

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**PERRY TOWNSHIP BOARD OF TRUSTEES**

**AND**

**PERRY ORGANIZED WORKERS UNION**

**SERB CASE # 10-MED-09-1289**

**Robert G. Stein, Fact Finder**

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## **INTRODUCTION**

The parties in this matter are Perry Township Board of Trustees (hereinafter “Township”, “Employer”) and the Perry Organized Workers Union (hereinafter referred to as “POW” or “Union”). The bargaining unit represented by POW consists of approximately ten (10) full-time Road and Bridge Department employees. These employees serve the vital functions of maintenance and repair of township roads, and perform snow and ice control, in addition to other related functions typically included in the nature of such work.

Perry Township is located in near Canton, Ohio and is in Stark County, Ohio. It is a very picturesque and pleasant residential area with well-maintained homes and with convenient access to numerous goods and services. The parties have had a bargaining relationship since 1994. Bargaining between the parties began November 18, 2010 and the parties met a total of four times, including one mediation session. The parties were successful in reaching tentative agreement on all but nine (9) issues that were carried forward to fact finding. A fact finding hearing was held on February 4, 2011 and February 17, 2011 at the Township offices. With the concurrence of both parties, the fact finder conducted a mediation session over all of the unresolved issues. At the close of mediation it appeared that all of the unresolved issues were tentatively agreed upon, pending approval of final wording by the advocates. However, what appeared to be consensus reached by the parties during the fact finder’s mediation efforts did not result in a complete settlement. The parties could not agree on the wording and content of the issues and the parties opted to submit the entire matter to formal fact finding. A second day of hearing (February 11, 2011) was held and once again the parties submitted pre-hearing

statements. Prior to this second day of meeting, pre-hearing statements were received in accordance with SERB rules and regulations.

**National/State/Local Economic Outlook:** Cuts in spending and in existing programs appear to be of central interest at the national level and recovery appears to vary widely depending upon geographic location. 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 and it is translating into cuts in services and personnel. Additionally, the Ohio legislature is close to passing a substantial overhaul of Ohio's 27 year old public sector collective bargaining law that will have far reaching affect for all governmental entities who participate in collective bargaining. 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 far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers and employees alike. Many states in the United States are attempting to cope with declining revenues and increasing costs. Townships in Ohio that were already weakened by the loss of industry, commerce, and changes in revenue options in preceding years were particularly vulnerable as the events of the recession took hold. At this point in time it is difficult to know how and when Ohio's economic recovery will take place. Every month on a national and state level there are mixed signals being provided by various sectors of the economy and by the public. The national unemployment rate recently fell to 8.9%, and while Ohio's unemployment rate as reported in January exceeded that figure, Stark County's unemployment rate has been among the highest among Ohio's eighty eight (88) counties and in January was 11.1%. The recent net gain in jobs both nationally and in Ohio,

while encouraging, is still undermined in Ohio by severe structural unemployment. Conventional wisdom indicates that the economy will improve slowly, but will experience uneven progress and even occasional setbacks, as has been the case in the past few months. One of the more certain and troubling aspects of the current economic times are losses of high paying skilled jobs in Ohio. Jobs that sustained a viable middle class lifestyle are now being performed outside of the United States. They number in the tens of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Most troubling is the prospect that the loss of these high paying manufacturing jobs is permanent. This altered employment pattern will require a recovery in Ohio to take a very different course than it has in the past, when industrial facilities creating these jobs were still in the state. All the news is not negative; there are indicators of economic revival and some employers are doing well in this recession and its aftermath. The GM Lordstown Plant is one example of recovery and there are others around the state. 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 for our new Governor is a projected deficit that has been estimated to be eight (8) billion dollars. The Governor's budget is due to be issued by March 15, 2011 and it promises to include substantial cuts in revenue to local governmental jurisdictions in Ohio. All public employers and employees in Ohio, regardless of jurisdiction, have reason to be concerned about the next biennium budget. 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 local governmental employer. During the last four years and for the first time, collections of the Township’s inside millage has declined by tens of thousands of dollars, and the Township has reduced the bargaining unit through attrition. 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 while anticipating cuts in state aid. 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. And as mentioned above, collective bargaining in Ohio is currently on the precipice of dramatic change that if implemented, promises to be Sea change in the way collective bargaining is conducted.

The Employer provided financial data to indicate it is concerned by state budget cuts as well as other measures being considered by the Ohio Legislature, such as elimination of the estate tax, both of which will have immediate impact upon the Township’s general fund. However, it is also noted that the Road Department operates with funds from the Road Levy that is up for renewal in May of 2011 and has never failed to pass. The bargaining unit has been reduced in recent years and by all accounts at the hearing does a very good job at maintaining the roads and bridges in the Township in spite of its diminished size. It is also recognized that employees are experiencing their own financial difficulties in terms of surviving an uncertain economy marked by high unemployment, record housing foreclosures, declining property values, and rapidly rising gasoline prices.

**Issues: (Summary of positions are identified below, see position statements of the parties for details and rationale)**

**Issue 1, Article 3, Recognition.** The Employer proposes to eliminate the position of foreman from the bargaining unit. In addition, the Employer proposes the proposition that it would like to use casual employees on an as needed basis. It argues that the seasonal nature of work, combined with a decline in Township revenue creates a need to supplement the workforce with part time or seasonal employees. The Union proposes current language and opposes removal of the one position of foreman from the bargaining unit and argues such changes are a matter for SERB. The Union also opposes creating part time bargaining unit positions, but argues that the Employer has a right to use seasonal and or casual employees, provided they are not hired to replace or reduce the rights of bargaining unit employees to work available overtime. Only the State Employment Relations Board can amend the composition of bargaining units, so that issue is beyond the purview of a fact finder. However, for an Employer facing a revenue decline and the possibility of having to maintain a large geographic area with a smaller staff, flexibility is an important factor. Of course, such flexibility should be compatible and not in conflict with the existing experienced workforce. **Issue 2, Article 8, Probationary Period.** The Employer proposes language that represents a clarification of its rights regarding probationary employees. The Union does not oppose this clarification. **Issue 3, Article 16, Hours of Work.** The Employer is proposing to eliminate the provision in this article that provides for overtime for employees who work over eight (8) hours in a day. The Employer also seeks to modify Section 5 of this article dealing with compensatory time and to eliminate the two additional holidays included in this section. It wishes to place more manageable limits on compensatory time and argues that twelve (12) holidays exceeds what other townships provide. The Union is opposed to the change in the eligibility for overtime, but indicated flexibility in proposed changes to Section 5. It is also opposed to reducing the holidays from twelve (12) to ten (10) and argues that this

benefit has existed for six or seven years and was exchanged for increased health care premium payments. The Union also argues there is little or no history of employees being called out on the day after Thanksgiving or on Christmas Eve. The facts indicate that the time and one-half after eight (8) hours of work provision has existed in the Agreement since its inception some fifteen years ago. While I understand the Employer's need to reduce costs, there was no data presented that quantified the savings that could be realized from such a change that would justify eliminating a fifteen (15) year plus benefit. Moreover, the benefit, not only has existed over the life of several contract periods, it represents a standard provision in labor agreements in Ohio and throughout the country. With a small workforce, it is important for the Employer to rely upon employees to respond to emergencies and to readily stay past quitting time to complete projects. However, the Employer made a persuasive argument to change Section 5 of this provision, again to create more management flexibility, particularly with a small workforce. The proposal to eliminate the holidays in Section 7 was undermined by the fact that the Township offices are closed at 11:00 a.m. on Christmas Eve. Moreover, the Road Department Superintendent is also off at 11:00 a.m. on Christmas Eve and does not work on the day after Thanksgiving. **Issue 4, Article 17, Holidays.** The Employer proposes to add language that would limit holiday pay if an employee is sick the day before and/or the day after the holiday in order to discourage holiday extensions. The Union proposes current language. Although this type of provision is commonly included in labor agreements, it is usually a result of documented abuse. With a bargaining unit of this size abuse of this nature would be apparent; however, no substantial data was provided to demonstrate that the employees in the bargaining unit are abusing sick leave and creating extended holidays. If evidence of abuse did exist such a proposal would have considerable support and would justify such an addition. **Issue 5, Article 18 Vacations.** The Employer is

seeking to place a four (4) week limit on vacation for new employees and current employees who are not currently provided with a schedule of five (5) or six (6) weeks under the Agreement. Employees who are currently at the five (5) or six (6) week threshold would be grandfathered. The Employer makes this proposal as part of its concern for budgetary control and argues that a four (4) week cap is consistent with other township. In addition, the Employer seeks a word change in Section 6 dealing with notice and the granting of vacation. The Union proposes current language. Given the size of the workforce eventually reducing the cap to four (4) weeks is reasonable, because employees who are hired after December 31, 2010 accept that condition when they agree to take the job. Employees who were hired prior to December 31, 2010 agreed to take the job under the terms that were in place at the time and reasonably that employment condition should be honored unless changed in collective bargaining or by law. The new collective bargaining legislation (Senate Bill 5) limits the amount of accumulated vacation to 7.7 hours every pay period, after 19 years of service. Depending on whether this provision becomes law, the parties will likely have to revisit the vacation article in the next round of bargaining. In addition, it appears from the facts that any employee who is not at the five (5) or six (6) week vacation threshold will not be eligible for five (5) weeks of vacation during the life of the Agreement as provided for below. The Employer's proposed changes in Section 6 are reasonable and are commonly found in other public sector agreements in Ohio. **Issue 6, Article 19, Sick Leave.** The Employer proposes that employees must provide a medical statement after three (3) days of illness and a physician's statement certifying the illness. It argues this requirement is to control sick leave miss-use. The Union asserts there is no sick leave miss-use and points to the testimony of the Superintendent, John Malsalko, who stated in the hearing that sick leave abuse was not an issue in the Road Department. **Issue 7, Article 23, Compensation.** The Employer is

proposing no increase for 2011 and a two percent (2%) increase for contract year 2012. The Union is seeking three percent (3%) increases in each year of the Agreement. Based upon the conditions stated in the beginning of this report regarding the economy and state and local finances, the Employer's proposal is far more rationale given the financial uncertainty faced by the Township. Moreover, the Employer's proposal is consistent with what non bargaining unit employees received. **Issue 8, Article 24, Insurance.** The internal comparable data of the two police bargaining units and fire fighter's unit strongly supports the Employer's position regarding this issue. **Issue 9, Article 33, Duration.** The facts support the Employer's proposal for a two (2) year duration of the collective bargaining agreement. Although the history of bargaining indicates the parties have historically agreed to three (3) year contracts, the legislative events of the past month, the anticipated referendum reaction promised by organized labor, and the anticipated cuts in state revenue have created conditions for employers and unions that support a contract length that provides for stability while these events unfold, yet allows the parties to return to the bargaining table one year earlier.

**Based upon the above the following determinations (in bold and italicized) are made:**

<b>Issue 1      Article 3 RECOGNITION:</b>
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**DETERMINATION:**

**Section 1.** *Maintain current language for Section 1; add a new section 1.1 as follows:*

**Section 1.1** *The Employer may use casual employees. At no time will any such employees be used to substitute for, perform the work in place of, and/or work the regular and/or overtime hours of any available bargaining unit employees.*

**Section 2.** *Maintain Current Language*

**Issue 2      Article 8 PROBATIONARY PERIOD**

**DETERMINATION:**

**Modify language as follows:**

**Section 1.** Each new employee shall be hired on a one hundred eighty (180) day probationary basis, during which time every effort will be made by the Employer to orient the new employee to his or her new job. At any time within this one hundred eighty (180) day probationary period, Employer may terminate the new employee with or without just cause *and the probationary employee's termination shall not be subject to the discipline, grievance, or arbitration procedures.*

Section 2. *Maintain Current Language*

Section 3. *Maintain Current Language*

**Issue 3      Article 16 HOURS OF WORK**

**DETERMINATION:**

**Sections 1 through 5:** *Maintain Current Language*

**Section 6.** *Overtime hours may be accumulated up to a maximum of 240 hours per year and used as compensatory time off within the same year in which those hours are earned at the discretion of the employee.* Compensatory time will not be carried over into the next calendar year, but will be paid to the employee affected at the end of each calendar year at the rate of one and one-half (1-1/2) times the employee's regular hourly rate. In no event shall a lump sum payout for C.T.O. exceed 40 hours calculated at one and one-half (1-1/2) times the employee's regular hourly rate or two and one-half (2-1/2) times the hourly rate earned on a holiday. An employee shall provide 24-hour notice prior to using compensatory time unless prevented from doing so by an emergency beyond the employee's control.

**Section 7:** *Maintain Current Language*

**Issue 4      Article 17 HOLIDAYS**

**DETERMINATION:**

*Maintain Current Language*

**Issue 5      Article 18 VACATIONS**

**DETERMINATION:**

**Modify the language as follows:**

**Section 1.** *Each full-time employee shall earn and be entitled to paid vacation in accordance with the following schedule:*

- After one year – one week;*
- After two years – two weeks;*
- After five years – three weeks;*
- After ten years – four weeks*

**Section 1.1** Only employees hired prior to December 31, 2007 are entitled to the vacation benefit of six weeks after twenty years. Employees hired on January 1, 2008 or after shall receive a maximum benefit of five weeks after fifteen years. *Any employee who was employed as of December 31, 2010, shall be eligible for vacation as provided in this section 1 and 1.1. All employees hired after December 31, 2010 will be eligible for vacation as provided in Section 1.*

**Section 2.** All accumulated vacation time will be paid to the estate of any employee upon death. All accumulated vacation time will be paid to employee upon employee's termination date. An employee may carry over vacation time from year to year for a period not to exceed four (4) calendar weeks. Vacation periods shall be computed on the employee's anniversary date of employment.

**Section 3.** An employee who has earned vacation time by reason of being employed in this department shall be able to transfer his vacation time to another department, should he elect such a transfer.

**Section 4.** Any employee who is terminated or retires and has unused vacation time shall receive such vacation time. The vacation check shall be paid no later than the following payday from when their employment is terminated.

**Section 5.** An employee who has been employed for a length of time so that the employee is eligible for four (4) weeks vacation or more in any one year, shall be allowed to accumulate up to one (1) week of vacation time each year to be applied in a manner to permit the retirement of the employee earlier than the retirement date to which the employee would otherwise be entitled. The length of such early retirement shall be equal to the number of weeks saved pursuant to this paragraph.

**Section 6.** Any earned vacation time may be taken by an employee with one (1) *work* day's request and may be taken one (1) day at a time subject to the approval of the supervisor, *such approval will not be unreasonably withheld.*

**Issue 6      Article 29 SICK LEAVE**

**DETERMINATION:**

*Maintain Current Language*

**Issue 7      Article 23 COMPENSATION**

**DETERMINATION:**

**Section 1.** *Effective January 1, 2011, all wages shall remain the same as they were in 2010.*

**Section 2.** *Effective January 1, 2012, all wages shall be increased by 2% per year for all job classifications.*

	<u>1/1/11</u>	<u>1/1/12</u>
<i>Road Maintenance Specialist</i>	<i>\$20.06</i>	<i>\$20.46</i>
<i>Mechanic</i>	<i>\$21.77</i>	<i>\$22.21</i>
<i>Foreman</i>	<i>\$21.09</i>	<i>\$21.51</i>
<i>Assistant Mechanic</i>	<i>\$20.06</i>	<i>\$20.46</i>
<i>New Hire Rate</i>		
<i>Start</i>	<i>\$16.05</i>	<i>\$16.37</i>
<i>6 months to 18 months</i>	<i>\$18.05</i>	<i>\$18.41</i>

Employees hired on January 1, 2008 or after shall receive a new hire rate that is 80% of the rate for the road maintenance specialist for the first six months of employment.

Said rate shall be increased to 90% of the road maintenance specialist rate for the time period worked between six months and eighteen months for an employee hired on or after January 1, 2008.

The employee shall receive 100% of the road maintenance specialist rate after successfully completing eighteen months of continuous employment.

**Section 4.** The Employer shall deduct from each paycheck all dues and initiation fees to be paid by all employees to P.O.W., all state, federal, and municipal taxes incurred by the employee, and

credit union savings and loan payments as consented to by the employee. Said credit union to be designated solely by P.O.W.

Section 5. All employees shall be paid every other Wednesday for the pay period ending on the prior Wednesday. A pay period shall be two (2) weeks.

Section 6. Any employee, at the sole discretion of the supervisor, may be assigned to perform the duties of any other employee classification outside the employee's present job classification. During the period that an employee is assigned to perform the duties of a different employee job classification, said employee shall continue to be paid at the rate of his present job classification, unless it is a higher rate. Then the employee shall be paid the current rate of his assignment as long as it does not conflict with Article 25, Section 1.

<b>Issue 8      Article 24 INSURANCE</b>
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**DETERMINATION:**

Section 1. *The Employer will provide hospitalization, major medical, dental, prescription, optical and other medical services coverage for each bargaining unit member and his/her spouse and dependent children. The major medical, hospitalization and insurance benefit package shall be the Aultcare Group Purchasing Plan I or its equivalent. Effective the first pay following ratification of this collective bargaining agreement, the Employer will pay ninety-two per cent (92%) of the monthly premium cost and the employee will pay the remaining eight percent (8%) of the monthly premium.* Any changes in the insurance plan or in third-party administrators shall be first approved by the Union. Such approval shall not be unreasonably withheld.

Section 2. Such hospitalization shall also be provided for use by retired employees and for the surviving spouse of deceased employees, pursuant to C.O.B.R.A.

Section 3. The Employer will provide each employee dental, prescription, and optical insurance coverage equal to or better than the present coverage.

Section 4. Employer shall provide all full time employees with a sickness and accident insurance plan. Said plan shall contain the following benefit provisions:

- a) Life Insurance - \$30,000 per employee
- b) Accidental Death and Dismemberment - \$30,000 per employee
- c) Accident and Sickness Income – Weekly income benefits for a twenty-six (26) week period at \$100 per week to begin on the first day after the employee exhausts all sick leave.

Section 5. Employer shall be entitled to make changes in the present health benefits or any other insurance plans during the term of this contract, provided the changes have been negotiated with P.O.W. and approved by the majority of P.O.W. membership.

Section 6. If insured's active service terminates because of temporary layoff or leave of absence, the insurance will stay in force for three (3) months.

Section 7. If the insured's active service terminates because of injury or sickness, the insurance will stay in force while he or she is totally disabled, if the policyholder continues to consider the insured as an employee.

Section 8. Death of Insured Person. If the insured person's personal insurance terminates, the dependent's dental and vision insurance shall be continued as specified in the insurance policy. COBRA shall be offered to the dependent as stipulated in the insurance policy and/or as otherwise required by law.

<b>Issue 9      Article 33 DURATION</b>
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**DETERMINATION:**

Section 1. This agreement represents the complete agreement between the parties on all matters subject to bargaining and, except as otherwise noted herein, shall become effective upon ratification by the Parties and shall remain in full force and effect until *December 31, 2012*.

## **TENTATIVE AGREEMENT**

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

The fact finder respectfully submits the above recommendations to the parties this \_\_\_\_\_ day of March 2011 in Portage County, Ohio.

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Robert G. Stein, Fact finder