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**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**AFSCME OHIO COUNCIL 8, AFL-CIO, LOCAL 1032**

**AND**

**SUMMIT COUNTY ENGINEER**

**SERB CASE # 11-MED-11-1685 (Service and Maintenance Unit)**

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

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## INTRODUCTION

The parties to this matter are AFSCME Ohio Council 8, LOCAL 1032 (hereinafter "Union" or "Unit") and the Summit County Engineer's Office (hereinafter "Engineer", "Engineer's Office", or "Employer"). The Employer is located in northeast Ohio. The fact finder first attempted to resolve the issues through mediation, but that effort, while helping to educate the fact finder, did not produce any settlements. Although the fact finder has had considerable past success in resolving disputes through mediation, mediation is a voluntary process and if meaningful progress and mutual engagement cannot be sustained, the fact finder must proceed with his statutory responsibilities.

**General Economic Overview:** Very 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 the economy of a small European country located thousands of miles away (e.g. the unemployment in Spain as of the date of this report is over 24%). The economy in Ohio continues to show signs of improvement from a very severe national recession the recovery of which remains subject to the financial health of the United States and other countries, particularly those who are currently facing considerable debt in Europe. It remains to be seen if the recent resolution in Greece will hold, and concerns about Spain, Portugal, Ireland, and others in the European Union will continue to plague the financial markets and will pose a threat to economic recovery. But that is just one set of worries; others include an increasing national debt, a housing market that is slow to recover, and rising gasoline prices hovering around \$4.00 a gallon. Gasoline prices are also fueled by unrest in the Middle East and competition for oil from rapidly developing countries like China. At the end of 2011 substantial swings in the stock market on a weekly and sometimes daily basis were commonplace. For the first three (3) months of 2012 it appears the national economy has become somewhat more stable and the wild and frequent swings seem to have evened out since the beginning of 2012. Yet, what Americans have experienced from 2008 until the present has left a lasting impression about the uncertainty and fragility of the future. In the month of April, as reflected in the stock market, the economy is again demonstrating some volatility that was present in the last quarter of 2011. The national unemployment rate is currently 8.2%, which has helped to create shoots of optimism among people hopeful for better times. The facts indicate that in Ohio, where the unemployment is lower, things are getting better slowly and that Ohio is still plagued by a lack of sufficient jobs that pay a living wage. Several months ago what has been called the great recession was declared to be officially ended by many economists. 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. Regardless of how you view the financial position of Summit County, one thing appears very clear; prudence in financial decision making is required for an orderly recovery to take hold.

There are two issues at impasse: Article 2.3d and Article 9.5, which was added by the Employer at fact finding. On March 23, 2012, the parties reached a tentative agreement, which did not change Article 9.5, yet it was subsequently rejected by the bargaining unit on a very close vote. The other AFSCME bargaining unit in the Engineer's office, the clerical and technical unit, accepted the tentative agreement reached by the parties.

## **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.

**Current Language (see CBA)**

**Union's Position.** Maintain current language. The Union is concerned about Local 18 performing ice and snow control work that is one component of the bargaining work of Local 1032.

**Employer's Position.** The Employer re-proposes in fact finding what it proposed and the Union agreed to in contract negotiations. The added language of Section 2.3 D. is as follows:

***"Members of Local No. 18, Union of Operating Engineers may be used for the purpose of snow and ice control provided that qualified members of AFSCME Local 1032 are not on layoff status. Members of Local 18 will not be used for overtime purposes when qualified members of AFSCME Local 1032 are available. If Local 18 members are assigned a permanent snow plow route then members of Local 1032 will be given shift preference over members of Local 18."***

**Discussion.** Placing this dispute in proper perspective, it is noted by the facts that there are only two (2) members of Local 18 and both hold the classification of Heavy Equipment Operator. It is also clear the parties have had discussions over this issue since 2009 (See M.O.U.) The collective bargaining with Local 18 was recently negotiated and ratified on March 21, 2012, and it contains language that is similar to what the Employer proposes above. The facts further indicate that the number of employees in Local 18 unit has been declining and in the not too distant past stood at five (5) members. It is understandable why the Local would have some concerns about work jurisdiction; however, in this particular case the proposed language is sufficiently specific that it limits what work the two (2) Local 18 Heavy Equipment Operators can perform. It also protects Local 1032's rights to overtime for snow and ice control. Moreover, the testimony provided by the Employer similarly indicates that Local 1032 may also perform work traditionally performed by Local 18 members and that said rights are somewhat less limited in scope than what is stated in the proposed language of Section 2.3D. The bottom line is that the important work of the Engineer's Office must get done as efficiently as possible and anytime there is the potential or the reality of overlapping work by different classifications, it is critical that lines of work jurisdiction be specifically defined in workable and practical terms. This is what the Employer's proposed language reasonably achieves with minimal disruption to the integrity of the core work performed by Local 1032 and Local 18.

**Recommendation**

**The tentative agreement originally reached by the parties in March of 2012 is recommended. See Employer's Pre-hearing Statement for specific language.**

**Current Language (see CBA)**

**Employer's Position.** The Employer proposes to modify the language of Section 9.5 to include starting and ending times for three (3) shifts when utilized by the Employer. Moreover, the Employer proposes to eliminate other language in C. dealing with hours of work.

**Union's Position.** Maintain current language. The Union argues the Employer has considerable rights already outlined in the Agreement and there is no need to further expand those rights.

**Discussion.** While I understand the need of the Employer to control the scheduling of work, the Employer's proposed changes come too late in the context of these negotiations. The circumstances leading up to fact finding (i.e. normal trade-offs and compromises reached in what was a difficult negotiations) in which a complete tentative agreement was reached that did not contain this proposed change weighs heavily in favor of remaining true to the original tentative agreement reached in March of 2012. The same principle provides the basis for the recommendation to resolve Issue 1 above.

**Recommendation**

**Maintain the language agreed upon in the tentative agreement reached in March of 2012.**

## **TENTATIVE AGREEMENT**

During negotiations and during and following impasse proceedings, the parties reached tentative agreements on several issues. These tentative agreements, signed or unsigned (but mutually acknowledged by the parties as agreed upon and not at impasse), and any unchanged current language are part of the determinations/recommendations for a successor Collective Bargaining Agreement contained in this report.

The fact finder respectfully submits the above recommendations to the parties this \_\_\_\_\_ day of April 2012 in Portage County, Ohio.

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Robert G. Stein, Fact finder