

STATE EMPLOYMENT  
RELATIONS BOARD

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**IN THE MATTER OF FACT FINDING**  
**BETWEEN**  
**THE CITY OF CONNEAUT**  
**AND**  
**AFSCME OHIO COUNCIL 8, LOCAL 2182**

**SERB CASE # 09-MED-<sup>10</sup>~~01~~-1143**

**Robert G. Stein, Fact Finder**

**ADVOCATE FOR THE UNION:**

**Cindy A. Michael, Staff Representative**  
**AFSCME OHIO COUNCIL 8**  
**150 South Four Mile Run Road**  
**Akron OH 44515-3137**

**ADVOCATE FOR THE EMPLOYER:**

**Gary C. Johnson, Esq.**  
**JOHNSON, MILLER, & SCHMIDT LLP**  
**635 Lakeside Avenue, Suite 600**  
**Cleveland OH 44113**

## **INTRODUCTION**

The bargaining unit is represented by the American Federation of State, County, and Municipal Employees, Ohio Council 8, and its Local 2182 (hereinafter “Union” or “bargaining unit”) and consists of approximately seventy-five (75) people employed full-time in the Service Department and in City Administration. The employer in this matter is the City of Conneaut (hereinafter “Employer” or “City”). The City of Conneaut is located in northeastern Ohio.

The Agreement expired on December 31, 2009; however, the parties continued to bargain and held a total of four (4) mediation sessions and one (1) fact-finding session on July 14, 2010. The July 14, 2010 session was not closed until August 25, 2010, upon the receipt of post hearing statements and subsequent replies by each party. There were approximately thirty-five (35) issues brought to fact-finding following the resolution of several articles or parts of articles in mediation. The issues, as well as several more sub-issues contained therein, will be addressed as they were presented in the fact finding hearing and not necessarily in numerical order as they appear in the current Agreement.

Negotiations for a successor agreement were particularly difficult in this round of bargaining. The current unprecedented financial difficulties of the City are caused by a variety of factors, many of which are well beyond the control of City leaders. As a result, the City in

this round of negotiations took a strong concessionary bargaining position in order to reduce personnel costs. All of the City bargaining units in the City agreed to significant concessions preceding fact finding over the instant matter. These preceding negotiated results with other internal comparable bargaining units must be considered factually significant in matters of collective bargaining. Understandably, the concessionary approach taken by the City in these negotiations and the predictable resistance by the Union resulted in prolonged negotiations, prolonged mediation, and extended fact finding including the unusual step of submitting post hearing replies by each party several weeks following the close of the oral portion of the fact finding proceeding. The Employer insisted language and benefit changes were necessary in order for the City to maintain its operations. The Union argued strongly that the City was overreaching in its need to make language and benefit changes. As a back drop to these negotiations was the reality of the local, state, and national economy. In a word times are “tough” and promise to remain that way given the deficit the state of Ohio is facing in the next fiscal year and the high unemployment that accompanies it.

## **CRITERIA**

### **OHIO REVISED CODE**

In the finding of fact, the Ohio Revised Code, Section 4117.14 © (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

## **General/Local Economic Outlook and Discussion of Issues**

The economy in Ohio is still experiencing the effects of a national recession and a very slow recovery. While officially considered to have reached an end, the impact of the recession upon Ohio's revenue stream is plain. In Ohio, unlike many other states, there has historically been a substantial lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the "Great Recession" is arguably far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers. Cities that were already weakened by the loss of industry and commerce in preceding years were particularly vulnerable as the events of the recession took hold. At this point in time it is difficult to say that Ohio's path to economic recovery will be predictable. Every month on a national and state level there are mixed signals being provided by various sectors of the economy and by consumers. The most recent national report on jobs released Friday, November 5, 2010, indicated a net gain in jobs and while encouraging, the unemployment rate remained at 9.6% for the nation and Ohio. In Ashtabula County the unemployment rate last reported in September of 2010 was 11.5%, one of the highest rates among Ohio's eighty eight (88) counties. One of the more certain and troubling aspect to the current economic times are losses of high paying skilled jobs in Ohio. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Moreover, conventional wisdom indicates that many of the losses of high paying manufacturing jobs are permanent, requiring a recovery in Ohio to take a very different course than it has in the past. All the news is not negative; there are indicators of recovery and some employers are doing well in this recession and its aftermath. The stimulus funds while welcomed by many to sustain public services were a temporary fix that buys public

employers a little time. Looming on the horizon and what will most likely become a hotly debated matter now that the November elections are over is the projected deficit in the state of Ohio. Currently estimated to be between four (4) and eight (8) billion dollars, all public employers in Ohio, regardless of jurisdiction have reason to be concerned about the next biennium budget. With the likelihood of less support from the federal government, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. Barring any unforeseen windfall in revenue it is very likely additional budget cuts will have to be made at the state level in Ohio in order to balance the budget, which will predictably translate into cuts in funds to local municipalities. Projections of a 10% to 20% cut in Local Government Funds to municipalities and counties were made as early as June of 2010, and while speculative, conventional wisdom appears to indicate that cuts and not tax increases are more likely in the next biennium. (Center for Community Solutions “Thinking the Unthinkable-Finding Common Ground for Resolving Ohio’s Fiscal Crisis”) Prudence would dictate that this potentiality needs to be factored into any projected budget of a municipality. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many county, city, and township public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. When dealing with concessionary bargaining evenhandedness of sacrifice often takes on even greater significance than it does when comparing internal comparables in more normal times. Arguably it becomes a matter of fundamental fairness when employees are asked to make sacrifices to maintain the integrity of a

bargaining unit. Only the open articles or parts of article listed below are submitted to fact finding. All other articles or parts of articles not listed below have either been tentative agreed upon recommended or if left unaddressed are to be considered to be current language and recommended as part of this report. Recommended changes in this report appear in **bold face type**.

<b>Issue 1      Article ___    Grievance Procedure, Sections 5 and 7</b>
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The Employer is seeking to include language to address grievances that are not filed timely or answered in a timely fashion. The Union argues that the administration has been derelict in its responsibility to answer grievances in a timely fashion or to schedule mediation sessions. The internal comparables and language commonly found in labor agreements in both the private and public sector support the Employer's position. It is commonly accepted that grievances need to be timely filed and efficiently processed as a matter of fundamental fairness. While I understand the Union's frustration in not having timely answers to grievances, it does have recourse through SERB if the Employer is acting in bad faith. Although technically open, the parties conceptually agree to create a permanent panel under Section 7.

**DETERMINATIONS (RECOMMENDATIONS)**

**Section 5.** The time limits set forth in the Grievance Procedure shall, unless extended by mutual written agreement of the **Employer** and the Union, be binding. A business day does not include Saturdays, Sundays or legal holidays. **Grievances not initially filed or appealed within the specific time limits shall be deemed withdrawn and void. Grievances not answered by the Employer within the specific time limits shall automatically be advanced to the next step.**

**Section 7** There is hereby created a permanent panel of arbitrators to hear grievances pursuant to this Article. Such arbitrators are the following: 1) \_\_\_\_\_  
2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_; and  
5) \_\_\_\_\_.

**Issue 2      Article \_\_\_ Section 1, Equalization of Overtime**

The Employer proposes to add the word “qualified” to employees who are called in for overtime. The Union opposes this change and argues that if the overtime work is in a classification, employees already holding the classification are qualified to perform the work. The Union’s argument is persuasive and is supported by standard practice in the private and public sector. It stands to reason if an employee holds a classification, he or she should be qualified to perform the work whether it is during normal work hours or on an overtime basis. With the exception of an agreed upon clerical change the evidence does not support a change in language.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** The **Employer** shall be the sole judge of the necessity of overtime. All overtime will be offered to employees in accordance with their classification seniority on a rotating basis. Overtime may initially be refused but, if sufficient employees do not voluntarily accept, the **Employer** shall assign the overtime work to employees within the same department in the inverse order of seniority and employees must work such overtime when assigned.

**Issue 3      Article \_\_\_ Section 1, and 2, Lateral Transfers**

The Employer argues that the Employer must be able to retain the authority to laterally transfer employees as the needs of the City dictate. The Employer asserts that its ability to run the City efficiently could be seriously impeded if an employee has the right to refuse a transfer. Moreover, the City argues that given the small size of the City and the closeness of its work locations, a lateral transfer, if needed, would not place a geographic burden on an employee. The Union wants to maintain language in the Agreement that allows an employee to refuse a transfer, but does not oppose the idea of using seniority to move people from one location to another. This provision deals with voluntary lateral transfers and not mandatory transfers. However, since the parties included mandatory transfer language in this provision it is reasonable for the Employer for operational reasons to have the ability to transfer or re-balance the workforce if necessary. However, said rebalancing should honor seniority.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** An employee may exercise his classification seniority for the purpose of transferring within his classification from one job assignment to another job assignment. An employee who desires such a transfer must make application in writing to the Department Head (on forms supplied by the City) prior to the opening occurring. A copy of the application form

shall be retained by the employee. An employee's preference shall supersede the promotion-job-bidding provisions of this Agreement.

**SECTION 2.** An employee may exercise his classification seniority for the purposes of changing shifts when an opening occurs within his classification of another shift. An employee who desires a change of shift must make application in writing to the Department Head (on forms provided by the City) prior to the opening occurring. A copy of the application form shall be retained by the employee. An employee's preference shall supersede the promotion-job-bidding provisions of this Agreement.

**SECTION 3. Involuntary transfers within a classification required by the Employer for operational reasons shall be by inverse order of seniority, unless a more senior employee volunteers for the transfer.**

<b>Issue 4      Article      Temporary Transfers</b>
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The Employer proposes to delete the requirement of a 48 hour advance notice in writing, the 30 day limit for transfers, and the penalty to the City of time and one-half under Section C. The City argues that if it transfers someone into a higher rate it will pay them a higher rate, or the same rate whatever the case may be. The City added that it does not have a problem in giving notice in advance providing it had advanced knowledge of the need to make the temporarily transfer, but it does not wish to pay a penalty of time and one-half for having to make the decision. The Employer also argues that the prohibition against changing the day off when it transfers a bargaining unit employee is overly restrictive. The Employer asserts that the current language prohibits its managerial flexibility in responding to operational needs. Work rules like these have wrecked the economy in private sector in the surrounding area, argues the Employer. The Union asserts that the police are offered a 5 day notice for a shift change and that currently an emergency is an exception to a 48 hour notice requirement. The Union points out that in 1977 the 48 hour notice was added. It insists that the City's hands are not tied and that it is just common courtesy to give an employee notice, particularly if those employees who have obligations. The Union argues that removing the 30 day limit no longer makes temporary transfers temporary, and that the one and one-half wage rate penalty is only in Waste Water. Other unions do not have temporary transfers because they do not need them, argues the Employer. Given the size of the workforce and the financial exigency the City finds itself in, it is not unreasonable to expect there may be a need for operationally based transfers that in certain circumstances may not be able to be preceded by a forewarning. With this issue I do not find the other units to be reasonable comparables, given the general uniformity of their work and the twenty-four nature of the service they provide. It is also clear that given the size of the workforce and the budget limitations of the City that the Employer needs sufficient managerial latitude to operate the City, including the right to temporarily transfer when operationally necessary. However, the Union makes a reasonable point about transfers not being temporary particularly if they are not conditioned upon legitimate operational need. And, if it involves a change in shift hours, employees normally need time to make arrangements to meet outside obligations, such as child care.

## DETERMINATIONS (RECOMMENDATIONS)

### SECTION 1.

- (a) The **Employer** may temporarily transfer employees from one job classification to another job classification either within the same department or to another department. **If the transfer involves a change in scheduled work hours and if the need for said transfer is not an emergency as defined in (f) below, the Employer shall give the transferred employee a minimum of forty-eight (48) hour advanced notice prior to making the transfer. Transfers under this provision shall not be discriminatory and shall be based upon operational needs. Temporary transfers shall normally not exceed thirty (30) calendar days in any calendar year, unless the Employer determines its operational needs require a longer period of time. The Employer will notify the Union of said need to extend the time of the transfer and the reasons it is necessary.**
- (b) When a Department Supervisor position is to be filled by a bargaining unit employee, said employee **when assigned** shall have an election to be compensated at his regular rate or ninety percent (90%) of the Department Supervisor's hourly rate whose position said employee fills. It is understood that Department Supervisors receive no overtime compensation and this understanding shall apply to the bargaining unit employee, if he elects to be compensated at the Department Supervisor's rate of pay.
- (c) Temporary transfers outside a classification or department shall be made in accordance with seniority rules among those in the affected classifications or department. In the event all employees entitled to said transfer refuse, the **Employer** may, at its sole discretion, mandate said transfer.
- (d) Notwithstanding other provisions in this section, the **Employer** may, for any stated reason, reassign or change shifts for employees in the Wastewater Treatment Plant. **If said transfer is not an emergency as defined in (f) below, the Employer shall provide said employee forty-eight (48) hours advance notice of the shift change.** Reassignment or shift change shall be based on seniority and job qualifications **and shall normally be for a period of no more than thirty (30) calendar days in any calendar year, unless the Employer determines its operational needs require a longer period of time.** By way of amplification, but not limitation, "any stated reason" may include: (1) a death in the family, (2) vacation conflicts, (3) training procedure for the benefit of employees, (4) emergency situation at the Wastewater Treatment Plant which threatens the operation of the Wastewater Treatment Plant or the health, safety or welfare of the community, and/or (5) sickness and/or injury. Additional reassignments and/or shift changes sought by the **Employer** in any calendar year shall be sought in good faith in cooperation with the Union and the Union shall not unreasonably withhold its approval.

- (e) It is further understood that these reassignments or shift changes shall not affect any employee's day off or eligible overtime they are presently offered, nor shall there be implementation of rotating shifts within the Wastewater Treatment Plant in regards to plant operators.
- (f) "Emergency" shall be defined as a situation beyond the control of the **Employer** for which the **Employer** could not pre-plan. The **Employer** will make every effort to notify the Union of any emergency situations.

<b>Issue 5     Article ____     Section 2, Promotions-Job Bidding</b>
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The Employer proposes to modify the language from a list of criteria to a sentence that emphasizes qualifications. In addition, the Employer seeks to increase the probationary period from thirty (30) days to ninety (90) days. The Employer points out that there is no comparable language in the police and fire bargaining units because those units are under the jurisdiction of Civil Service, where the probationary period is six (6) months. The Union opposes adding the words "if filled" to current language. The Union points out that the language being sought by the Employer is almost the same language that exists in the current Agreement presented in a different form. From an historical perspective the Union argues that in 1995 all promotions were strictly by seniority, and it agreed then to modify the language to move to what exists in the current Agreement. The Union further asserts that it does not believe that the current language requires promotions to be solely based on seniority. The Union also argues that the current probationary period may be extended to longer than thirty (30) days and that an employee can returned to his previous job on his own, just as the Employer has the option of returning him. A probationary period of thirty (30) days in reality and depending upon the month, represents only twenty (20) to twenty-two (22) work days. Depending upon the complexity of the position, it would appear that such a short period does not serve the Employer well in evaluating performance or the employee in evaluating his comfort in the new position. The Employer's proposed promotional language generally represents, in format and content, language commonly found in the public sector in Ohio. However, the proposed probationary period by the Employer is outside of normal length for the classifications in the bargaining unit.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** When a vacancy occurs, or a new job is created, the **Employer** shall post a notice of the opening or openings for seven (7) consecutive calendar days. The notice shall contain the job classification title, rate of pay, department shift, area of vacancy, brief job description, and date of posting. Employees who wish to be considered for the posted job must file a written application with the department head by the end of the posting period.

**SECTION 2.** All applications timely filed shall be reviewed by the City, and the job will be awarded within thirty (30) days. The City Manager shall **promote the applicant with the most**

**qualifications. When determining an applicant's qualifications, the City Manager shall consider the applicant's experience, skill, ability, education, and seniority.**

**SECTION 3.** An employee who is awarded a job under bidding procedure will **serve a probationary** period of **sixty (60)** calendar days to prove that he is qualified to hold such a job on a permanent basis and if he cannot prove his qualifications within that period of time, he will be returned to his former job. For occupations which require a license, an employee who fails to obtain said license, shall be returned to the same or a similar position, if available, or to any vacant position within the unit for which he is qualified. If no such position exists the **Employer** may reduce the workforce in accordance with Article 13 of this agreement. Employees awarded the job under these provisions will be given reasonable help and supervision in learning the new position. He will be considered to have qualified on the new job when he satisfactorily performs the required duties with no more supervision than is required by other qualified employees on the same or similar jobs, and when his record as to the quality and quantity of work meets the standards applicable to the job.

**SECTION 4.** An employee who is awarded a job under these provisions shall receive the permanent rate of the new classification.

**SECTION 5.** No employee shall be eligible for promotion who has not satisfactorily completed the required probationary period as provided for in Article 15, Section 1.

<b>Issue 6</b>	<b>Article</b>	<b>Layoffs</b>
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The City proposes to add to the current language the phrase "from the effected Job Classification." It also proposes to change the designation of Department to "Division" based upon current reorganization, however, during the fact finding hearing the Employer indicated it could accept the designation, Division/Department. Finally, the Employer argues that its proposed modifications simply conform to the way layoff procedures are practiced throughout the State. The Union strongly opposes any changes in Section 1 of the current language that would change the order of layoff. The Union asserts that the Employer's proposed language would allow part time summer and probationary employees to continue to work while bargaining unit employees were laid off. It is the position of the Union that there should not be any part time seasonal or casual working while bargaining unit employees are laid off. The Union did not oppose defining City-wide seniority in layoffs. Layoffs within a classification, using system wide seniority is customarily found in labor agreements in the public sector.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** Whenever it is necessary, employees shall be laid off **from the effected job classification** in the following order:

- (a) Part-time employees and seasonal employees;
- (b) Employees who have not completed their probationary period;
- (c) Employees who have completed their probationary period.

**SECTION 2.** When a layoff is necessary, employees shall be laid off in accordance with the above order on the basis of classification seniority within **the effected job classification in their division/department**. An employee who is laid off shall be able to bump another employee with less **City-wide** seniority in a lower rated classification within the same **division/department**.

In the event an employee is unable to “bump” a lesser seniority employee in a lower rated classification within the same **division/department**, the employee shall be able to exercise his **City-wide** seniority to bump the least senior employee in the same or lower classification in any previously held classification so long as the affected employee maintains the minimum qualifications for the position.

An employee who is bumped out of the classification shall have the right to exercise his **City-wide** seniority in the above prescribed procedure.

**To avoid being laid off a bargaining unit employee shall also have the right to displace any seasonal, casual, or part-time employee at the summer rate of pay and for the length said summer employee would have been seasonally employed providing he or she is qualified and are able to perform the work.**

**SECTION 3.** In the event employees have the same classification seniority date, the **City-wide** seniority shall prevail.

The Union shall receive a copy of all such layoff notices.

**SECTION 4.** All regular full-time employees shall be given a minimum of seven (7) calendar days advance written notice of layoff indicating the circumstances which make the layoff necessary.

**SECTION 5.** In the event an employee is laid off, he may, upon request, receive a payment for earned but unused vacation as quickly as possible, but no later than thirty (30) days after the layoff.

**SECTION 6.** A laid off employee shall accumulate seniority during any period of layoff.

<b>Issue 7      Article    Probationary Period</b>
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The City seeks to raise the number of days of initial probation to 180 days from the current 150 days. By way of comparison it argues that the police and fire bargaining units have a one-year probationary period. The Union argues that the nature of its work lends itself to greater consistency in performing tasks as opposed to police and fire fighters whose work is far less predictable; therefore, making it easier to assess the competency of bargaining unit employees can be done in a shorter timeframe. The Union’s argument is persuasive. The positions in the bargaining unit in most cases are able to be evaluated given the fact they are performed with great range and intensity almost every day. In contrast, police and fire employees are tested in

real life situations episodically rather than daily, therefore justifying a greater length of time for evaluation. However, at this point in time, the undersigned fact finder finds there insufficient evidence to justify a change from current language.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.**

- (a) New employees shall be considered to be on probation for a period of one hundred and fifty (150) calendar days.
- (b) If an employee whose employment has terminated is rehired, he shall be considered a new employee and subject to the provisions of Article 2, Section 3.

<b>Issue 8      Article ____ Sick Leave</b>
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The Employer proposes new language that somewhat mirrors the police contract language. The Union is not opposed to said change providing it mirrors the police contract language. Current language shall therefore be replaced by the language contained in the police contract modified for the bargaining unit.

**DETERMINATIONS (RECOMMENDATIONS)**

**\_\_\_\_ It shall be the policy of the Employer to provide sick leave with pay for all bargaining unit employees.**

**\_\_\_\_ Each bargaining unit employee shall earn four and six-tenths (4.6) hours of pay for every eighty (80) hours of work. Sick time shall have no limit of accrual while the employee is employed by the Employer.**

**\_\_\_\_ Sick leave shall be charged in minimum units of two (2) hours. An employee shall be charged for sick leave only for days upon which he would otherwise have been scheduled to work.**

**\_\_\_\_ Sick leave shall be granted to the employee for the following reasons, only upon approval of the department head:**

- A.      The illness, injury, or pregnancy of the employee or an emergency, including pregnancy, in his/her family.**
- B.      The affiliation of an employee of the immediate family of the employee with a contagious disease requiring the care and attendance of the employee.**

- C. **Exposure of the employee to a contagious disease such that the presence of the employee at his/her job would jeopardize the health of the other employees.**
- D. **Employees are required to provide medical documentation of an illness from their physician for all incidents of sick time for 3 consecutive days missed and each day after the fifth occurrence of sick time usage per calendar year (January 1 to December 31). Additionally, at the discretion of the Employer medical documentation of illness may be required for any illness that occurs prior to or after an employee's scheduled day off, vacation, or holiday. An occurrence would be considered an absence from scheduled work for a consecutive period of four hours or longer.**

<b>Issue 9      Article    Sewer Jet</b>
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The City proposes to eliminate this provision in order to determine what employees are to work on the Sewer Jet. The Employer points out that the Sewer Jet should be manned in a manner consistent with the allocation of employee time. The Employer also states that the City Manager desires to combine job titles and to create greater efficiencies regarding the use of the Sewer Jet. The Union states the language has been in the Agreement for many years and that people who work on the Sewer Jet receive higher pay. The current language is very specific and arguably restrictive in terms of assignments that need to be prioritized by management in a very different economic environment that calls for more not less flexibility in assignments.

**DETERMINATIONS (RECOMMENDATIONS)**

**Through December 31, 2010**, the City shall continue to staff the Sewer Jet Operation with one (1) employee from the Public Works Department and one (1) employee from the Wastewater Treatment Department. It is also understood that those employees shall only be granted overtime assignments in their respective designated departments as defined in Article 9 of the Agreement.\*

**Through December 31, 2010**, it is further understood that the only exception to the above is when an employee is required by the City to report and perform duties in another department and thereby is eligible to perform in overtime status because of the continuation of those specific tasks past the normal shift or work schedule.\*

**\*Effective January 1, 2011 the above language shall no longer be in effect and the Employer shall determine proper staffing and operation of the Sewer Jet in conformance with applicable provisions of the Agreement. On a one time basis, the employees who were assigned to the Sewer Jet prior to January 1, 2011 shall have bidding preference to staffing the Sewer Jet, if said employees are willing to transfer to another department/division, in accordance to the operational requirements of the Employer.**

**Issue 10 Article \_\_\_\_\_ Sections 1, 2, and 3 Leaves of Absence**

The Union is opposed to changing Sections 2 and 3. The Union asserts that the extra time off supported by medical evidence has helped some of their members over the years and because the Employer runs leave time and FMLA concurrently, this provision should be retained in the Agreement. The Union also argues it needs to have time off for its Union officers to attend conferences, conventions, or Steward training. The Union points out that the Police and Fire have negotiated ten (10) days for such activities. The Union is proposing three (3) paid days of Union leave in addition to current language. The Employer desires to remove the mandatory nature of leaves under Sections 2 and 3. Both parties agreed to remove Section 1, in light of conceptual agreement on the sick leave article previously addressed.

**DETERMINATIONS (RECOMMENDATIONS)**

**OLD SECTION 1. delete and renumber remaining sections**

**SECTION 1. Sick Leave Without Pay.** Upon request, an employee may be granted a leave of absence, without pay, for a period not to exceed six (6) months because of personal illness or injury, which shall be supported by medical evidence. **This request shall not be unreasonably denied.**

**SECTION 2. Union Leave.** The Employer shall provide the Union with a total three (3) paid days of Union leave each year. Said Union leave is to be apportioned by the Union to its bargaining unit members for the purpose of attending training, conventions, or other official Union business. The Union shall give the Employer at least fourteen (14) days prior notice of the need for such leave and this leave may not be unreasonably denied except in emergencies and in situations of unforeseen operational need.

**SECTION 3. Military Leave.** An employee shall be granted a leave of absence, without pay, for military duty in accordance with Federal and State Law. Furthermore, an employee who is a member of the Ohio National Guard or member of other reserve components of the Armed Forces of the United States shall be entitled to a leave of absence without pay for such time as in the military service on field training or active duty.

**SECTION 4. Educational Leave.** An employee may be granted a leave of absence, with pay, for educational purposes relating to the operations of the **Employer.**

**SECTION 5. Personal Leave.** An employee may be granted a leave of absence, without pay, for good cause shown to the **Employer.**

**SECTION 6.** Seniority shall accumulate during any paid or unpaid leave of absence granted under the provisions of this Agreement.

**SECTION 7.** Upon completion of a leave of absence, an employee shall be returned to the job assignment which he formerly occupied.

**SECTION 8.** An employee may be returned to work prior to the expiration of any leave of absence if such earlier return is agreed to by the **Employer** and the employee.

**Issue 11 Article \_\_\_ Supervisory Work**

The Employer proposes to delete the language that prohibits supervisory work. It argues that it does not appear in any other contract and it is looking for consistency in the City. The Union argues that current contract language already provides ability for supervisors to work, if no bargaining unit members are available. No other bargaining unit contract appears to contain language of this nature and given the size of the workforce it is not unusual for some work to be performed by Supervisors, proving said work does not diminish the working opportunities, including overtime for the bargaining unit and does not result in bargaining unit employees being laid off.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** Supervisors shall not perform bargaining unit work if there are bargaining unit employees reasonably available to perform said work.

**Issue 12 Article \_\_\_ Work Schedules**

The Employer is seeking flexibility to change schedules. Employees work forty (40) hours per week, but there are different shifts in Water Treatment and the Employer argues it must have the flexibility to change hours and cannot be limited to the number of employees it may be required to use on different shifts. The Union argues it can never agree to change the language on work schedules. It argues that police and fire as comparables have a minimum requirement regarding staffing. The Union also points out that Section C was put in Agreement for snow removal and that in Section B the City has not had a utility worker work these hours for five (5) years. The language contained in the Agreement does not provide the City with the flexibility it will likely need to address an immediate and long term future that will likely mean substantially diminished revenue. Scheduling of work is normally a managerial function and that provisions of this nature customarily provide bargaining unit employees with a normal guarantee of hours per week and not the scheduling or staffing of said hours. It is also noted that the USW bargaining unit contains a forty (40) hour guarantee, but does not contain restrictions on shift scheduling or staffing.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1** All employees in the bargaining unit shall normally work, but not guaranteed, forty (40) hours of work per week. The regular work week shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, inclusive, except for

employees in continuous operations. The lunch period shall be twenty (20) minutes. The normal hours of work each day shall be consecutive except for interruptions for lunch period.

**Issue 13 Article \_\_\_ Health and Safety Disputes**

The Employer seeks to eliminate this provision and argues that no other union can go to arbitration over safety. It contends that there already exists a safety council, but the Union no longer participates. The Union President stated that he has not been at a health and safety committee for over 6 years and that the safety council is not functioning. The Union argues that it does not want to lose its right to grieve. Safety and health of employees is a serious concern that is customarily monitored by a joint labor/management committee in many union settings. The evidence does not justify a change in this important language.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** There is hereby established a joint Safety and Health Committee which shall consist of the City Manager, the Union President along with each department head and individual department stewards. The purpose of the Committee is to establish safe and healthful working conditions and procedures in the City and to encourage all employees to follow said procedures.

**Issue 14 Article \_\_\_ Hospitalization**

This has been a contentious issue between the parties and has been the subject of unfair labor practice charges. However, the internal comparables demonstrate the fact all of the other bargaining units have accepted the new health care plan. Additionally, it is clear from the financial data that the City was required to seriously address this costly benefit, one that has plague practically every employee, union, and employer in the country in terms of every increasing costs. The facts indicate that dental coverage is part of the hospitalization plan and does require a separate article in the Agreement.

**DETERMINATIONS (RECOMMENDATIONS)**

**Section 1** Effective January 1, 2010, the Employer shall pay ninety-five (95%) percent of the monthly premium of a Health Savings Account (HSA) and will contribute the same dollar amount towards the premium of the PPO plan, with employees who elect such coverage paying the difference. HSA payments shall be paid in January of each year.

**Section 2** Employees who utilize their spouse's insurance plan and do not enroll in any Employer sponsored insurance plan shall receive a monthly stipend of four hundred (\$400.00) dollars per month.

**Section 3** All employees who have completed one hundred twenty (120) calendar days of employment with the City shall be enrolled in the AFSCME Care Plan. **The Employer shall pay the cost of premium per employee (\$14.75 per month) for the following AFSCME Care Benefits: Life Insurance, Vision 1, Hearing Aid. There shall be coordination of benefits between the Employer's health insurance and the AFSCME plan.**

**Issue 15 Article \_\_\_ Bereavement Leave**

The Employer proposes to reduce the current benefit from to 3 days from 5 days. It argues it is seeking consistency in the benefit across bargaining units and that employees can always use sick leave for bereavement leave. The Union is seeking to maintain current language. This type of provision affects all employees alike regardless of job duties. However, it is recognized that the number of days needed by an employee to grieve, particularly in the case of immediate family and the possible attending obligations will vary greatly. There was no evidence to indicate that this language has been misused and no longer serves the needs of the parties in a reasonable fashion, and it does not support a change in language at this time.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** In the event of a death occurring in the immediate family of an employee in the bargaining unit, that employee shall be granted five (5) work days off without loss of pay. Immediate family as used herein shall be defined as husband, wife, son, daughter, mother, father, father-in-law, mother-in-law, brother, sister, and grandchildren.

In the event of a death of an employee's brother-in-law, sister-in-law, grandmother or grandfather, that employee shall be granted three (3) days off without loss of pay. Such bereavement leave shall not be chargeable to sick leave.

**Issue 16 Article \_\_\_ Paid Holidays**

The City argues that no other bargaining unit employee in the City or any non bargaining unit employee has 15 holidays. The Employer argues for a reduction of three days to a total of twelve (12) days. The City further asserts that the Police do not get Good Friday or Day after Thanksgiving off, like AFSCME. The Union points out that in the 1977-1980 Contract the Union took a wage freeze and in exchange for MLK holiday day and the day before Christmas. Moreover, the Union argues that in 1986 -1987 year, it accepted no pay increase in exchange for the Day after Thanksgiving becoming a holiday. The Union also points out that the Police bargaining unit is off every holiday that is recognized by the City. The Union proposes to add two (2) more floating holidays. It is clear that the other comparable bargaining units in the City have reduced their holiday benefit as a cost cutting measure and because of that, adding additional holidays to the schedule, is not supported by the facts. The IAFF will reduce said holidays to ten (10) starting in 2011. Employees hired after March 1, 2010 will have eight (8) holidays. However, with regard to holidays it is difficult to compare the unconventional schedule of fire fighters with employees who regularly work five (5) eight (8) hour weekly schedules.

The police contract and the USW contract contain thirteen (13) holidays and are better comparables, yet it is not clear from the evidence how many holidays the police bargaining unit and USW bargaining unit gave up holidays to be at thirteen (13) on an annual basis. In the instant matter, the AFSCME bargaining unit had negotiated fifteen (15) holidays and argued they negotiated these days in the past due as a result of trade-offs made with other issues, such as salary. This was not disputed by the City. Internal comparables and more importantly the financial condition of the City support a realignment and a temporary freeze of holiday time to bring about needed savings to the City and more comparability among bargaining units where practical.

#### **DETERMINATIONS (RECOMMENDATIONS)**

**For 2010 the current holiday schedule shall remain in place. Beginning January 1, 2011 the following language shall replace the current language:**

**SECTION 1.** Beginning January 1, 2011, all employees will receive an additional leave of **thirteen (13) eight (8) hour shifts per year to be known as holidays.** Eligibility for paid holidays shall be contingent upon an employee either working a full eight (8) hour shift or having compensatory time off both the work day prior to the holiday and the work day after the holiday.

Holidays will be defined to include:

- |                                  |                              |
|----------------------------------|------------------------------|
| 1. <b>New Year's Day</b>         | 9. <b>Thanksgiving Day</b>   |
| 2. <b>Martin Luther King Day</b> | 10. <b>Christmas Eve</b>     |
| 3. <b>President's Day</b>        | 11. <b>Christmas Day</b>     |
| 4. <b>Memorial Day</b>           | 12. <b>Two personal days</b> |
| 5. <b>Independence Day</b>       |                              |
| 6. <b>Labor Day</b>              |                              |
| 7. <b>Columbus Day</b>           |                              |
| 8. <b>Veteran's Day</b>          |                              |

- **As a cost savings measure.** Effective January 1, 2011 and during the remainder of the Agreement Good Friday and the Day after Thanksgiving shall be regular work days and not holidays.

<b>Issue 17    Article ___    Overtime    Sections 1 and 2</b>
--

The City proposes to delete the provision that provides overtime for working over eight (8) hours in a twenty-four (24) hour period, citing sick leave abuse in the bargaining unit as its reason to exclude all paid leave from the computation of hours worked. The City also proposes to eliminate the \$5.00 a day lunch provision. The Union argues that the current language is from the Union's original current language of 1973. Moreover it argues that if changed employees could work 16 hours straight with no extra compensation or could work 10 days straight with no additional compensation. The Union further asserts that it does not have evidence of sick leave abuse and that the \$5.00 for meals is valuable for unplanned overtime. There is a lack evidence

to support removing the \$5.00 meal fee, especially when considering the extreme conditions that have to exist (e.g. working ten (10) consecutive hours) prior to its application. I understand the Employer's argument regarding the inclusion of sick time in the eligibility of overtime and it is not uncommon in Ohio for paid sick leave to be excluded from the calculation of hours worked, particularly where an employer has experienced excessive sick leave use and suspected abuse. The provision for overtime on an over eight (8) basis and over forty (40) has existed since 1973, which gives it stature as well established benefit. It is also noted that in the police contract overtime is paid for working over eight (8) hours.

#### **DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** All hours worked in excess of eight (8) hours in a twenty-four (24) hour period or in excess of forty (40) hours in a seven (7) day period shall receive overtime pay at the rate of time and one-half (1½). The overtime list shall be kept by the department supervisor or his assistant and in the absence of either of them; the list shall be kept by the senior most union member in the department. **Paid sick leave shall not count in the computation of overtime.**

**SECTION 2.** Any employee called out after he has completed his work shift shall be paid a minimum of three (3) hours at his overtime rate.

**SECTION 3.** The City shall pay each employee Five Dollars (\$5.00) for meal money during the shift in the event any overtime is worked in excess of ten (10) consecutive hours and such overtime is not scheduled at least twenty-four (24) hours in advance. The City reserves the right to provide a warm meal in lieu of this provision; such meal to be of equal or greater value. The parties agree to continue to explore options for the provision of meals for those employees not able to leave their work site during the shift.

<b>Issue 18    Article    Shift Differential</b>
--

The Employer proposes to delete the requirement to pay shift differential for working overtime. The Union proposes current language and cites Article 8, Section 2 of the Police Contract as a comparable, which provides shift differential when called for overtime. The evidence does not support a change in language regarding the inclusion of shift differential for working overtime; however, the language should be more precise in addressing when overtime hours are worked in order to be eligible for overtime.

#### **DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** All second shift employees shall receive \$.30 per hour over the regular rate established for their classification, starting time beginning at 3:00 p.m. and ending at 11:00 p.m.

All third shift employees shall receive \$.40 per hour over the regular rate established for their classification, starting time beginning at 11:00 p.m. and ending at 7:00 a.m.

Any overtime worked by an employee, who is required to work a **second or third** shift due to a vacancy or call-in, will receive the shift differential for that shift.

Employees shall be paid their designated shift rate for all approved paid leave.

<b>Issue 19</b> <b>Article</b> <u>    </u> <b>Severance Pay</b>
---

The parties are in not far apart on resolution of this issue as evidenced by movements made during fact finding. The parties appeared to favor the language utilized in the Police Contract regarding this issue, although in the last section the Union proposed severance at a level provided to Dispatchers in their contract. The evidence supports adoption of the severance language used in the police and USW contracts.

**DETERMINATIONS (RECOMMENDATIONS)**

**31.01** When an employee qualifies for retirement with at least ten (10) years of continuous employment with the Employer, he may elect at the time of retirement to be paid in cash for the value of his accrued but unused sick leave credit not to exceed twelve hundred (1,200) hours of sick time upon retirement. Such payment shall be based on the employee's rate of pay at the time of retirement. Payment for sick leave on this basis shall be considered to eliminate all sick leave credit accrued by the employee at that time. The Employer shall have no further liability to pay for unused sick leave.

**31.02** In the event of the death of an employee, which occurs in the line of duty, a designated beneficiary shall be paid for all accrued but unused sick leave credit, at his current rate of pay, within thirty (30) days of such death.

**33.03** In the event of the death of an employee, not occurring in the line of duty, a designated beneficiary shall be paid for all accrued but unused sick leave credit, at his current rate of pay, up to a maximum eleven hundred (1,100) hours, within thirty (30) days of such death.

<b>Issue 20</b> <b>Article</b> <u>    </u> <b>PERS Pick-Up</b>
--

During the fact finding hearing the parties reached tentative agreement on the Employer's proposal to convert PERS Pick-Up to wages.

**DETERMINATIONS (RECOMMENDATIONS)**

Tentative agreement was reached by the parties.

**Issue 21    Article \_\_\_\_ Temporary Pay Rates    Section 2**

The City proposes to remove Section 2 of this Article. The Union proposes current language. From the evidence it appears that no other language containing this provision exists in the other bargaining units in the City. Conventional temporary pay level language typically pays employees for all or most work performed in the higher rated classification. However, it is usual to find a provision that continues to pay employees a higher rate of pay who no longer perform the higher rated work.. In light of the City's serious financial problems the evidence supports modification of this language.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1. An employee shall be paid under the pay range of the job which he is called upon to perform. In the event an employee is required to fill a position temporarily that bears a lesser pay scale, the employee shall be paid at his regular rate.**

**Issue 22    Article \_\_\_\_ Hours of Work**

The Employer proposes to delete this section of the Agreement arguing it's too cumbersome. The Union proposes to remain with current contract language. It argues that the standard national work week is 8 hours per day/5 days per week. The Union rejects the Employer's assertion that the language as "very rigid", and that it is normal and practical in work places all across the United States of America. The language is redundant to the language contained in Article 19 of the Agreement and the relevant sections recommended herein shall be relocated under Article 19.

**DETERMINATIONS (RECOMMENDATIONS)**

**Delete current language, see Article 19 for recommendation**

**Issue 23    Article \_\_\_\_ New Jobs**

The City proposes to eliminate this provision. It argues that it does not want to go to arbitration for new jobs over a determination of wage rates. The Union contends that such a procedure is commonplace. The current language represents language commonly found in collective bargaining agreements and there was no evidence submitted indicating difficulty with this provision.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1. If substantial changes in the method of operation, tools or equipment of a job occur, or if a new job is established which has not been previously classified, the **Employer** shall meet with the Union for the purpose of negotiating a rate of pay and classification of placing the job in an existing classification. In the event the **Employer** and the Union are unable to reach an agreement on the issue, the **Employer** may recommend to the City Council a temporary rate and**

classification and will promptly notify the Union in writing. Thereafter, the **Employer** and the Union shall submit the issue to arbitration. The arbitrator may recommend a new rate and classification or place the job in an existing classification. Any recommendation of the arbitrator shall be binding upon all parties concerned including City Council.

<b>Issue 24    Article    No Contracting Out</b>
--

The Employer argues that no other labor contracts in the City prohibit contracting out work and that grievances over guard rail work that must include contractors are counterproductive. The Employer flatly states that given the size of the workforce and the work that must be performed it cannot get things done without the use of contractors. The Union contends that the current language does not prohibit outside contracting and that it has concerns that temporary and summer help employees will continue to erode bargaining unit work and the number of people in the bargaining unit. The facts indicate that no other bargaining unit contains any provision regarding contracting out work. From the testimony and evidence subcontracting has occurred and continues to be selectively used. I find the current language to be antiquated in its reference to C.E.T.A employees and it does not recognize the ongoing practice of the use of subcontractors. However, the Union's argument regarding being replaced by contract employees is not lost on this fact finder.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.**

- (a) **It shall be the policy of the Employer to not subcontract work, including work performed by temporary summer employees that would result in the layoff of bargaining unit employees. Additionally, if bargaining unit employees are available (i.e. not already working, not on vacation or not on other types of leave) and are able to perform the work, bargaining unit employees shall be offered overtime opportunities prior to any temporary or summer help being offered overtime. The one exception to this provision is when a temporary or summer employee must work overtime in order to complete a task that had been previously assigned to them.**
  
- (b) **The City agrees that in the event that individuals are assigned by the Department of Public Welfare or the Conneaut Municipal Court to work off benefits and/or fines, and/or prison labor, the Employer shall provide work to said individuals on work other than that which is customarily performed by regular employees, so long as regular employees are on a layoff status. In the event employees are not on a layoff status, the within provision shall not have application.**

**Issue 25 Article \_\_\_ Longevity**

Longevity in many Ohio public sector entities addresses pay that recognizes a minimum length of service. It is common to find that the minimum length for said service to be five (5) years and not two (2) years as contained in the current Agreement. Two (2) years of service can hardly be called longevity in many work places. As a cost savings measure, the facts support an alignment of this benefit with other bargaining units in the City and the state of Ohio.

**DETERMINATIONS (RECOMMENDATIONS)**

Effective January 1, 2010, an employee who has at least **five (5)** years of service by November 1 of each calendar year shall receive Eighty-Five Dollars (\$85.00) for each year of continuous service up to a maximum of Two Thousand Five Hundred Fifty Dollars (\$2,550.00) per longevity payment.

Longevity pay shall be in addition to any other compensation to which an employee may be entitled. The Longevity payment shall be made in November of each year.

**Issue 26 Article \_\_\_ Wages**

The overall economic conditions of the City and other factors that address realistic expectations of future revenue and current expenses support a recommendation that is consistent with other internal comparable bargaining units. While it is difficult to accept no increase in wages, it is clear from all the evidence that the City of Conneaut is facing and will continue to face very difficult financial conditions.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.**

- (a) The general wage increases for the duration of this Agreement shall be as follows:

Effective January 1, 2010	0%
Effective January 1, 2011	0%
Effective January 1, 2012	4%

- (b) Employees who possess a Class A Commercial Drivers License (CDL) shall be paid One Hundred Fifty Dollars (\$150.00) per calendar year payable with the employee's last annual paycheck. An employee who first obtains a Class A CDL during the calendar year shall be paid a proportionate share based upon the number of complete months the individual possesses such CDL.

- (c) While engaged in tree trimming/cutting duties as part of a bucket truck crew, each employee so assigned shall be paid at the Class A - Heavy Equipment Operator hourly rate of pay for each hour the employee is engaged in such work.

**SECTION 2.** The **Employer** shall pay the cost of the original and all renewals of the required CDL (Commercial Drivers License). This includes all require endorsements.

**SECTION 3.** The **Employer** shall pay the cost of the original and all renewals of the EPA licenses at the Wastewater and Water Department and also any contact hours required by the EPA.

<b>Issue 27     Article     Uniforms</b>
--

The evidence and testimony do not support a change in language.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.**

- (a) The City agrees to pay the sum of Six Hundred Dollars (\$600.00) per year to Public Works Department employees, Maintenance Workers, and Utility Workers at the Waste Water Treatment Department, Meter Readers, Sewer Jet Operators and Water Construction Crew as and for a clothing allowance. The City, at its sole expense, shall provide emblems to be affixed to the uniforms described herein. The City shall designate the uniforms to be worn by said Meter Readers and Sewer Jet Operators. This amount shall be payable no later than March 1<sup>st</sup> of each year. Employees receiving this allowance are expected to dress appropriately for the work assignment.
- (b) The City shall pay the sum of Three Hundred Fifty Dollars (\$350.00) per year to all other employees of the AFSCME bargaining unit. Employees receiving this allowance are expected to dress appropriate for the work assignment.
- (c) The City shall provide gloves and two (2) lab gowns for employees of the Water Filtration Plant and Wastewater Treatment Plant laboratories.
- (d) The City shall provide four (4) uniforms per week when needed for Mechanics.

<b>Issue 28     Article     Street Department Job Classifications</b>
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The Employer seeks to make modifications in this provision per its pre-hearing statement. It argues that employees should not receive a higher pay rate until after eight (8) hours of operation of a piece of equipment. The Union argues that if you do a job in a higher classification you

should get paid for it from the first hour. The facts and convention in matters of working in a higher classification favor the Union's position, however under management rights the Employer, has the right to modify or create new job classifications when necessary.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** Street Department/**Division** employees in the following job classifications shall be able to present a demonstrable proficiency in the below listed equipment and licensing as follows:

A Rate Heavy Equipment Operator: (CDL Required) - Must be proficient in the operation of four (4) of the six (6) following pieces of equipment: Paver, Sweeper, Trackhoe, Grader, Backhoe, or Bucket Truck.

B Rate Heavy Equipment Operator: (CDL Required) - Must be proficient in the operation of four (4) of the six (6) following pieces of equipment: Tandems, Tractors, Chipper, Bobcat, Rollers, or #19 Side-arm Mower.

C Rate Heavy Equipment Operator: (CDL Required) - Must be proficient in the operation of all of the following pieces of equipment: Singles, Pick-ups, Loader, Tar Truck, and Miscellaneous Hand Equipment.

D Rate Trainee/Laborer - Move to C Rate after passing probation, obtaining a CDL, and demonstrating proficiency for C Rate. **New Job Classifications and Descriptions shall be supplied by the Employer.**

**SECTION 2.** An employee who is assigned to operate a piece of equipment in a higher classification shall be paid the rate of said classification for each hour of such operation.

<b>Issue 29     Article ___ Call Out List</b>
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The Employer proposes to change the dates in Section 1 to include all of November through March. Additionally, the Employer proposes to make the call list optional. The Union is concerned that the on and off basis and the need to maintain a pager will create havoc with the lives of employees under the Employer's proposed changes. The Employer also wants to eliminate the \$50.00 payment in Section 2 (c), which the Union opposes. The Union is seeking increase the amount to \$75.00. In light of the City's financial condition, the facts do not support additional monies to be spent; however, they do support maintaining current language based upon the experience of the parties with northeast Ohio winters.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** During winter months, defined as that period between November 15 and March 15 and any weekend, which is bisected by the November 15 start and March 15 end dates, the

City may maintain a call-out list for snow removal. Such list shall only be used on weekends defined as the period occurring between 3:00 PM Friday and 7:00 AM Monday. Employees on such list shall carry a pager and shall report to the Public Works Garage within one (1) hour of being paged.

**SECTION 2.** The call-out list for snow removal shall consist of eight (8) Public Works Department employees who are qualified to perform snow removal duties. The list shall initially be filled anew each week on a volunteer basis. Any interested employee may sign up to be considered for selection to the list no later than 3:00 PM Wednesday of that week.

- (a) In the event more than eight (8) employees sign up for the list, selection will be made on an equalization basis. Each time an employee serves on the list will count as one appearance for purpose of equalization. Those employees with the least number of appearances shall be given preference for selection to the list. In the event two (2) or more employees possess the same number of appearances, the preference as between or among them shall be determined on the basis of seniority, with preference being given first to the most senior and continuing sequentially to the least senior.
- (b) In the event less than eight (8) employees sign up for the list, then those employees who did not volunteer will be required to fill the remaining vacant positions in inverse seniority order, with the least senior employee being placed on the list first and continuing sequentially up through the seniority roster. However, such assignments to the list shall be made on an equalized basis so as to allow for complete rotation through the seniority list. To the extent practicable, allowance will be made for employees taking vacations, personal days, sick leave, or any other leave provided by this Contract; or for the substitution of one employee for another if arranged between these employees and if consented to by the Public Works Director.
- (c) For each weekend an employee is on the call-out list, the employee shall receive an additional Fifty Dollars (\$50.00), regardless of whether he is actually called out or not.
- (d) In the event of a conflict between the terms of this Article 42 and those of Article 9, entitled "Equalization of Overtime," the terms of this Article 42 shall prevail. Nothing in Article 42 shall be interpreted to prohibit the Public Works Director from calling out additional employees during a snow event in conformance with the other provisions of the Contract.

<b>Issue 30    Article ____    Duration</b>
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The parties are in agreement as to the length of the Agreement.

**DETERMINATIONS (RECOMMENDATIONS)**

**SECTION 1.** This Agreement shall become effective as of January 1, 2010; and shall remain in full force and effect through the 31<sup>st</sup> day of December, 2012. Either party shall give the other ninety (90) days notice prior to the termination date that they wish to modify or re-negotiate the conditions of this Agreement. This Agreement shall remain in full force during the contract negotiations unless the Union is given fourteen (14) days written notice of its intent to terminate the Agreement.

- (a) Any notice relative to Section (1) of this Article shall be given by certified mail, be completed by and at the time of mailing; and if by the City, it shall be addressed to the President of the Union, and if by the Union, it shall be addressed to the City Manager of the City of Conneaut, Ohio. Either party may, by written notice, make changes of address to the other party.

**Issues 32, 33 New Articles: Obligations to Negotiate, Total Agreement**

The language proposed by the Employer regarding Total Agreement represents boiler plate language often found in collective bargaining contracts in Ohio and in some detail it already exists at the end of current Article 42, Duration. Obligation to negotiate language is not found in the police or fire contracts and there is a lack of evidence to support its inclusion in the Agreement. However, the Total Agreement language is included in the Fire Fighters and USW contracts and it is reasonable to recommend it here.

**DETERMINATIONS (RECOMMENDATIONS)**

**TOTAL AGREEMENT**

**SECTION 1** This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, or applicable arbitration decisions, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer and not be subject to the Grievance Procedure. The wages, hours, terms and conditions of employment in this Agreement supersede any related Ohio laws, including specifications under or related to those laws.

**In light of this recommended language the last sentence under Article 42 shall be deleted.**

**Issues 34, Grammatical Error Provisions**

The language of the current Agreement is unclear in meaning and purpose, justifying the Employer's proposal to have it removed.

**DETERMINATIONS (RECOMMENDATIONS)**

**Delete this provision**

**Issues 35, Other Proposed Language Regarding Training, Negotiations, Appendix B**

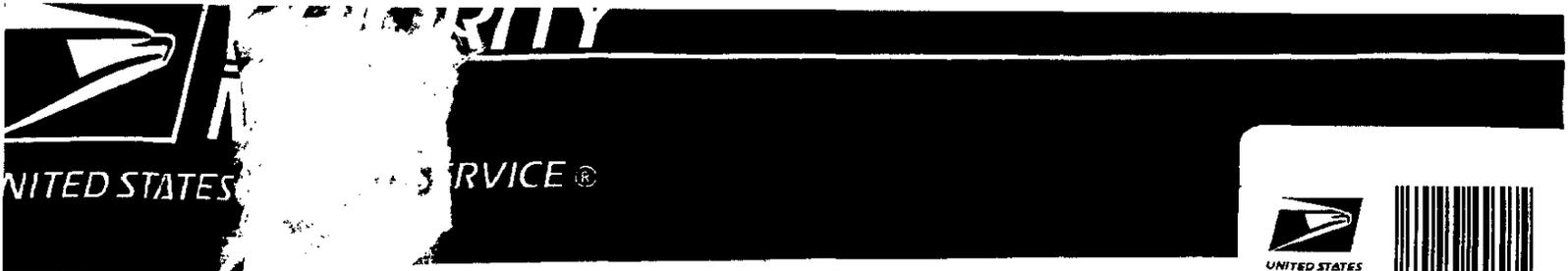
At this time the facts do not support additional language in the areas of training, negotiations, or Appendix B.

## TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The fact-finder respectfully submits the above recommendations to the parties this 17<sup>th</sup> day of November 2010 in Portage County, Ohio.

  
\_\_\_\_\_  
Robert G. Stein, Fact finder



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Robert G. Stein  
265 W. Main St., Ste. 102  
Kent OH 44240-2461

*TO!*  
SERB  
C/o Mary Laurent  
65 East State Street, 12<sup>th</sup> floor  
Columbus OH 43215-4213