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**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

CITY OF CLEVELAND

AND

CITY AND COUNTY WASTE PAPER DRIVERS
TEAMSTERS LOCAL 244

Case Numbers:

10-MED-12-1814 and 10-MED-12-1821

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

Jarrell B. Williams
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Teamsters Local 244
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and

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and

James R. Sprague, Interim General Counsel
State Employment Relations Board

65 East State Street, 12th Floor
Columbus, Ohio 43215

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on May 19, 2011 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

Hearing was held over two dates, July 15, 2011 and August 10, 2011 both at Burke Lakefront Airport. Prior to the fact finding hearing, the parties engaged in bargaining and entered into a number of tentative agreements including wages and health care but then declared impasse on a number of issues. The parties submitted pre-hearing statements in a timely manner. The Fact Finder inquired if the parties were willing to engage in mediation of those issues submitted for hearing, but they decided to move directly to the evidentiary hearing. A court reporter produced a transcript of the proceedings.

The Union represents approximately 300 full time and seasonal employees in two bargaining units across a number of city departments including the Water Division, Port Control, Waste Collection, Motor Vehicle Maintenance, Streets Division, Police Division, Dog Pound Division, Parking Division and Park Maintenance. Classifications in the bargaining units include Concrete Mixer Driver, Tanker Truck Driver, Truck Driver, Tow Truck Operator, Tractor Driver, Airport Maintenance Man, Tractor Driver, Animal Control Officer, Hostler, Street Equipment Maintenance Specialist, Street Equipment Maintenance Lead Man, Street Carry All Driver, Waste Collection Driver, Ground Maintenance Driver I, Ground Maintenance Driver II, Traffic Controller, Parking Enforcement Officer, Snow Removal Vehicle Operator.

Outstanding issues include the following:
Article III, Management's Rights (privatization issue)
Article VII, Union Security and Check-off
Article XVII and XIV, Job Evaluation and Classification
Article XVIII and XV, Overtime
Article XX and XXII, Holidays
Article XXV and XXVII, Grievance Procedure
Addendum IV, Animal Control Officer
Addendum IX, Waste Collection
Addendum X, Airport
Addendum XI, Department of Public Utilities
New, Snow Removal Vehicle Operators (Seasonal)

Those participating for the Union at hearing include the following:

Jarrell B. Williams
Lindsay Maddox
Leon Robinson
Emanuel Sheppard
Joe Dusek
Brian Pierce
James Colbert
Ramon Blevins

Those participating for the City include the following:

George S. Crisci
Frank Badalamenti
Phil Haddad
Jeffrey Gordon
Cedric K. Johns
Rich Silva (by telephone)
Laurie Dubecky
Robert Henderson
Rob Mavec
Jeanette Saunders
Fred Szabo

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then making a recommendation, the Fact Finder will be guided by the principles that are outlined in ORC 4117.14 (G) (7) (a-f).

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.

4. The lawful authority of the public employer.
5. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party.

The Fact Finder indicated that, by agreement of the parties, the Report and Recommendation would be transmitted to the parties on September 7, 2011 by way of electronic mail.

The City presented on overall review of its financial status at the onset of the hearing. Frank Badalamenti, internal auditor for the City of Cleveland, described the structure of the various funds including the general fund and various enterprise funds. Enterprise funds may not be used for general fund expenditures, but general fund monies may be utilized to supplement operations supported by enterprise funds. In 1999 there were nearly 10,000 City of Cleveland employees. By 2003, the City was facing difficult financial times, and the Mayor at the time was forced to layoff approximately 780 employees. Then in 2007 City finances again faced a crisis. Various city services were consolidated, and fees were implemented in 2009 for waste removal. Cost saving measures were implemented in the Water Department (City Exb. F-3), and capital improvements were limited (City Exb. F-4). Mayor Jackson, the current mayor, began to limit the filling of vacancies. Limitations were placed on the plus pay rates of non bargaining unit employees which saved \$700,00.00 per year.

By 2009, the downturn in the housing market and stock market and the loss in employment in the area had a very negative impact on City finances. The City was faced with a \$20 million deficit. Non bargaining unit employees were forced to take ten day furloughs, and City unions were asked to take concessions. Most of the unions granted the City concessions, and layoffs occurred in those bargaining units whose unions did not agree to reductions.

The City lost a number of important corporations including National City Bank as job loss continued, and citizens moved out of the city. Income tax collection decreased by 8.6% in 2009 and was further reduced by 2% in 2010. The City faced further deficits in 2010. City Council increased some fees including false alarm fees, dog tags and other residential assessments. The

thought of increasing the income tax was out of the question due to the economy and shrinking tax base.

The City's employee health care plan was made more efficient and other cost saving initiatives were implemented. By the end of 2010, the City had a positive balance of only \$15,000.00 based on an annual budget of one-half billion dollars. Auditor Badalamenti's comment that this was problematic is an understatement.

The Mayor presented the 2011 budget to City Council and the public (City Exb. G), and it appeared that it would be in balance for the year. Then in February and March, 2011, the Governor announced that the local government fund would be reduced significantly along with a number of other revenue sources from the state. The result of state funding cuts resulted in a potential loss of \$35 million dollars for the City (City Exb. E). The loss of local government funds is more than a \$40 million reduction in revenue through 2013. The state also decreased significant funding streams from the Tangible Personal Property Tax and Commercial Activity Tax. This loss of income has resulted in further layoffs of employees, severe limitations to capital expenditures, continued hiring freeze and other service limitations. In May, 2011 revenues were projected at \$505,974,141.00 with expenses of \$512,302,264.00 (City Exb. B). By the end of May expenses were running at 46% and revenue at 38%.

The City addressed the deficit by controlling overtime throughout its departments, and overtime was eliminated for non bargaining unit employees. In addition, employees have been asked to pay a larger share of the health care premium. 2011 wages have been frozen for employees, and the cost of living adjustment for non bargaining unit employees was eliminated. The loss of state funding created a \$35.7 million deficit for 2011 through 2012 (City Exb. B, 12-27). Reductions impacted 350 to 400 positions. The City planned for 321 layoffs and the permanent removal of 145 open vacancies. Layoffs included 81 patrol officers and 42 cadets upon their graduation (City Exb. B-19). Other demotions occurred in the Safety Department, and a number of EMS positions were eliminated reducing the City's response time from 7 to 18 minutes. A FEMA grant did allow the city to recall 21 fire fighters, but the City could not guarantee further layoffs in the Fire Department. 79 employees have been laid off in the Public Works Department. Waste collection crews were reduced from 51 to 45. 26 seasonal truck drivers were eliminated as well as 16 seasonal laborers, members of the Local 244 bargaining unit. 40 vacancies in the Recreation Department were eliminated, and City swimming pools were scheduled to be closed on certain days each week. The City has over 600 less employees in the General Fund in 2011 than it did in 2003. Trash collection and other similar services have been reduced with delays of several hours to several days. Main street sweeping is reduced from weekly to monthly. Residential street sweeping is reduced from six

sweeps per year to two. Leaf pick-up has been eliminated. Twenty playgrounds are unstaffed, and recreation centers are now closed on Saturdays. Street painting is now delayed by two months, and snow operations are reduced.

Mr. Badalamenti continued to illustrate the crisis in foreclosures in Cleveland and the loss in property tax. He stated that Cleveland has one of the highest rates of poverty in Ohio and the nation. The current population of the City is 396,000 which represents a 17% loss of citizens since 2000. The median household income is \$27,761 which is 54% of the national household income of \$51,425 (City Exb. D).

Revenue for the Water Department has decreased as consumption is not at previous levels due to the loss of LTD and other large users, and many consumers fail to pay their water bills. Due to the upgrading of the water plants, the debt ratio is high. The high number of foreclosures has negatively impacted the department.

The airport likewise has high debt. It is supported by an enterprise fund, but the debt is over \$1 billion. Cleveland Hopkins Airport is a Continental Airlines hub, and the recent merger between Continental and United Airlines is a concern for the City in that the hub may be eliminated. Airport Commissioner Fred Szabo stated that Hopkins is the 35th largest airport in the United States making it a category one facility. 9.5 million passengers are served each year. Field maintenance and building maintenance employees are members of the Teamsters' bargaining unit. Certain maintenance services are contracted. The operational budget for the airport is \$139 million. 38% of the total budget is in debt service. Hopkins Airport must stay competitive as it added a new runway in 2002 and a new terminal. The longest bonds expire in 2033. Cleveland Hopkins Airport is nearly 60 years old and is deteriorating in a number of areas. The FAA requires the airport to develop a master plan to indicate the manner in which it will be maintained and upgraded. The Commissioner stated that the airport will spend \$1.6 billion during the current 20 year plan, and this is in addition to the current \$1.3 billion debt.

The airport business is very competitive. Various regions of the country attempt to attract major airlines and hubs. Hopkins charges approximately \$3 per thousand pounds per aircraft to land. In 2001 the airport charged \$4.49 per thousand pounds. It was forced to reduce the fees in order to stay competitive with other airports. And many airlines have moved away from larger aircraft and now utilize the smaller and lighter regional aircraft which means less revenue for the facility based on the per thousand pound fee formula.

In general, the fiscal presentation by the City was detailed and well organized. Testimony and discussion were to the point, and City exhibits clearly illustrated the fiscal challenges faced by the City of Cleveland. Although the Union questioned various aspects of

the presentation, it did not dispute the overall state of the City's fiscal status. During the negotiations, which occurred prior to Fact Finding, the parties achieved tentative agreements on wages and health care. This speaks well for the relationship between the Teamsters and the City of Cleveland.

A brief discussion of each issue at impasse and recommendation of the Fact Finder follows.

ARTICLE III, MANAGEMENT RIGHTS FULL TIME AND SEASONAL

The City proposes to modify the first sentence of the section of this Article which describes its right to subcontract. This proposal adds language which states that the city has the right to privatize or subcontract for services. The City proposes further to delete the first sentence of paragraph A which illustrates the process to be followed in the event the City indicates intent to privatize a service which is performed by the bargaining unit. The remainder of this provision would remain intact including the actual privatization process. The Union proposes to maintain status quo.

CITY POSITION: This is a core proposal of the City, and it has been presented to other bargaining units. It is meant to clarify what is now vague because the language has not been updated in decades. The City does, in fact, subcontract work, and this proposal clarifies what has been the right of the City during previous collective bargaining agreements. The proposal does not eliminate negotiated protections for the Union and its members. Phil Haddad, the City's Labor Relations Officer, stated that the City has no immediate plans to subcontract any work currently being performed by the Local 244 bargaining unit. Other City witnesses stated that there were no plans to institute subcontracting. The City states that there are 31 bargaining units at the City of Cleveland and most of the unions have already agreed upon this language during negotiations. Union Exhibit 2-A is a list of the various city unions. In reviewing this document, Mr. Haddad stated that the following unions have agreed to accept the same language which is proposed in these negotiations: AFSCME Local 100; Association of Heat and Frost Insulators, Local 3; Boilermakers Local 744; Bricklayers and Allied Craftsmen's Local 5; Cement Masons Local 404; Cleveland Building and Construction Trades Council; International Brotherhood of Electrical Workers Local 38 and Local 39; Iron Workers Local 17; International Association of Machinists; International Brotherhood of Operating Engineers Local 10; Municipal Foreman and Laborers Local 1099; International Union of Painters and Allied Trades, District Council 6; Pipefitters Local 120; Plasterer's Local 80; Plumbers Local 55; SEIU Local 1;

SEME Local 1; Sheet Metal Workers Local 33; Teamsters Local 507; Theatrical Stage Employees Local 27; and Tile Setters Local 36. A small number of unions have not agreed to this language, and unions representing safety forces have not agreed. The City argues that the proposal is reasonable. It does not harm Local 244 members and most other locals have accepted the proposal of the City.

UNION POSITION: The subcontracting language, which is in the Agreement, has existed for more than a decade. Previous to the current collective bargaining agreement, the current language was contained in a side letter between the Union and the City. It was then moved to Article 3, Management Rights. The Union argues it was moved in order that it has more “weight” and that the City’s right in this area would be enhanced. The Union states that there has never been a grievance regarding this language, and the City has never given the Union reason to initiate litigation regarding the issue of privatization. There is no good reason to modify the subcontracting language of the Agreement at this time.

RECOMMENDATION: The Union makes a strong argument that there has been no conflict between the parties regarding subcontracting, and therefore there is no need to modify existing language. This argument is generally persuasive. The City emphasized the fact, during the hearing, that it has no immediate plans to subcontract work currently performed by Local 244 members. The current language allows the City to subcontract although limited to provisions in Paragraphs A and B. The proposal clarifies this right by making the statement that “The City shall have the right to privatize or subcontract services” as the opening statement in Section 3. It also makes it clear that provisions contained in Paragraph A and B become operative when potential privatization would cause a layoff of bargaining unit employees. The deletion of the first sentence in Paragraph A does not negatively impact the remainder of this paragraph, and it does not minimize guarantees which are outlined in Paragraph B. The Fact Finder must give considerable weight to the fact that most bargaining units have agreed to the City’s proposal because the internal comparables are critical in the development of a recommendation. **The City’s proposal to modify Article 3 for both bargaining units is hereby recommended.**

ARTICLE VII, UNION SECURITY AND CHECKOFF FULL TIME AND SEASONAL

The Union proposes that dues deduction will commence during the first month of employment during which an employee is hired. The Teamsters Union by-laws require dues payment during the first month of employment in the bargaining unit. The City currently

deducts dues during the second or third month of employment following the completion of documents by the new employee. It generally takes this amount of time to program the dues process in the payroll department.

UNION POSITION: The Union finds it difficult to hand collect dues from new employees during the first month on payroll. There are approximately two hundred members who are not in good standing based on delinquent dues. The International Brotherhood of Teamsters requires all members to be in good standing. Generally dues are deducted and processed to the Union in the second month of employment, and there have been cases in which the Union does not receive dues until three months following the hiring of a new employee based on hire date. This proposal is important to the Union.

CITY POSITION: The City rejects the Union proposal regarding dues deduction. At hearing City Auditor Badalamenti stated that it takes six or seven weeks to process the dues deduction of a new employee. This is following the completion of paperwork, the taking of a physical, background check and other procedures required during the initial weeks of employment. It is physically impossible to process dues into the ADP and Kronos systems any faster.

RECOMMENDATION: During the hearing it was revealed that the City also deducts an initiation fee for the Teamsters Union. The parties discussed the possibility of increasing the initiation fee for new employees to cover dues for the first month of employment. This would not require a language change in this provision of the collective bargaining agreement. **The recommendation is to not modify Article VII but to maintain status quo. The parties will meet in a labor management meeting to develop a process whereby the amount deducted by the City for the Union's initiation fee is increased to cover the first month of dues.**

ARTICLE XVII AND XIV, JOB EVALUATION AND CLASSIFICATION FULL TIME AND SEASONAL

The City has proposed to modify Section 3 of this provision of the Agreement to include the words, "consolidating classifications." Currently the language states the following. "In the event a new classification is established by the City which is related to an existing classification in the bargaining unit, the City will promptly notify the Union prior to placing the classification into effect." This provision provides further that the parties will meet to determine bargaining unit status, and a grievance may be filed at Step 4 if the matter remains unresolved.

CITY POSITION: The City states that this proposal is based on the recent creation of the Department of Public Works which now takes in a number of Divisions in which employees

belong to the Local 244 bargaining unit. There is no specific plan at this time to consolidate any positions within the jurisdiction of the Local 244 bargaining unit, but the City is considering such in the future. The City states further that it will meet with the Union in Labor Management Meetings to discuss any future proposal regarding job consolidation, and that, based on the current contract provision, the Union may submit any dispute regarding the classification and pay rate to arbitration.

UNION POSITION: The Union takes the position that the proposal is premature. It seeks to maintain current contract language “until such time that the new wage rate and classification have been established.”

RECOMMENDATION: City witness, Phil Haddad, Labor Relations Officer, responded to a question regarding a timeline or schedule to the consolidation process. He stated that the City “has a long way to go down that road.” While the City’s proposal has merit, it does appear to be premature. It is asking the Union to accept a concept that has not fully been developed. Nevertheless, the current Agreements allow the City to create new classifications and establish a process to involve the Union including an appeal to arbitration. The City may be asking for something that it does not need. The Union’s concern, that the City’s proposal is not well developed, has merit. **Articles XVII and XIV will not be modified. Maintain status quo.**

ARTICLE XVIII AND XV, OVERTIME FULL TIME AND SEASONAL

The City makes two proposals regarding this provision of the Agreements. First it proposes to delete Section 4 which requires the City to pay time and one-half for hours worked in excess of eight hours in one day. Overtime would be paid after forty hours in one week only. The City then proposes language which would allow for the assignment of work to employees outside the bargaining unit to avoid the need for overtime.

CITY POSITION: The City states that it continues to incur unacceptable levels of overtime during a time of financial crisis. The City has outlined its financial condition, and it is clear that overtime must be controlled. The City argues that its proposal to eliminate overtime pay after an eight hour work day is not only a cost savings measure but is also in conformance with the Fair Labor Standards Act (FLSA) which requires overtime pay after 40 hours in a work week but does not mandate premium pay after an eight hour work day. The City cannot afford to pay for overtime after eight hours which has been an overly generous practice.

In an effort to control overtime costs, the City further proposes to allow non bargaining unit employees (outside the Local 244 jurisdiction) to perform Local 244 work in overtime situations. When the Local 244 bargaining unit employee is unavailable, current practice requires the City to call in another bargaining unit member for an overtime assignment based on Section 1 (D). The City's intent is to offer the overtime to an employee who is already working and who is qualified to perform the work regardless of bargaining unit. The example is a Water Department employee who is not in the Local 244 bargaining unit but who possesses a CDL license. The City states, that while this will not eliminate overtime, it will result in efficiency and cost savings. The City commented on a recent arbitration award regarding this issue and states that the Arbitrator did not go far enough, and the award forces the City to incur excessive overtime costs. The City is attempting to avoid the assignment of overtime based on its financial condition.

UNION POSITION: The Union rejects the City's proposal to eliminate the payment of overtime after an eight hour work day. The Union states that this provision of the Agreement has been in existence for over two decades, and it argues that there has been no controversy over this provision and no grievances. To eliminate this long standing benefit and practice is unfair to employees and cannot be justified.

The Union objects to the City's proposal to allow non bargaining unit employees to perform Local 244 designated work in an overtime situation. This proposal gives the City the discretionary authority to assign overtime to anyone. The current agreement dictates that overtime must be assigned to employees who normally perform the work. It would be inequitable to assign bargaining work normally performed during the regular work week to a non bargaining unit employee on a Saturday overtime assignment. The Union states that this is unfair. The Union cited two past arbitration decisions regarding the issue of non bargaining unit employees performing bargaining unit work during overtime assignments. In 2002 Arbitrator Campbell found that the City violated the Agreement by awarding bargaining unit overtime work to a non bargaining unit employee (Union Exhibit 3). Then on June 23, 2011, Arbitrator Robert Stein considered a similar case in which the City had trained and assisted non bargaining unit employees to attain CDL licenses in order to perform Local 244 bargaining unit work (Union Exhibit 3-A). The Union states that both arbitration decisions reinforce the rights of the Union to retain the right to utilize bargaining unit employees during overtime assignments. The Union seeks to maintain current contract language with no modifications.

RECOMMENDATION: The City justifiably seeks to control all personnel costs including overtime. Except for emergency and critical work beyond the regular work day, it has the ability to contain these costs. It has suspended overtime for non unrepresented employees. The eight

hour overtime provision has been a part of the collective bargaining agreement for many years, and it apparently cuts across many of the City's bargaining units. There were no stats or comparables presented to suggest that this provision in the Local 244 Agreement is unique. And there was no cost estimate to indicate potential savings. The real answer is in controlling overtime assignments. **The City's proposal to eliminate overtime premium pay after eight hours is rejected. Maintain status quo regarding this portion of Articles XVIII and XV.**

The second proposal is more complex, and both parties proffered meritorious arguments for their positions. The City is concerned regarding the cumbersome process to replace one bargaining unit employee with another when certain work could be assigned to another City employee at a potentially lower cost. Bargaining unit employees would lose no regular shift work based on the City's proposal. The Union's argument is also compelling in that bargaining unit overtime should not be performed by workers not represented by Local 244 based on equity, fairness and the long standing practice of the parties. Arbitrator Stein's award in June, 2011 (Union Exb. 3-A) strikes a fair balance in that it provides initial protection for the bargaining unit regarding overtime assignments and allows the City to assign overtime to a non bargaining unit employee, who is part of a work crew, in the event the employee performing the work during the regular shift turns down the assignment beyond the standard shift. This addresses the concern of the City when it is required to stop a job while the call in procedure is implemented. It also negates the four hour minimum pay required for "call outs" in these specific circumstances which may result in cost savings. **Section 1 (D) will read as follows.** **"The City must ask bargaining unit members first when an overtime situation presents itself for work within one of their classifications. When this procedure has been exhausted, assuming it is of a non-emergency nature, the City may ask other employees to perform the required assignments. A steward shall be present, on a rotating basis, when three (3) or more members are working in an overtime situation. In the event of holdover or contiguous overtime, if a crew's unit leader or supervisor determines that the Local 244 bargaining unit employee is needed to complete a job, that bargaining unit member assigned to the crew or assignment shall have first option of working the required overtime hours. If the Local 244 bargaining unit member individually decides to forego that specific overtime opportunity, the City will then have the right to use a non bargaining unit employee, who is a member of the crew present at the work site and who is qualified to perform the work required, to work the overtime hours necessary to finish the requisite work."**

ARTICLE XX AND XXII, HOLIDAYS
FULL TIME AND SEASONAL

The City proposes to modify this provision of the Agreements to require an employee to work the last full day before and full day following a holiday. Currently the Agreements require an employee to work the day before and after the holiday but does not require that the employee work the entire day therefore allowing an employee to be absent for a portion of the day before and after and still be credited with holiday pay.

CITY POSITION: The City states that this is one of its core proposals. Eighteen other bargaining units have agreed to the City's proposal, and Fact Finders have supported the modification to this Article. If the employee is legitimately sick and provides medical documentation, the City has the option to provide holiday pay for that individual. Unexpected absences cause overtime costs. In 2009 the Local 244 bargaining unit used 1113 hours of sick leave before and after holidays; 1068 hours in 2010; and 759 hours at this point in 2011 (City Exb. R). Employees may continue to use approved vacation before and after holidays and receive holiday pay. Labor Relations Officer Haddad stated at hearing that this proposal is meant to establish a benchmark throughout the City. It is a cost savings measure.

UNION POSITION: The Union rejects the City's proposal and seeks to maintain current contract language. The current provision of the Agreement requires an employee to work the day before and the day after a holiday to receive holiday pay. There are instances when an employee may find it necessary to leave during the work shift due to illness, injury or loss of day care for children. It is unfair to penalize employees in this manner. The Union asserted at hearing that there is no evidence to suggest that bargaining unit employees have abused this portion of the Agreement. The Union suggests that the City's assertion that the proposal is a cost savings measure is not accurate.

RECOMMENDATION: The City's proposal is reasonable. Although City witnesses were unable to cite specific examples of abuse regarding the Local 244 bargaining unit, the intent of many contract provisions, which require working the day before and day after holidays, usually means full days of work and not partial days. Internal comparables are important in that eighteen city bargaining units adhere to the City's proposal to this bargaining unit. **Section 2 of these articles will read as follows. "To be entitled to holiday pay, an employee must work the entire last regular work day before the holiday and the entire first regular work day after the holiday or be on vacation or personal days which are approved in advance of the last regular work day before and the first regular work day after the holiday. An employee may receive holiday pay when using sick leave with management approval and appropriate medical documentation."**

FULL TIME AND SEASONAL

The City proposes to modify the Grievance Procedure in two areas. It proposes to add language to the Agreement which states that a grievance not timely filed and processed by the Union shall result in the denial of the grievance with prejudice. The proposal also states that a grievance not timely answered by the City may result in the grievance advancing to the next step. In addition, the City proposes to modify Step 3 of the Grievance Procedure by requiring the Union to present, in addition to the grievance in writing, a copy of the “initial grievance, Step 2 appeal, amendments to same, and any Step 1 and 2 responses...”

CITY POSITION: The City states that its proposals will streamline the grievance process, and both parties will benefit from this. The majority of city unions have similar language (City Exb. M). The current Agreement is vague. It does not address untimely filing by the Union or failure to respond by the City. “The Grievance Procedure does not address what happens when someone misses a deadline.” (Witness Haddad) The proposal to require additional documentation at Step 3 is important to allow the City to make an educated and timely response to the grievance. It will assist both parties in resolving grievances at Step 3.

UNION POSITION: The Union rejects the proposals by the City and seeks to maintain current contract language. The Union cited a number of examples concerning late answers by the City and late disciplinary notices. It suggested that, as a counter measure, the Union’s settlement request be automatically granted in the event the City is untimely with a grievance response. In 1999 Fact Finder Thomas Skulina recommended complete language regarding the Grievance Procedure (Union Exb. 4), and this language has been in the collective bargaining since that time. It has stood the test of time with little problems or concerns.

RECOMMENDATION: In respect to the City’s first proposal regarding untimely filing of grievances, the City argues that many City unions have agreed to same or similar language. City Exhibit M indicates that only 12 bargaining agreements contain this language. A majority do not. An employer is able to challenge the timeliness of a filed grievance with or without language stating such. If an employer is consistent in responding to grievances in a timely manner and is consistent in challenging untimely filed grievances by the Union, most arbitrators will find that an untimely filed grievance will not be heard on its merits. This is the standard with or without the language the City seeks to add to the Agreements. Unions generally do not take untimely filed grievances to arbitration if the timeliness standard is followed consistently by both sides. Therefore the City does not need its proposed language to accomplish its goal of timely filed union grievances. **Maintain status quo.**

The City's proposal regarding Step 3 is a fair attempt to produce sufficient information for management to respond to the grievance. Nevertheless, the Union expresses concern for good reason. Mr. Haddad stated that the language would not invalidate a grievance that moves to Step 3 without the listed documentation, but another management representative could take the opposite approach and argue procedural defect. Union stewards and officers volunteer their services to the Union, and they are not generally labor relations professionals. This requirement, if rigidly enforced by the City, would be unfair to a Grievant, who wants his complaint heard, and could open the Union to "duty of fair representation" challenges. In addition, the current Step 3 provision states that "A complete agenda for all grievances appealed in writing to Step Three (3) will be provided by the Union prior to each meeting." If the City requires certain documentation, it may request it prior to the actual Step 3 meeting pursuant to this language. The City's proposal is unnecessary. **Maintain status quo.**

ADDENDUM IX, WASTE COLLECTION FULL TIME

The City proposes to modify this provision of the Agreement in order to reduce the rate paid to Waste Collection Drivers when they operate Roll-off vehicles and Front End Loaders. Based on the City's proposal, the drivers would no longer be paid at the rate for Roll-off vehicles or Front End Loaders but instead would remain at the Waste Collection Driver rate plus the \$1.00 per hour adjustment when performing these duties.

CITY POSITION: Prior to June, 2009, the City paid Waste Collection Drivers at the rate paid Roll-off drivers in addition to the \$1.00 per hour rate pursuant to Addendum IX. An internal audit was conducted by the City, and it was determined that Roll-off drivers were not in the Local 244 bargaining unit. The audit concluded that Local 244 drivers should no longer receive the hourly rate paid to Roll-off drivers but should receive their regular hourly rate in addition to the \$1.00 per hour adjustment. The City implemented this change, but the Union challenged the action by the City in arbitration. The arbitrator granted the Union's grievance. The City is forced to continue to pay the higher rate during a time of reduced revenue and service reduction to the public. The General Fund, which supports the Waste Collection Department, is in dire financial condition. Employees, who receive both adjustments contribute to the department's fiscal stress. The cost to the City of paying for the higher hourly rate and the plus adjustment is \$146,203.20 annually. The cost based on paying only the negotiated \$1.00 per hour adjustment is \$124,425.60. The City recognizes that it must comply with the decision of the arbitrator, but employees would continue to receive additional compensation based on its current proposal.

UNION POSITION: The Union rejects the proposal of the City and seeks to maintain status quo. This has been a long standing past practice of the City, and there is no reason to discontinue the pay rates. When the City notified the Union of its intention to discontinue paying the higher rate of Roll-off Driver and only pay the plus adjustment, the Union filed a grievance and proceeded to arbitration. The arbitrator granted the Union's grievance and stated that the City was not able to discontinue to pay the higher rates based on past practice and the obligation to bargain with the Union and reach a mutual understanding. The Union argues that the Fact Finder recommend status quo.

RECOMMENDATION: It is clear that the Waste Collection Department has been negatively impacted by the financial condition of the General Fund. The City properly wishes to reduce costs in the department. This Fact Finder has reviewed the award of the arbitrator in this matter (Union Exb. 5) and understands the rationale which led to the decision. Although the Roll-off Driver and Front End Loader classifications are not in the bargaining unit, the City paid Local 244 bargaining unit members at the higher rate and then applied the \$1.00 plus adjustment for many years and even paid the higher rates when adjusting grievances in the past. The arbitrator stated in his 2010 decision that the City was required to bargain and reach a mutual understanding with the Union. Failing to do such, the arbitrator granted the Union's grievance. The City stated in its pre-hearing statement that it is obligated to comply with the award of the arbitrator but looks for relief from the Fact Finder. At hearing it was determined that the City has not complied with the decision of the arbitrator, and the City has, in fact, appealed the arbitration in the courts in an effort to vacate the decision. This places the Fact Finder in a difficult position as the matter has not been resolved between the parties.

Therefore the recommendation of this Fact Finder is to maintain status quo. It is suggested that the parties engage in bargaining over this issue while it is pending in the court. Perhaps the City might offer the Union some upfront relief or benefit that would, in the long term, result in future savings.

ADDENDUM X, AIRPORT FULL TIME

The City proposes two changes to this provision of the Agreement. Currently the Addendum provides for a Clothing Maintenance Allowance in Section 4 and a Uniform Allowance in Section 5. The City proposes to allow for the option of the City providing a uniform in lieu of the cash payments.

Addendum X provides for plus adjustments for bargaining unit employees who perform “routine maintenance involving plumbing fixtures, sheet metal fixtures, and roofing...” These employees receive a plus adjustment of \$4.00 per hour. An employee who assists the Carpenter also receives a plus adjustment of \$3.00 per hour. Lathe work is an additional \$3.00 per hour. Employees are paid a minimum of two hours and hour for hour thereafter. The City proposes to modify this provision by replacing the word routine with “performs responsibilities...that encompass the description of the core job responsibilities regularly performed by employees in those trades.” The City also adds language that states, “Supportive work i.e., moving material/supplies or assisting a craftsman in a laboring capacity, does not meet this definition.” The proposal goes on to state that a foreman must designate the plus work to be performed, and the proposal restates the provision which indicates that employees, who are being trained in these tasks, do not receive the plus adjustment.

POSITION OF THE CITY: The City states its proposal to allow for the option of providing uniforms as opposed to the maintenance and uniform cash allowances is only that, an option. The proposal results in no change in benefits for bargaining unit members. The proposal ensures that money spent by the City properly goes toward uniforms. In addition the City provides uniforms for employees in other departments.

The City states that its proposal to restrict the payment of the trades work premiums is critically important. The City is paying employees to do minor tasks when assisting craft workers such as moving supplies or repairing a soap dispenser. The City will readily pay the premium when a bargaining unit employee is performing the actual core duties of the craft employee, but it cannot afford to pay the premiums for work that is not actual trades or craft responsibilities. The trades and craft employees at Hopkins Airport do not support paying the high premiums to Local 244 bargaining unit employees for performing minor tasks that are not actual craft or trades duties. The City implemented the limitations regarding the payment of premiums in 2009, and the Union grieved and arbitrated the matter. The arbitrator granted the grievance, but the City cannot continue to pay bargaining unit members craft and trades premiums for work which is not craft or trades responsibilities. Prior to 2009, the City was paying the premiums for non trade work. The cost in 2007 was \$71,286.82 and \$75,027.56 in 2008. The City reduced these costs in 2010 to \$23,944.85 when it implemented the limitations. The City looks to the Fact Finder to recommend this change in the Addendum based on equity and the City’s financial condition.

POSITION OF THE UNION: Regarding the clothing allowance, in the past the City provided uniforms but did so sporadically. In the 1999 Fact Finding between the parties (Union Exb. 4), Fact Finder Skulina recommended that the City make cash payments of uniform and

maintenance allowances because the required uniforms did “not always reach the employees.” (pg. 15) Since that time the Addendum has reflected the cash payments, and the Union is concerned that a return to city provided uniforms will result again in missing clothing items. The Union seeks to maintain current contract language.

The Union is opposed to any restrictions regarding trades and craft work premium. The City implemented certain limitations in violation of the Agreement in 2009, and the matter was appealed to arbitration. Arbitrator Adamson granted the grievance of the Union by reinstating all lost premium pay and stating that the City must continue to pay the adjustments during the term of the Agreement based on the language of the Agreement and the long standing past practices which date back over 20 years. The Union also states that the City has not complied with the decision of the arbitrator as of the date of the fact finding hearing. Union witnesses stated that bargaining unit employees often perform the work of trades employees either as their assistants or in their place as there are a limited number of trades and craft employees at Hopkins Airport. Witnesses stated that trades or craft work, which was compensated at the premium rate for over 20 years, was no longer being paid at the higher rate in 2009, but bargaining unit employees continue to perform these tasks. The Union seeks to maintain current contract language and that the City must comply with the award of the arbitrator.

RECOMMENDATION: The Union argues that the City failed to provide uniforms in a timely manner prior to the time the parties bargained for cash payments. Fact Finder Skulina recommended the uniform and maintenance allowance based on this proposition in 1999. He also made the following statement. “In the next go around of negotiations, this, of course, may be revisited.” The City’s proposal has merit and is reasonable. **The recommendation is to permit the City to provide the option of furnishing uniforms in lieu of a uniform allowance or clothing allowance.**

The trades and craft premium pay issue is complicated. Due to the financial condition of the City, it implemented cost savings across all departments, and in 2009 determined that the various premiums being paid to Local 244 bargaining unit employees were excessive and not justified. Earlier during this fact finding hearing the Airport Commissioner and City Auditor reviewed the financial condition of the airport and the heavy debt it has incurred in order to remain competitive. Although the City conducted a number of labor management meetings with Local 244 regarding the premium pay limitations being implemented, it failed to engage in collective bargaining with the Union relying instead on the Management Rights provision of the Agreement. The City also rejected the notion that the past practices, regarding the conditions that premium payments had been made over the years, were valid. The Union appealed the dispute to arbitration, and Arbitrator Adamson agreed with the Union. He determined that the

City failed to bargain, and he found that Section 6, Trades Work Premium, was vague to the point that past practice was the determining and overriding factor. His decision was issued less than ten months ago. The City now asks this Fact Finder to recommend the limitation of trades and craft premium pay going forward. Testimony indicates that the City has not complied with the award of the arbitrator, and it is unclear if this matter will result in further litigation. Due to these circumstances, this Fact Finder is reluctant to recommend the proposal of the City. As Arbitrator Adamson indicated, the parties should have bargained over this issue, and this Fact Finder supports that contention. After many years, decades, of paying trades work premium, based on Section 6 of the Addendum and the practice of the City, it is incumbent on the parties to engage in serious bargaining to develop an acceptable solution, compromise, over this issue. The parties have been at a standoff over this issue for two years, and this Fact Finder surmises that little or no bargaining over this issue occurred during these negotiations for a successor agreement. The issue is too important for bargaining to not occur and to hope that a Fact Finder will support one position over another. This Fact Finder urges the parties to tackle this issue, utilize mediation or an interest based facilitated approach through the labor management meeting process during the term of the Agreement and during the time that the recent arbitration award is reviewed for litigation. It must also be noted that the Union has agreed to freeze wages in the first year of the new Agreement which means that the Airport Commission will benefit from this relief. **The recommendation is to maintain status quo and maintain current contract language.**

ADDENDUM XI, DEPARTMENT OF PUBLIC UTILITIES
FULL TIME

The Union proposes that all truck drivers in the bargaining unit be paid the same rate of pay. Waste Collection Drivers and Ground Maintenance Drivers are to be paid the same rate as Truck Drivers. The Union wishes to standardize rates for all three positions especially in light of the City's proposal to initiate a combined Department of Public Works in which all drivers may be used intermittently.

UNION POSITION: The Union states that the pay rate for a Ground Maintenance Driver II in the Parks Department is \$18.96. The pay rate for a Waste Collection Driver is \$18.94 plus \$.75 each day. The pay rate for a Truck Driver in Streets is \$19.21. These rates should be standardized. The Union states that the City is attempting to create a combined Department of Public Works which would include all three classifications. Drivers would be expected to operate vehicles in various capacities in the new department. It is therefore critical to establish one pay rate for all drivers at the level of the Truck Driver in the Streets Department.

CITY POSITION: The City argues that it does not have the financial resources to elevate all drivers to the top pay level as proposed by the Union. All truck driver classifications are General Fund positions. City Witness Haddad stated that the City desires the flexibility to utilize truck drivers in varying capacities in a combined Department of Public Works, and it is willing to negotiate the consolidation of classifications including pay. Nevertheless, as stated during discussions regarding the proposal on "Job Evaluation and Classification," the City has not completed its plans regarding the new department. It would prefer to discuss the pay rates for drivers at a later time.

RECOMMENDATION: The Union's proposal has merit in its attempt to create equity among its truck driver members. The City makes two relevant arguments, the lack of financial resources to move all drivers to the Streets Department drivers pay rate, and setting this matter aside until the reorganization of the Department of Public Works is complete. The City stated that it is willing to negotiate over the matter at a later time and agrees to submit any disputes to final and binding arbitration. **The recommendation is to maintain status quo.**

ADDENDUM IV, ANIMAL CONTROL OFFICER FULL TIME

The Union proposes an equity pay adjustment and increase for all Animal Control Officers of \$1.00 per hour effective April 1, 2011.

UNION POSITION: In the past these employees were known as Dog Wardens. Then the job title changed when the job description was modified to include the control and capture of wild and exotic animals. Based on this change, the job has become more hazardous than it was in the past. In addition, the Union believes that the City has received grant funding for the services provided by these bargaining unit employees. The City therefore has the financial means to meet the Union's demands.

CITY POSITION: These employees are paid from the General Fund, and the parties are aware of the City's financial condition. The City does not have the resources to meet the Union's demands regarding this proposal. Additionally, if there is grant money, it cannot be counted on to fund ongoing wage increases. The City rejects the Union's proposal.

RECOMMENDATION: The parties acknowledge the City's financial condition regarding the General Fund, and there was no specific evidence regarding a grant that could be utilized to fund wages. City Witness Haddad stated that a grant, which had been discussed at one time, was never awarded. **The recommendation is to maintain status quo.**

SNOW REMOVAL VEHICLE OPERATORS SEASONAL

The Union proposes that seasonal employees assigned to the Department of Public Works be provided with Uniform Allowances.

The Union proposes that Snow Removal Vehicle Operators, who work beyond the winter snow season, receive City provided health care benefits.

UNION POSITION: The Union states that seasonal snow removal truck drivers begin work around the first of October each year. Generally they are laid off on April 1 following the snow season. Many seasonal employees return to City employment two or more weeks following their layoff and work through the spring and summer until the end of September. They then continue on the City payroll around October 1 as the snow season approaches. In essence, many seasonal employees, who are represented by the Local 244 bargaining unit, work nearly full time, but they are not afforded a uniform allowance, and the City does not provide health care coverage. At hearing, Union Witness, James Colbert, a Seasonal Snow Removal Vehicle Operator, works for the City from October until April 1. Mr. Colbert possesses a CDL. He is laid off around April 1 and then returns to City employment during the middle of April. Over the years he has been assigned to street sweeping during the spring and summer months, grass cutting, asphalt and concrete and similar duties. Witness Colbert has worked this schedule for six years. He works nearly the entire year except for two or three weeks in April. Mr. Colbert receives no uniform allowance, as do full time employees, and he receives no health care benefits. The Union argues that seasonal employees, such as Mr. Colbert, work almost the entire year and have done so for many years. It is unfair for employees in this category to go without the uniform allowance and especially health care benefits. The Union argues further that seasonal employees are expected to report to work with blue pants and shirts and work boots. They are not reimbursed for the clothing that is required by the City. The Union requests that the Fact Finder recommend its proposals in the Report.

CITY POSITION: The City states that, while seasonal employees are urged to wear blue clothing and boots, no worker has ever been sent home without pay for noncompliance. The City states further that seasonal employees, who return to work in mid April, are technically laid off and then recalled. They are not full time employees and not entitled to full time benefits. Seasonal employees in other bargaining units do not receive full time benefits. This has been the standard at the City of Cleveland for decades. Many snow removal seasonal employees are paid through the City's General Fund. The current state of the General Fund is clear. The City

does not have the financial resources to fund either proposal by the Union regarding seasonal employees in its bargaining unit. To the extent that some snow removal seasonal employees are funded through enterprise funds, such as the airport, those funding sources are unable to afford the cost of healthcare. The City asks the Fact Finder to reject the Union's proposals.

RECOMMENDATION: The Union makes a compelling argument for seasonal employees who are laid off in April and return to employment two weeks later. And it should be noted that a bid procedure is in place for seasonals who wish to work during the spring and summer months. The lack of health care benefits places a burden on families and the community. The City argues that its financial condition does not allow it to assume these costs, and it is clear that this is an accurate assessment. The Union has little disagreement regarding the overall financial condition of the City of Cleveland as elicited during this Fact Finding hearing. As justified as these proposals may appear, the funding is not available for uniform allowances and health care benefits for those seasonal snow removal vehicle operators who work during the spring and summer months. **The Union's proposals are not recommended. Maintain status quo.**

SUMMARY

After review of the pre-hearing statements of the parties, all facts presented at hearing, the extensive number of exhibits and the transcript taken during the two days of hearing, the Fact Finder recommends the provisions as contained in this report. In addition, the Fact Finder has given consideration to the positions taken by the parties regarding each issue at impasse and to the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f). **In addition, all tentative agreements, which were reached between the parties prior to fact finding, including the wage settlement, are hereby incorporated in this Fact Finding Report and Recommendation.**

Respectfully submitted and issued at Cleveland, Ohio this 7th day of September, 2011.



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2011, a copy of the foregoing Report and Recommendation of the Fact Finder was served upon George S. Crisci, Esq., representing the City of Cleveland; Jarrell B. Williams, representing Teamsters Local 244; and James R. Sprague, State Employment Relations Board, by way of electronic mail.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Fact Finder

