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**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**TEAMSTERS LOCAL 20**

**AND**

**THE CITY OF PORT CLINTON OHIO**

**SERB CASE # 11-MED-04-0677**

**Robert G. Stein, Fact-finder**

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## INTRODUCTION

The parties to this matter are Teamsters Local 20 (hereinafter "Union" or "Local") and the City of Port Clinton (hereinafter "City", "Employer"). The Employer is located in northwest Ohio. The bargaining unit is comprised of approximately nineteen (19) employees who work in service, maintenance, clerical, and technical positions in various departments of the City. These employees provide vital functions service to the citizens of Port Clinton, Ohio by performing such functions as street maintenance, water and sewer lines repair, parks and cemetery maintenance, operate the wastewater treatment plant, and perform administrative functions in City Hall. The fact finder first attempted to resolve the issues through mediation, but that effort proved fruitless leading to a second day, held on December 22, 2011, in which a formal fact finding hearing was held.

**General/State/Local Economic Overview:** Cautious optimism appears to be an apt characterization of the state of the current national and international economy that by virtue of world interdependence can be impacted by a small European country's economic condition thousands of miles away. The economy in Ohio continues to show some signs of improvement from a very severe national recession that remains subject to the financial health of the United States and other countries, particularly those who are currently facing considerable debt in Europe. Just a few months ago, substantial swings in the stock market on a weekly and sometimes daily basis were commonplace. For the last several weeks it appears the national economy has become somewhat more stable, yet what Americans have experienced from 2008 until the present has left a lasting impression about the uncertainty and fragility of the future.

The national unemployment rate is currently 7.7%, down from 9.0% just one year earlier. This has helped to create shoots of optimism among people hopeful for better times. The facts indicate that Ohio is in a very slow recovery that is still plagued by a lack of jobs that pay a living wage. Foreclosures continue to rise as we enter 2012. Several months ago what has been called the great recession was declared to be officially ended. Yet, for people in Ohio who are unemployed, underemployed, have experienced dramatic declines in their home values, face foreclosure, have given back benefits and paid days, have foregone wage increases for years, and have been laid off, such declarations ring hollow. The impact of the recession upon Ohio's revenue stream is plain, and employers in the public sector are feeling the effects of the state of Ohio significantly reducing its financial support to local governments. However, it took a while for management and labor in the public sector to experience the effects of a dramatic decline in what were formerly dependable revenue streams, and to come to terms with the new reality.

All the news is not negative; there are pockets of recovery and some employers are doing well in the aftermath of the recession. Detroit seems to be on a comeback, and that is particularly good news for neighboring Ohio. And, there are states that are weathering the recession much better than Ohio. Prudence would dictate that the sobering realities of fluctuating economic indices need to be factored into any projected budgeting process for a public employer in Ohio.

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 have and 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. State employees recently agreed to a second three (3) year contract that once again contains no wage increases. When dealing with concessionary bargaining, evenhandedness of sacrifice takes on even greater significance than it does in more normal times where needed market based equity adjustments can be reasonably addressed as a customary subject of negotiations. The critical and central factor during times of economic hardship is authenticity. If sacrifice is called for by employees and managers alike, then it must be based upon reality and not hyperbole.

Locally, Port Clinton has experienced unfavorable financial news in recent years that includes declines in income tax revenue (the tax revenue for 2011 is equal to that received in 2007), and dramatic cuts in local government funds, and the forthcoming elimination of the estate tax in 2013. In addition, the City has annual debt payments water and sewer loans. The General Fund carry over balance has decreased from approximately $781,000 in 2007 to a projected carryover of approximately $524,000 at the end of 2011. The Union does not disagree that the City has financial problems, but does not agree they are as severe as the City indicates.

## CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (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.

**Issues 1, 2 and 3 Article 19, HOURS OF WORK AND OVERTIME, Sections 19.5, 19.7, and 19.13**

**Current Language** ***(see CBA)***

**Employer's Position.** 19.7**:** The City proposes all employees move from one-half (1/2) hour of paid lunch to a one-half (1/2) hour unpaid lunch. The Employer indicates that City Council has instructed City Administration to do away with paid lunches for all employees and that the general public has voiced their concerns to City Council that City employees should not be paid for not working. 19.13 , New. The Employer proposes a new Section 19.13 of this Article that addresses employees on sick leave. It argues that such employees should be last to be offered overtime during a day(s) when they are sick. The City opposes increasing call-in time under the Union's proposal in 19.5 in as much most of the call-in work takes less than two (2) hours.

**Union's Position.** 19.7 The Union argues that this provision has been in the Agreement for many years and employees would have to take a pay cut under the Employer's proposal. 19.13 Here the Union argues there have not been any issues related to people abusing sick leave and then seeking to work overtime on the same day or days. 19.5 The Union argues that being called into work is a major inconvenience to employees during their time off and is worthy of at least a minimum of three (3) hours of pay.

**Discussion. 19.5** The evidence and testimony that was part of the record indicates that many call-in periods are less than two hours There was insufficient evidence to justify a change in the current call-in language, which pays time and one-half for all hours worked with a minimum of pay of three (3) straight-time hours paid, regardless of the time spent on the call-in. However, being called in on a Sunday, which is more of a traditional family day in Midwest America, requires a greater sacrifice on the part of an employee and his or her family. **19.7** This benefit has existed for many years and it results in the City paying eight (8) hours of pay for seven (7) hours of work. What is more typical in the public sector in Ohio is to provide unpaid lunch time and paid break time, an eight and one-half (8 1/2) day. However, that type of scheduling without sufficient long range planning, impacts both a city's operation and an employee's personal life. In its proposal, the Employer appears to be proposing to cut one-half hour out of an employee's paid day. It is one thing to require more time on the job for the same number of paid hours and quite another to simply cut wages by cutting hours, without any gain in productivity. It is unreasonable to cut employees pay by thirty (30) minutes each day, which results in a loss of 2.5 hours of pay per week or 130 hours of pay per year. This would place an unjustified hardship on employees, when the real goal of the Employer appears to be greater productivity. A simpler way to approach this matter during these challenging times for the City, and one that does not require a complete operational schedule change, or an unreasonable financial sacrifice by employees, is to combine break time and meal time and reduce overall unproductive paid time by twenty-five percent (25%). This approach would require the bargaining unit to contribute a portion of paid time to an increase in productivity

without having to suffer a wage reduction. Hypothetically, using a forty-eight (48) work week-year (allowing time off for vacations and holidays) the City would on average gain seventy-five (75) minutes of productive time per week, or sixty (60) hours of productive time per year for each employee. Within each work unit or department, employees and supervisors can determine how to apportion this time between breaks and lunch. **19.13** There was insufficient evidence to indicate that the Employer's proposal is based upon a problem that has to be addressed. In addition, it cannot be assumed that if an employee is sick during his regularly scheduled shift, he is not well enough later in the day to work overtime, if it is his turn. The parties already have considerable language in the Agreement devoted to overtime and there wasn't sufficient evidence that due to sick leave the current overtime provisions are unsatisfactory.

**Recommendation**

**Article 19.5** **Call-In Pay.** Call-in pay is defined as payment for work assigned by the City or designated representative and performed by an employee at a time disconnected from his or her prescheduled hours of work. Work done in this manner shall be compensated at the rate of one and one-half (1½) times the normal rate of pay with a minimum of two (2) hours pay. Employees called out a second time during the original two (2) hour call-in shall not be entitled to receive a second two (2) hours call-in pay. Employees called at home for information shall be compensated for actual time spent on the call or a minimum of one-fourth (1/4) hour of pay at one and one-half (1½) times the normal rate of pay. Employees called a second time for information during the original one-fourth (1/4) hour call-in shall not be entitled to receive a second one-fourth (1/4) hour call-in pay. **Call-ins on Sunday shall be a minimum of three (3) hours of pay at the rate of one and one-half (1 ½) times the normal rate of pay.**

**Article 19.7 All employees shall have a total of forty-five (45) minutes of paid break and or lunch time per day, with the distribution of said time to be negotiated by the Employer and the Union in each department.**

**All other provisions of this Article shall either remain as tentative agreed upon or shall remain current language.**

**Issue 4 Article 20, Wages**

**Current Language (see CBA)**

**Employer's Position.** The City proposes a three-year wage freeze based upon its current and near future financial position. It argues that during the past decade it has provided competitive wage increases of approximately 29% that have exceeded the CPI by over 5%. And yet over the past thirty (30) years it has lost population going from 7,200 plus citizens in 1980 to just over

6,000 citizens in 2010. This nineteen (19) percent loss in population, coupled with the effects of the most recent severe recession, high debt service that has caused the City to have the 3rd highest sewer rates in the state of Ohio, a decline in housing values and losses in revenue from the state and other sources has placed the City in a very difficult position currently and in the foreseeable future.

**Union's Position.** The Union modified its wage demand for fact finding to two percent (2%) each year of the Agreement. It argues the City can afford this modest increase, which is less than the average wage increases have been during the past ten (10) years.

**Discussion.** What the City is experiencing is unfortunately not uncommon in Ohio and many other parts of the America, particularly the Midwest. These are very different times than in the past when three percent (3%) increases were the standard "default" position for raises. The "great recession" is still having its effect on housing values, tax collections, and most importantly on good paying jobs that produce income revenue for the City. These are challenging times as the state of Ohio has placed considerable pressure on local governments to provide service to the public with far less. The data does indicate the parties have been able to establish very competitive wage levels over the past several years which indicate they have had a stable relationship. However, the events associated with the recession of 2008 have also impacted employees in the same manner they have affected municipal revenues. Employees have suffered substantial losses of their home values, and may have spouses or adult children who are out of work or are having difficulty finding steady work. Gasoline prices have eroded disposable income and have caused employees to reevaluate their budgets, and they have had to make do with less. A reasonable and prudent approach to wages is called for during this time of economic recovery.

## Recommendation

**Effective 9/1/2011 1% retroactive to 9/1/11**

**Effective 9/1/2012 1.5% wage increase**

**Effective 9/1/2013 2% wage increase**

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 5 Article 21 LONGEVITY**

**Current Language** ***(see CBA)***

**Employer's Position.** The City is proposing to return to its former longevity rate and method of calculation of said rate. The City is attempting to undo what it agreed to in late summer of 2008, just prior to the collapse of the financial sector and the beginning of the recession. In that former set of negotiations the City increased longevity by fifty percent (50%), raising it from $.04 per hour to $.06 per hour. The City is proposing to return to $.04 per hour.

**Union's Position.** The Union proposes to keep the same longevity, which it argues was originally proposed by the City during the last round of bargaining in 2008 in exchange for concessions made by the Union in wages and health care. The Union also insists that the current payment by separate check be maintained.

**Discussion.** The evidence indicates that Union made concessions when it agreed to the Employer's proposed increase from $.04 per hour to $.06 per hour in 2008. Now the Employer wants to return reduce longevity by fifty percent (50%) without any quid pro quo exchange. The City's financial position, while considered in the wage recommendations stated above, does not justify this type of roll back in benefits, particularly when it was originally proposed by the City and when the Union had to make concessions in agreeing to it.

**Recommendation**

**Maintain Current Language**

**Issues 6 Article 22, INSURANCE**

**Current Language** ***(see CBA)***

**Employer's Position.** The City is proposing to provide the same insurance plans to the bargaining unit that it has for other non-bargaining unit personal. It insists that it is unreasonable for the bargaining unit to continue to limit its exposure to insurance cost

increases by "artificially insulating itself by using "caps" and paying pennies on the dollar that the Employer is forced to absorb." The City argues that the bargaining unit, which is only nineteen (19) employees should not dictate the benefits and contributions for the rest of the City. Currently each employee's maximum cost for insurance is $100 per month, regardless of how much they use it. It argues that it can no longer afford to pay one hundred percent (100%) of each employee's out-of-pocket expenses. The City is also proposing to delete the mandatory "opt-out" option, which will have no effect on any current bargaining unit employee.

**Union's Position.** The Union argues the City is proposing "draconian evisceration of the minimum health insurance guarantees" in the Agreement. It further contends that the City is attempting to replace current minimum guarantees with "a license to establish health care plans as it sees fit" in as much as it seeks to bind bargaining unit employees to whatever the City wishes to provide to non-bargaining unit employees. These changes are not justified, argues the Union.

**Discussion.** This is obviously an important issue to both parties. At the hearing some members of the Union's bargaining team made it clear that the Union is knowledgeable about rising health care costs and that the Union is willing to talk about these issues with the City in order to find ways to better control costs. It contends that City has not talked with the Union and has not agreed to explore various ways to deal with rising health care costs in a collaborative fashion. Currently the Agreement calls for an employee to contribute 9% toward health care costs with a $100 cap, which is actually less. According to the evidence a true cap of 9% equals $112. It is readily recognized that the City of Port Clinton, with an already small union and non-union employee population, would likely increase its negotiating power if all employees were on the same plan. The value of having employees involved in the design of benefits and attending costs is also common at all levels of Ohio government, as well as elsewhere in the country. Health care committees are common and often do an excellent job of managing the high costs of health care insurance. Having employees involved in healthcare decision making increases their awareness of the cost of this valuable benefit.

## Recommendation

**Section 22.1 Premium**

A. **Effective April 1, 2012, bargaining unit members shall have the same health insurance, including surgical, dental, vision, and prescription drug coverage as that which is provided for all non-bargaining unit City employees (including all managerial employees). Each bargaining unit employee's maximum out of pocket expense, excluding premium payments for health insurance, including surgical, dental, vision, and drug prescriptions, shall be $150 for single coverage and $300 for family coverage,**

**with the City reimbursing employees for amount above this levels up to the current out-of-pocket maximums for single and family coverage. In addition, the monthly employee premium for all of the above listed benefits shall remain at nine percent (9%) capped for employees as follows: Single month premium: $60; and family monthly premium: $120. The City shall pay ninety-one percent (91%).**

**B. <u>Effective April 1, 2013</u>, bargaining unit members shall have the same health insurance, including surgical, dental, vision, and prescription drug coverage as that which is provided for all non-bargaining unit City employees (including all managerial employees). Each bargaining unit employee's maximum out of pocket expense, excluding premium payments for health insurance, including surgical, dental, vision, and drug prescriptions, shall be $200 for single coverage and $400 for family coverage, with the City reimbursing employees for amount above this levels up to the current out-of-pocket maximums for single and family coverage. In addition, the monthly employee premium for all of the above listed benefits shall be ten percent (10%). The City shall pay ninety percent (90%).**

**C. <u>Effective April 1, 2014</u>, bargaining unit members shall have the same health insurance, including surgical, dental, vision, and prescription drug coverage as that which is provided for all non-bargaining unit City employees (including all managerial employees). Each bargaining unit employee's maximum out of pocket expense, excluding premium payments for health insurance, including surgical, dental, vision, and drug prescriptions, shall be $250 for single coverage and $500 for family coverage, with the City reimbursing employees for amount above this levels up to the current out-of-pocket maximums for single and family coverage. In addition, the monthly employee premium for all of the above listed benefits shall remain at ten percent (10%). The City shall pay ninety percent (90%).**

**D. Within thirty (30) calendar days of the ratification of the Agreement, a health care committee (HCC) shall be formed with maximum of two (2) representatives from the Union, a maximum of two (2) representatives from any other city bargaining units, a maximum of two (2) non-union employees, and up to four (4) administrative personnel. The purpose of the HCC is to evaluate the current health care plan and to recommend changes in order to keep health care premium costs for both the employee and the Employer within reasonable limits for 2013 and 2014. Said health committee shall make timely recommendations to the City Council and Mayor, prior to the next benefit year and in time for consideration and implementation of said recommendations in part or in total.**

**<u>Section 22.2 Coverage</u>**

**A. For purposes of maximizing negotiating leverage for health care coverage, bargaining unit employees will be provided the same plan(s) as provided for all non-bargaining**

**unit employees, but in accordance with the caps and/or reimbursement rates provided for in A. and B. above.**

**<u>Section 22.3 Opt out Option.</u> Maintain Current language,**

**<u>Sections 22.4 and 22.5</u> Maintain Current Language.**

**Issues 7 Article 23, HOLIDAYS**

**<u>Current Language</u>** ***(see CBA)***

**Employer/Union/Discussion.** At the hearing the Union withdrew its opposition to the Employer's proposed changes, which reflect common practice in the private and public sector. At the hearing the Employer withdrew its proposed changes to Article 36.

**Recommendation**

**<u>Section 23.1 Holiday Pay</u>. Add to current language the following sentence:**

**Employees are not eligible for holiday pay if they call in sick their last scheduled day before the holiday and/or their first scheduled day after the holiday, unless such sick leave is approved at least twenty-four (24) hours prior to such scheduled work day, or they present a physician's statement.**

**<u>Section 23.5 Personal Days.</u>** Each full-time employee shall be entitled to three (3) days per year of their choice in addition to the holidays specified in Section 23.1 above. Employees may convert one (1) sick leave day to a personal day and such day does not count toward credit sick leave per Article 25.12. Employees must **request the use of personal leave at least twenty-four (24) hours in advance of the use of such personal leave when possible. However, to be eligible for holiday pay, per section 23.2 above, employees must receive prior approval for the use of personal leave at least twenty-four (24) hours in advance of their last scheduled day before the holiday and/or their first scheduled day after the holiday. However, in certain situations, the supervisor may waive the twenty-four (24) hour advanced notification.**

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 8 Article 26, SICK LEAVE CONVERSION**

**Current Language *(see CBA)***

**Employer's Position.** Maintain current language

**Union's Position.** The Union asserts that in light of current language, the current limitation of accrued minimum hours on sick leave under Section 26.1 appears to be redundant.

**Discussion.** The facts do not justify a change in this language at this time.

**Recommendation**

**Maintain Current Language**

**Issue 9 Article 33, UNIFORMS AND EQUIPMENT**

**Current Language *(see CBA)***

**Employer's Position.** Maintain current language.

**Union's Position.** The Union is seeking what it considers to be a modest increase in uniform allowance by $50 in Section 33.2 for clothing and footwear.

**Discussion.** According to the testimony provided by the Union, the allowance for footwear has not been updated for approximately nine (9) years. During the period inflation has been relatively modest, but has eroded some purchasing power and the Union's proposed increase is in line with even modest increases in inflation over almost a decade.

**Recommendation**

**<u>Section 33.2.</u>** The City will provide reimbursement to each employee for work clothing not provided by the City in the amount of **two hundred dollars ($200.00) per year.** Employees will be reimbursed this **two hundred dollars ($200.00)** allowance upon submission of receipts for the purchase of additional approved work clothing. Employees work footwear will be a reimbursable item under this allowance; however, if the City requires employees to wear ANSI or equivalent approved boots, the City will reimburse employees up to **one hundred and fifty dollars ($150.00)** per year.

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 10 Article 36, ASSIGNMENT OF OTHER EMPLOYEES TO BARGAINING UNIT WORK.**

**<u>Current Language</u>** ***(see CBA)***

**Employer's Position.** The Employer withdrew it proposal.

**Union's Position.** Maintain Current Language

**Recommendation**

**Maintain Current Language**

**Issue 11 Article 39, DURATION OF AGREEMENT**

**<u>Current Language</u>** ***(see CBA)***

**Employer's/Union's Position/Discussion.** Both parties are seeking a three (3) year agreement, however, the Employer proposes to begin the three (3) years upon ratification, and also proposes to delete the last sentence in 39.1, which provides for the contract to renew

automatically for one (1) year without written notice. The Union proposes current language except for the need to change dates for a three (3) year agreement. Additionally, the Union would include retroactivity of the Agreement to 9/1/11. There was no evidence introduced that justifies a departure from three (3) years as the length of the Agreement or to eliminate any long established language that has not proven to be unworkable. Moreover, the parties' collective bargaining history indicates that the current Agreement began the day after the previous Agreement had expired. There is no reason to change this bargaining history.

**Recommendation**

**Section 39.1** This Agreement represents the total and complete agreement on all matters subject to bargaining between the City and the Union and shall be effective **as of September 1, 2011** and shall remain in full force and effect until August 31, **2014.** This Agreement shall be renewed automatically on its termination date for another year in the form in which it has been written unless one of the parties gives written notice as provided herein.

**All other sections of this Article shall remain current language unless previously TA'd by the parties.**

**Issue 12 New Article ___, CALL-IN**

**Employer's Position.** The Employer argues that it would benefit by having an employee on call for twenty-four (24) hours, seven (7) days per week. The Employer claims the Union admitted such a position is needed and its proposed language represents those positions. The City claims that there are emergency situations (e.g. snow storms, waterline breaks, trees blocking the road) that require immediate attention and an on-call provision would help serve the welfare of the public in a timely fashion. The City contends that such a provision is commonly found in cities. (Ex. G.)

**Union's Position.** No language needed. The Union argued at the hearing that there may be FSLA problems with implementing such a change, and the City could not come up with many examples when this type of provision would have benefited the City. The Union also objects to the low rate of reimbursement ($1.50 per hour) being proposed by the City as being unrealistic in requesting that an employee restrict his/her life style for so little compensation.

**Discussion.** The comparable data provided by the City, and the potential benefit to the public justify the introduction of this procedure. However, like with any new procedure, there may be

a need in the future to make adjustments, once the parties have a period to evaluate its effectiveness and problem areas.

## Recommendation

**ARTICLE ____**
**CALL-IN**

**<u>Section .1.</u> Call-in payment is for an employee who has been recalled to duty at a time disconnected with the employee's normal workday or shift. Employees so recalled shall be compensated with a minimum of two (2) hours at time and one-half (1 ½) their current rate of pay. If more than two (2) hours are required to complete the work for which the employee was called in, such employee shall be compensated for the hours actually worked.**

**<u>Section .2.</u> The Employer shall have one (1) or more bargaining unit member(s) be on-call during non-working hours in order to facilitate the calling in of persons to work. The employee(s) designated to do so shall be required to carry a pager or telephone. The designated employee(s) shall keep the pager or phone with him/her at all times. The employee will remain in an area where he/she can be paged or phoned and where he/she is able to report for work within a reasonable response time.**

**<u>Section .3.</u>**

**A. An employee(s) designated to carry a pager shall do so on a weekly basis, beginning at the start of their shift on Monday and ending at the start of their shift the following Monday. Other weekly periods may be used if agreed to by the Employer and the Union.**

**B. Employees required to be on-call and carry a pager or phone, shall receive an additional compensation of $2.00 per hour for all compensable hours for the entire week they are required to be on-call. The compensation shall be payable with wages for the pay period in which the end of the week (as defined in this section) falls.**

**During the term of this Agreement the parties shall revisit the call-in procedure as needed in order to evaluate its function and utility and to make any mutually agreed upon changes.**

**TENTATIVE AGREEMENT**

During negotiations and during and following impasse proceedings, 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 2012 in Portage County, Ohio.

_____

Robert G. Stein, Fact finder