposes one percent and one and one-half percent for the second and third years of the successor Agreement, respectively.

The parties presented reliable data as to the budget of the city of Pickerington, Ohio; the budget of the city of Pickerington Police Department; and the costs of providing wages and benefits to the members of the bargaining unit. A substantial cost center is the provision of health care insurance coverage to bargaining unit members and to all employees of the city, organized and non-organized, with three individual exceptions.

The city of Pickerington, Ohio is blessed with very competent budget managers and their quite natural and rightful conservatism in predicting the economic circumstances the city will face is grounded in protecting the economic well-being of the municipality.

The Union's expert, Mr. Steen, a certified public accountant, was nonetheless credible and persuasive about

expectations of an improving economy and the ability of the public employer to fund reasonable increases in wages and benefits in the second and third years of the parties' successor Agreement.

The zero wage increase agreed by the parties is intended to provide the Employer with a respite from wage increases in these bargaining units for twelve months so as to allow the Employer to stand on firmer economic footing in the last two years of the three-year contract. The fact finder recommends that the wage increases for the bargaining unit members over the three years of the parties' successor Agreement be zero, two percent, and two percent. The fact finder is cognizant of the fact that other city bargaining units have received different wage increases, but the nature of the work to be performed by the bargaining units at issue in this proceeding is very different from the nature of the work assigned to other city bargaining units, and the bargaining histories of city bargaining units are separate and different.

The wage increases proposed by the fact finder, four percent over three years, are found by the fact finder, on a preponderance of the evidence presented, to be affordable by the public employer.

The Employer also proposes the insertion of a new wage step, to be inserted between the third and (what would become) the fifth step in the pay schedules of patrol officers.

The Union opposes the new step on the grounds that bargaining unit members were employed under the predecessor

collective bargaining agreement with a wage schedule comprised of four steps; the four-step wage schedule was agreed by both parties; the four-step wage schedule is an obligation that should not be changed to the detriment of bargaining unit members who have relied upon it.

The fact finder recommends the insertion of the step sought by the Employer, step four, with the understanding that this new step will not be applied to any bargaining unit member hired prior to July 1, 2010. This "grandfathering" provision will maintain the language relied upon by bargaining unit members presented in the predecessor Agreement and will work no detriment upon new hires who will have no reason to rely on the prior language.

The parties have reached virtual agreement on changes to Article 17, section 17.7, Shift Differential. The fact finder recommends changing the language of 17.7 to: \$1.10 effective the date of the Agreement; \$1.15 effective December 29, 2010; and \$1.20 effective December 29, 2011.

As to section 17.8, Longevity Pay, the fact finder recommends the maintenance of current language that would continue the longevity payment, after five years of full-time service, at \$650.

The Union proposes new language to be included in section 17.11 that would pay compensatory time to detectives in compensation for on-call status. This is a new benefit and is opposed by the Employer.

The fact finder declines to recommend the addition of detective on-call compensation for the parties' successor Agreement. The Union's arguments as to the inconvenience of being on-call is acknowledged but the fact finder is reluctant to add new benefits in this economic climate, preferring to apply the resources available for increases in wages and benefits among those currently held.

Recommended language-Article 17-Compensation/Hours of Work

Section 17.1. Wage Rates. Members shall be paid in accordance with the following wage rates:

Effective December 29, 2009

<u>OFFICER</u>				
STEP	1	2	3	4
Hourly	21.11	24.25	26.01	30.82
Bi-Weekly	1,688.80	1,940.00	2,080.80	2,465.60
Annually	43,908.80	50,440.00	54,100.80	64,105.60

<u>SERGEANT</u>	
Hourly	35.45
Bi-Weekly	2,836.00
Annually	73,736.00

Effective December 29, 2010 [2%]

OFFICER

STEP	1	2	3	4 ²	5
Hourly	21.53	24.74	26.53	28.99	31.44
Bi-Weekly	1,722.58	1,978.80	2,122.42	2,318.67	2,514.92
Annually	44,786.98	51,448.80	55,182.82	60,285.27	65,387.71

SERGEANT

Hourly	36.16
Bi-Weekly	2,892.72
Annually	75,210.72

Effective December 29, 2011 [2%]

OFFICER

STEP	1	2	3	4	5
Hourly	21.96	25.23	27.06	29.56	32.07
B-Weekly	1,757.03	2,018.38	2,164.87	2,416.48	2,668.08
Annually	45,682.72	52,477.78	56,286.48	61,490.97	66,695.46

SERGEANT

Hourly	36.88
Bi-Weekly	2,950.57
Annually	76,714.93

Sections 17.2 - 17.6 - Maintain current language.

Section 17.7. Shift Differential. Shift differential shall be paid at the following rates as effective on the following dates:

Effective Date of Agreement	12/29/10	12/29/11
\$1.10	\$1.15	\$1.20

Shift differential shall apply to any hours worked outside first shift hours, except that where a member is placed in overtime status during first shift hours, shift differential shall apply. The first shift commences at 7:00 a.m. or 8:00 a.m., as determined by operational needs.

Shift differential shall only be paid for hours actually worked and for court appearance pay during the hours specified above but shall not be paid for use of leave such as sick leave, vacation leave, personal leave, or bereavement leave.

Sections 17.8 - 17.13 - Maintain current language.

Article 18 - Insurance

Health care insurance coverage is essential to the well-being of bargaining unit members and their families. This benefit is expensive and is rising in cost at a rate that far exceeds any increase in inflation.

Health care insurance coverage is an issue about which the Union bargains as an exclusive representative of the bargaining units. Health care insurance coverage, however, is directly affected by how health care coverage is provided by the Employer to all employees of the municipality. If each bargaining unit insists on fashioning an individual coverage plan, such coverage is possible to provide but is far less efficient and far more expensive than coverage provided through a wider pool of

² Step 4 applies only to hires after June 30, 2010.

participants.

The Union is correct that it has every right to negotiate health care coverage for its bargaining unit members and is not bound by agreements reached by the Employer with other parties.

Health insurance coverage has as its primary economic goal the spreading of risk and therefore operates more efficiently through a larger pool of participants. The Employer's proposal on this point, to provide identical coverage to all employees of the municipality, promotes economy of scale.

The Union proposes the maintenance of the premium payment arrangements between the Employer and bargaining unit members under the parties' predecessor collective bargaining agreement under which the Employer pays ninety-two percent of the premium costs; the bargaining unit member pays eight percent of the premium costs, and caps to protect bargaining Union members from premium cost increases are urged upon the fact finder by the Union.

The Employer argues that bringing all city employees under the same health care coverage plan treats all employees the same, increases efficiency in providing health care coverage, and avoids higher costs associated with ``boutique'' plans. The Employer proposes that, as is the case with all other participants in the health care coverage plan intended for all city employees, the bargaining unit members in this fact-finding proceeding will contribute eight percent of premium costs in 2010, ten percent of premium costs in 2011, and twelve percent of

premium costs in 2012.

The fact finder understands the protections intended by the Union in its proposals on health care coverage but the fact finder is persuaded that the point of health care coverage is to spread risk, with each participant in the coverage pool sharing equally in this risk with all other coverage pool participants. The Balkanization of health care coverage increases costs and complicates the administration of the coverage. In the absence of compelling reasons to the contrary, the fact finder favors a larger pool where all participants are treated the same.

As noted above, health care insurance coverage is essential and increasingly expensive. The Employer's proposal commits to paying ninety-two percent of the health care coverage premiums in 2010, ninety percent of the premium costs in 2011, and eighty-eight percent of the premium costs in 2012. This presents an increased burden on bargaining unit members but does maintain a payment schedule that commits the Employer to pay for (on average) ninety percent of the premium costs over the three years of the successor Agreement, leaving ten percent (on average) to be paid by bargaining unit members choosing to participate in the coverage plan.

The fact finder recommends the language proposed by the Employer for section 18.1 of Article 18. The fact finder finds the proposal to be beneficial to both parties. While the risks of increased premium costs and some increase in premium costs must be borne by bargaining unit members, the overall plan is

sensible, fair, and offers a reasonable method of providing this important benefit to bargaining unit members and their families.

The Union has proposed an increase in the term life insurance coverage made available to bargaining unit members by the Employer, from seventy-five thousand dollars to one hundred thousand dollars. This increase requires a small amount of money and the fact finder recommends the Union's proposal as to the life insurance provision in Article 18, section 18.2.

Recommended language - Article 18 - Insurance

Section 18.1. Insurance Coverage and Member Premium. The Employer will provide comprehensive hospitalization, surgical, major medical, physicians' services coverage, prescription drug coverage, vision care plan, and dental coverage in the same manner it provides insurance to non-bargaining, non-administrative City employees. Members shall pay the following monthly contribution for such coverage during the listed payroll year:

Effective for 2010: 8% of the premium paid by the Employer.

Effective in payroll year 2011, 10% of the premium paid by the Employer.

Effective in payroll year 2012, 12% of the premium paid by the Employer.

If the City chooses to offer incentives to members opting not to be covered through the City's health care plan because they have coverage elsewhere, then the members shall be awarded the same opportunity for such incentives. Bargaining unit employees will pay the same contribution toward the monthly premiums as non-bargaining, non-administrative City employees pay, except not greater than outlined above. The City also agrees to fund the Health Savings Account (HSA) at not less than 75% of the deductible, or the same funding as non-union employees, whichever is greater.

Section 18.2. Life Insurance. The Employer will maintain life insurance for each member in the amount of the member's current

annual wage rate, or one hundred thousand dollars (\$100,000), whichever is higher, with the Employer paying all premiums. The amount of life insurance coverage shall be doubled for member killed in the line of duty.

Article 22 - Vacation

The parties have agreed to replace language on scheduling annual and casual leave in section 22.2 of Article 22 and to attach to this language the language found at Article 24, section 24.2(E) in the predecessor Agreement.

The Union has proposed an additional sentence to be added to section 22.2 addressing guaranteed leave. The Employer opposes this additional sentence and the fact finder declines to recommend its inclusion.

Recommended language - Article 22-Vacation

Section 22.1. Vacation Accrual. Effective with payroll year 2010, the following shall be the vacation accrual rates for members:

AFTER COMPLETED YEARS OF SERVICE	HOURS OF ACCRUED VACATION	MAXIMUM ACCUMULATION HOURS
0 (at hire)	80	80
2	104	144
4	112	152
6	120	160
8	128	168
10	136	176
11	144	184
12	152	192
13	160	200
14	168	208
16	176	216
18	184	224
20	192	232

Section 22.2. Annual and Casual Leave Scheduling. For purposes of annual leave (except compensatory time) scheduling, leave requests which are submitted by members between January 1 and January 31 shall be approved by February 15, based upon seniority with the member having the highest seniority being given the first choice of leave scheduling. The Division shall post and maintain a master leave schedule listing all approved annual and casual leave. Casual leave (except compensatory time) shall be approved on a first come basis, without preference to rank or seniority. All casual leave requests must be approved or denied within seven (7) days of a member's submission to his or her supervisor.

Illness, injury or pregnancy-related conditions of the member's immediate family where the member's presence is reasonably necessary for the health and welfare of the member or affected family member. For purposes of this paragraph "immediate family" shall include the spouse, dependent children and parents. For purposes of this paragraph, upon request, a member shall be granted ten (10) days of sick leave (80 hours) to care for a spouse who gives birth to a child; the granting of this leave does not require a member to furnish proof under Section 24.3.

Sections 22.3 - 22.5 - Maintain current language.

Article 24-Sick Leave

The fact finder recommends changing "360" hours of total pay as it appears in Article 24, section 24.8, Retirement Pay Out, to "600" hours of total pay. The fact finder also recommends the changes in wording agreed by the parties for section 24.9(A) and section 24.9(A)(1) that clarify the "sell-back" of annual accrued but unused hours of sick leave.

Recommended language - Article 24 - Sick Leave

Section 24.1 - Maintain current language.

Section 24.2. Use. A member may request sick leave for absences resulting from:

- A. Illness or injury of the member,

- B. Exposure of the member to a contagious disease which would have the potential of jeopardizing the health of other City employees or of the public.
- C. Necessary medical, dental, psychological, or optical examination by a licensed practitioner, when such examination cannot be scheduled during non-work hours;
- D. Inability to work due to pregnancy, childbirth and related medical conditions.

Sections 24.3 - 24.7 - Maintain current language.

Section 24.8. Retirement Pay Out. A member with ten (10) or more years of service credit shall, upon retirement from employment with the Employer, be compensated for one half (1/2) of his or her unused sick-leave up to 600 hours of total pay. The pay rate per hour shall be the member's final hourly straight time pay rate. ``Retirement'' shall mean service or disability retirement pursuant to a State of Ohio retirement plan.

Section 24.9. Annual Sick Leave Pay Out Option.

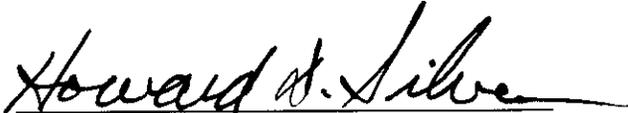
- A. After 600 hours have been accumulated (excluding transferred-in sick leave from another Ohio political subdivision), a member would be eligible to ``sell back'' sick leave.
 - 1. Beginning in payroll year 2010, members who have 600 more hours of sick leave accrued, may opt to ``sell back'' their annual accrued but unused hours of sick leave at one-third (1/3) their current straight-time hourly rate, retaining not less than 560 hours accumulation.
- B. Members who use sixteen (16) or fewer hours of sick leave in the preceding twelve (12) months shall accrue one (1) additional vacation day.
- C. Members who expect to retire in three (3) years or less may ``sell back'' accrued sick leave hours over 360 hours at one-fourth (1/4) their current straight-time hourly rate. Transferred-in sick leave shall not be eligible for this ``sell back.''

Section 24.10 - Maintain current language.

The fact finder incorporates by reference, as if fully rewritten herein, all Articles that were unopened by the parties and all Articles tentatively agreed by the parties, and recommends that these Articles be included in the parties' successor Agreement.

In making the recommendations presented in this report, the fact finder has considered the criteria presented by Ohio Revised Code section 4117.14(C)(4)(e) and section 4117-9-05(K) of the Ohio Administrative Code.

Finally, the fact finder reminds the parties that any mistakes in the language recommended by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).


Howard D. Silver
Fact Finder

Columbus, Ohio
June 9, 2010

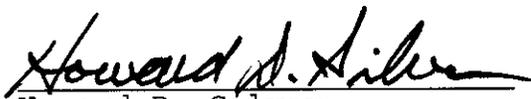
CERTIFICATE OF SERVICE AND FILING

I hereby certify that the foregoing Fact Finder's Report and Recommended Language in the Matter of Fact-Finding Between the City of Pickerington, Ohio and the Fraternal Order of Police, Capital City Lodge #9, SERB case numbers 2009-MED-09-0867 and 2009-MED-09-0868, was filed, via hand-delivery, with the State Employment Relations Board, and hand-delivered to the offices of the following, this 9th day of June, 2010:

Robert W. Sauter, Esquire
CLOPPERT, LATANIK, SAUTER & WASHBURN
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and

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Howard D. Silver
Fact Finder

Columbus, Ohio
June 9, 2010