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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN CASE NOS. 11-MED-12-1733

CHAMPAIGN COUNTY EMPLOYEES ASSOCIATION

and

THE CHAMPAIGN COUNTY ENGINEER

FACT FINDING REPORT

Submitted by John F. Lenehan
November 9, 2012

TO: **VIA E-MAIL**

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On July 31, 2012, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Champaign County Employees' Association and the Champaign County Engineer (Case No. 11-MED – 12 -1733). A Fact Finding Hearing was held at 10:00 A.M. on October 3, 2012 at the County Engineer's Facility, 428 Beech Street, Urbana, Ohio 43078. The Champaign County Employees' Association ("Association" or "Union") was represented by David W. McIntosh, Esquire, AFSCME, Ohio Council 8, and the Champaign County Engineer ("Employer" or "Management") was represented by Edward S. Kim, Downes Fishel Hass Kim, LLP. Also, appearing for the Union were: Todd Anderson, President; Brett Herrcen, Vice President; and, Darren McIntosh, Bargaining Committee Member. Also appearing for the Employer were: Stephen McCall, Chief Deputy Engineer and Fereidoun Shokouhi, County Engineer.

As required by SERB's rules, an unsuccessful effort was made by the Fact Finder to mediate the outstanding issues. At the conclusion of the hearing, the parties agreed that Post Hearing Briefs would be filed via email no later than October 29, 2012. Subsequently, at the request of the Fact Finder, the time for issuing the Fact Finding Report was extended November 9, 2012.

A. Description of the Bargaining Unit

The parties are the Champaign County Employee Association and the Champaign County Engineer. There is one (1) bargaining unit consisting of fourteen (14) employees; ten (10) in the classification of Highway Maintenance Worker and four (4) in the classification of Highway Maintenance Worker Assistant.

B. History of Bargaining

The parties had a Collective Bargaining Agreement ("CBA" or "Agreement") with an effective date of April 1, 2011 through March 31, 2012. The Employer and the Union

met on March 14, 2012, April 11, 2012, May 21, 2012, June 12, 2012 and August 16, 2012. As a result of these meetings no tentative agreement was signed by the parties. The parties have submitted eighteen (18) issues, involving twenty-six (26) articles of the agreement for resolution by the Fact Finder.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

1) Past collectively bargained agreements between the parties;
2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
4) Lawful authority of the public employer;
5) Stipulations of the parties; and,
6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

Issue 1

CHANGING THE TERM "UNION" TO "ASSOCIATION" IN THE FOLLOWING ARTICLES OF THE AGREEMENT (CBA)

ARTICLE 1 –INTENT AND PURPOSE

ARTICLE 6 –MANAGEMENT RIGHTS

ARTICLE 7- NO STRIKE/NO LOCKOUT

ARTICLE 15- SENIORITY

ARTICLE 17 –CORRECTIVE ACTION

ARTICLE 21- WORK RULES

ARTICLE 22 – WAIVER IN CASE OF EMERGENCY

ARTICLE 24 – LAYOFF AND RECALL

EMPLOYER'S POSITION

The Employer proposes a change to all articles of the CBA containing the word "Union". It proposes changing the reference to "Union" to "Association" in all articles of the Agreement, including the articles specifically listed above. The reason for this, states the employer, is due to the confusion that exists with the word "Union" and its assumed reference to AFSCME. The Employer claims that it is important to understand that AFSCME is not the Employee Organization and that AFSCME's only role is that of an outside representative for the Champaign County Engineer's Employees' Association. This change does not change the substantive effect of the Agreement and the Employer sees no harm in effectuating such change.

UNION'S POSITION

The Union's position is that there should be no change in the use of the term, "Union" and that all such references remain the same as the current agreement. It does not accept the Employer's reasoning and believes the Employer's position is frivolous and that the requested change is unnecessary and presumptuously offensive. This language, according to the Union has existed since the inception of the contract over fifteen (15) years ago and the Union does not wish to open this for an unnecessary and an unknown purpose.

FINDING AND OPINION

The Employer's position on this issue is not persuasive. It is creating confusion where none exists. Article 1 of the Collective Bargaining Agreement, which expired March 31, 2012, made the following statement in reference to the Champaign County Engineer's Employees' Association: "hereinafter referred to as the "Union". Apparently, no confusion existed at the

time the agreement was executed. Nor was there evidence of any confusion for the previous fourteen (14) years that an agreement had been in existence. For these reasons, the Employer's proposal should be denied and the contract language should remain the same as to all references to the term "Union".

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there should be no change in the use of the term "Union" in any article of the Collective Bargaining Agreement and that the language referencing "Union" should remain the same as that set forth in the CBA which expired April 1, 2012.

Issue 2

ARTICLE 2 - RECOGNITION

EMPLOYER'S POSITION

In addition to replacing all references to Union with Association in this article, the Employer proposes to change the provisions of Section 2.1 to exclude probationary employees from the bargaining unit. Under the provisions of Article 19, Section 19.1 of the CBA, all new employees are required to serve a probationary period of one hundred and eighty (180) days, which may be extended upon agreement of the parties. It is the Employer's position that since probationary employees do not have the same rights as non-probationary full-time employees that they not be recognized and included in the bargaining unit until such time as they have completed their probationary period.

UNION'S POSITION

The Union's position is that this article should remain unchanged. The additional change the Employer is attempting to impose of excluding probationary employees from the bargaining

unit would require a joint petition to SERB to alter the certified recognition article of the contract. This provision has been in place since the mid -1990's. Additionally, the Employer already has language that disallows probationary employees from grieving termination whilst on probation.

FINDING AND OPINION

The Union's position that there should be no change in the language of this article is more compelling. The Employer's proposal would change the definition of the bargaining unit which by law is within the exclusive jurisdiction of the State Employment Relations Board (SERB). While probationary employees do not have the right to grieve discipline during the probationary period, they do have rights and protections under the agreement. These would include pay rates, overtime pay, holiday pay, benefits, non-discrimination, and the defined end of the probationary period with the full protection of the agreement.

For the foregoing reasons, and in the absence of any evidence of an adverse impact on the Employer's operations, there should be no change in the provisions of this article.

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RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact finder that there be no change in the provisions of Article 2 – Recognition, of the CBA.

Issue 3

ARTICLE 3 – UNION ASSOCIATION SECURITY

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes two other changes to this Article. The first change proposed by the Employer is in

Section 3.3 providing that all deductions for union dues and fees be transmitted to the Champaign County Engineer's Association as opposed to AFSCME, Ohio Council 8. This position, according to the Employer is based upon the fact that AFSCME is not a party to the CBA and the Employer desires to refrain from transmitting payments/deductions to a non-party entity.

The second change the Employer proposed was to Section 3.5 of Article 3 of the CBA. The Employer proposed to set forth specific dates instead of references setting a period of thirty (30) to sixty (60) days prior to the expiration of the agreement. The parties have indicated they could agree to leave the current language in this section, but add in parenthesis the specific dates.

UNION'S POSITION

The Union proposed to add fair-share fee language to the contract in order to obligate all employees receiving contract coverage and benefits to pay their fair share. According to the Union approximately seventy-five per cent (75%) (9 of 14) of the employees in the bargaining unit are union members. Although the Union indicated the Employer opposes virtually everything union and does not wish for all employees to pay for services, guaranties, benefits and security endowed by the CBA, the Employer in both its pre-hearing statement and post hearing brief did not comment on the Union's proposal for a fair-share fee provision to be added to the CBA. Nor was there any opposing testimony offered at the hearing.

The Union did not give a specific response to the Employer's proposal on Section 3.3 except it did indicate agreement to leave the current language in Section 3.5 and add in parenthesis the specific dates.

FINDING AND OPINION

Based upon the CBA, the history of negotiations, the testimony at the Fact Finding Hearing and the relationship of the parties, it is clear that AFSCME is not a party to the CBA. However, the Employer's argument that it desires to refrain from transmitting payments/deductions to a non-party entity makes no sense. The Employer probably makes numerous payments/deductions to non-party entities in making direct deposits to various banks for payroll purposes and paying bills. The entities to which the payments are made are not, in many cases, parties to a contract with the Engineer's Office. The payments to these entities are

made pursuant to an employee's authorization and instructions for direct deposit, or the authorization of the contracting agency. The payments to AFSCME are made in accordance with instructions and/authorization from the Champaign County Engineer's Employees' Association. For this reason, and the absence of any evidence of a policy and consistent practice of not making payments or deductions to other non-party entities, the Employer's proposal to change Section 3.3 should be denied. Likewise, the Employer's alternative proposal at the Fact Finding Hearing should be denied for the same reason.

Although the Union indicated the Employer opposes virtually everything union and does not wish for all employees to pay for services, guaranties, benefits and security endowed by the CBA, the Employer in both its pre-hearing statement and post hearing brief did not comment on the Union's proposal for a fair-share fee provision to be added to the CBA. Nor was there any opposing testimony offered at the hearing. The Union's arguments and its duty of fair representation under Ohio's Collective Bargaining Law support the incorporation of a fair-share fee in this case.

Since the parties have indicated a willingness to agree on adding in parenthesis the specific dates for revocation of union membership dues deductions, such should be incorporated into Section 3.5 of the CBA.

RECOMMENDATION

Therefore the Fact Finder makes the following findings and recommendations.

1. There should be no change in the language of Section 3.3 of Article 3 of the CBA, which expired April 1, 2012.
2. The language of Section 3.5 of Article 3 of the CBA, which expired April 1, 2012, shall remain the same, except that the specific dates for revocation of Union membership dues deduction authorizations shall be added in parenthesis.
3. The language proposed by the Union for Authorization and Fair Share Fee in its proposals and exhibits submitted at the Fact Finding Hearing on October 3, 2012 (Tab #3) shall be incorporated into the CBA as Section 3.6 of Article 3, and made a part of this report.

Issue 4

ARTICLE 4 – PLEDGE AGAINST DISCRIMINATION AND COERCION

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes to delete Section 4.5 of Article 4 stating that "the Engineer reserves the right to establish bona fide occupational qualifications, which all employees and prospective employees must satisfy as a term or condition of employment." According to the Employer it is within management's rights and the provision is redundant.

UNION'S POSITION

Although the Union expressed no specific opposition to the Employer's proposal to delete Section 4.5 of Article 4, it proposed that there should be no change in this Article of the Contract.

FINDING AND OPINION

The Employer's position on the deletion of Section 4.5 of Article 4 is convincing. In the absence of any specific opposition from the Union, the language should be deleted.

RECOMMENDATION

Therefore it is the finding and recommendation of the Fact Finder that Section 4.5 of Article 4 be deleted from the CBA.

Issue 5

ARTICLE 5 – UNION ASSOCIATION REPRESENTATION

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes a change in Section 5.3 for the purpose of clarifying that the Union shall have the right to review and comment on policies and procedures as it pertains to wages, benefits and conditions of employment for the bargaining unit as opposed to a general statement suggesting that the Union has the right to review and comment on all policies and procedures implemented by the Employer. Based upon discussions at the hearing, it was the Employer's understanding that the parties were agreeable to the addition of language that provides, "or issues that affect this bargaining unit directly or indirectly."

UNION'S POSITION

The Union's position is that this article remains unchanged. It believes that the change to Section 5.3 proffered by the Employer is unnecessary as the current language only allows for Union comment on policy changes not mutual agreement prior to implementation.

FINDING AND OPINION

The Employer should prevail on this issue. The language of the first sentence of Section 5.3 is overly broad. A literal interpretation of the current language could result in the Employer not being able to implement policies, except in emergencies, concerning the public interest that are unrelated to the bargaining unit. Such a delegation of authority is probably not legally permissible, and thus, was not intended by the parties. The Employer's proposal brings clarity and rationality to this provision.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Section 5.3 of Article 5 should read as follows:

> Section 5.3 The Union Bargaining Committee shall have the right to review and comment on all Department policies, procedures or issues that affect the bargaining unit directly or indirectly prior to their implementation, except in an emergency. The committee may review and comment on any existing policies and any policies and procedures adopted without prior notice to the bargaining committee.

Issue 6

ARTICLE 8 – GRIEVANCE PROCEDURE

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes two changes to this article. First, it proposes a change in Section 8.5 Step 3 by adding that the "Association must provide its notice to mediate in writing to the Employer within five (5) days after the Step 2 responses from the Employer". According to the Employer there, currently, no deadline as to when a grievance may be submitted to mediation and its proposed change would allow the parties to continue to move the process along in a timely manner.

The second change proposed by the Employer is to Section 8.11 by deleting the last part of the sentence in the paragraph wherein it states that "unless the nature of the grievance is such it affects an entire class of classification of employees." The Employer claims that the purpose of this change is to require all employees who wish to be a part of a "group" grievance to sign such grievance.

UNION'S POSITION

The Union's position is that the article remains the same as the current agreement. It does not wish to change its name in the contract to "Association". As to the Employer's attempt to impose new time limits on the grievance procedure, the Union maintains such is unnecessary and unwarranted. The current language has been satisfactory and this language has not been an issue under the current agreement.

FINDING AND OPINION

The Employer's proposal as to the change to Section 8.5, Step 3 makes no sense. Step 3, Mediation, is a voluntary step, unlike the other steps in the Grievance Procedure. Unless both parties agree, there is no mediation. The twenty-one day time limit the Union has to submit a grievance to arbitration after Step 2 is running, unless the parties agree to use mediation. If the Union proposes that a grievance be mediated and the Employer does not agree to do so, there is no mediation and the Union either submits the grievance to arbitration within twenty-one (21) days or it forfeits the grievance. The arbitration process is stopped only if the parties agree to mediate.

Also, the Employer's proposal to restrict the filing of a group grievance under Section 8.11 should be denied. There has been no evidence presented by the Employer that there has been a problem with this section of the agreement to justify restricting the Union or group of employees in filing a grievance on behalf of a class of employees.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change to the provisions of Article 8 of the CBA, which expired April 1, 2012.

Issue 7

ARTICLE 9 – HOURS OF WORK AND OVERTIME

EMPLOYER'S POSITION

The Employer has proposed two changes in Section 9.1. The first change involves overtime payments to be made for all hours actually worked in excess of forty (40) hours a week. The second change proposes that time spent on paid or unpaid leave shall not count as hours worked for purposes of overtime. According to the Employer this is a practice that is becoming more common throughout the public sector.

UNION'S POSITION

The Union proposes that the current work hours of 7:30 -4:30 be memorialized in the CBA. It rejects the Employer's proposal to change the overtime to only hours worked over forty (40) in a week.

FINDING AND OPINION

Both parties' proposals need to be rejected. Neither party has produced evidence to support their positions. The employer has failed to establish that overtime costs are a problem and that the method of payment should be changed. The Union has failed to produce any clear and convincing evidence to justify restricting the Employer's right to establish the work day.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change in the provisions of Article 9 of the CBA, which expired April 1, 2012.

Issue 8

ARTICLE 10 – WAGES

EMPLOYER'S POSITION

The Employer proposes a wage freeze through March 31, 2015 for the reasons presented at the hearing. The Employer presented documents and data showing declining revenues,

increasing expenditures and an unpredictable financial future for Champaign County and the Engineer's Office. According to the statements by Employer at the hearing, even though there is a need to exercise fiscal responsibility, it was not pleading poverty or the inability to pay a wage increase.

Instead it argues that the Highway Maintenance Workers are the highest paid employees in jurisdictions with a population between 25, 000 to 75,000 people. It is clearly evident that Highway Maintenance Workers within Champaign County Engineer's Office are compensated very well and the Employer's proposal of a wage freeze will not put them behind their counterparts and instead will keep them ahead of their respective counterparts. The Union's argument in comparing themselves to Greene County is simply unreasonable. Also, it is important to note that Employees in Champaign County have enjoyed generous wage increases over the past years. In 2008, 2009 and 2010, the employees received a 3.25% increase each year.

The Employer also proposes a change in Section 10.4 by deleting that "all employees required to wear steel toed shoes shall receive one hundred dollars ($100) per year as a shoe allowance" and inserting that "required safety gear shall be provided by the Employer."

UNION'S POSITION

The Union proposed a wage increase of 3% effective retroactively to April 1, 2012, with wage re-openers in years two and three of the proposed agreement. It is seeking the 3% wage increase to help offset the 10% rise in insurance premiums. Also, it has foregone wage increases since 2010, and many of the less-senior employees are under paid. Members of management have received wage increases and this Employer has not substantiated an inability to pay.

FINDING AND OPINION

Based upon the Pre-Hearing Statements, the evidence submitted at the hearing and the Post Hearing Briefs, the Fact Finder makes the following findings:

1. The Employer has the ability to pay a reasonable wage increase.
2. The Highway Maintenance Workers are highly compensated and their wages are competitive.
3. The Highway Maintenance Worker Assistants are not highly compensated.
4. Wage increases have been given to management employees in the Engineer's Office effective January 1, 2012 of 1.5% to 2% (exclusive of promotion).

5. The Employer's proposal for a 100% increase in the portion the health insurance premium that an employee in this bargaining would pay would have a profound impact on the employee's compensation.
6. The parties can agree to the change in Section 10.4 as proposed by the Employer.

The Employer's proposal for a wage freeze might be persuasive if it only applied to the Highway Maintenance Worker Classification for a year and the percentage of the health insurance premium paid by the employees was not increased. The wage rates for the Highway Worker Assistants should be restructured through future negotiations.

Considering the foregoing findings, it is the opinion of the Fact Finder that wage rates should be increased by 3% effective January 1, 2013 and that there should be a wage re-opener for the years April 1, 2013 through March 31, 2014 and April 1, 2014 through March 31, 2005. This should not impose an undue burden on the Employer considering the reduction in health insurance premiums that the employer will be paying.

Also, it is the opinion of the Fact Finder that the Employer's proposal on Section 10.04 should be adopted.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that effective January 1, 2013, the hourly rate for all bargaining unit employees shall be increased by 3% and that there shall be a wage re-opener for the years April 1, 2013 through March 31, 2014, and April 1, 2014 through March 31, 2015. In addition, it is the finding and recommendation of the Fact Finder that Section 10.4 should be changed to read as follows:

> Section 10.4 Employees assigned to the asphalt distributor on a seasonal basis shall be provided with eleven (11) sets of uniforms. Employees who are assigned to work on the tar truck shall receive a $50.00 shoe allowance per year. Required safety gear shall be provided by the Employer.

Issue 9

ARTICLE 11 – INSURANCE

EMPLOYER'S POSITION

The Employer proposes a change to Section 11.1 of Article 11 by providing that employees and the Employer shall be required to pay insurance premiums the same as other county employees under the Commissioners' jurisdiction. In addition, the Employer proposes to delete Section 11.1 A through D of the CBA. This change would be effective April 1, 2012.

It is the Employer's position that a consistent and uniform practice throughout the County with regards to health insurance is of paramount importance. Different terms and conditions for different groups within a County only increases the chance for increase administrative cost and promotes an inequity in the utilization of such policies within the County.

As to the retroactive health insurance premiums, it is important to note that all other non-bargaining unit employees in the Champaign County Engineer's Office have been making the higher premium payments since January 1, 2012.

UNION'S POSITION

The Union will agree to lower the Employer premium contribution to match the un-unionized county employees who currently pay 20%. However, the Union wishes to have a "me-too" clause granting the same insurance premium contribution that the FOP Sheriff contract guaranties but not lower than 80%. The Union states that this agreement is a major concession in an effort to reach agreement on this contract. In addition, the Union argues that the Employer's wishing to extinguish the Union's ability to bargain for health insurance is not well taken. The Union will not accept undefined premium coverage. Finally, the Union argues that the Employer's insistence on retroactive health care premiums paid by the employees is unacceptable and simply not realistic. The employees cannot afford to pay 10% premiums back to the April 1, 2012.

FINDING AND OPINION

The Employer's proposal for the employees paying retroactively the increase in health insurance premiums could be considered draconian, confiscatory, insulting, and possibly evidence, along with other factors, of bad faith bargaining. However, for sure, such is not the case here. Since the parties are in basic agreement as to the percentage of the premium to be paid by the employees, a reasonable date for implementation would be January 1, 2013, at the same time as the recommended effective date for the pay increase. It is the opinion of the Fact Finder that the Union's proposed language on Article 11 should be adopted, as set forth in its note book of exhibits submitted into evidence at the hearing (Tab 3 –Article 11).

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that effective January 1, 2013 the rates as set forth in the Union's proposed language on Article 11, contained in its Note Book of Exhibits under Tab 3, should be adopted, made part of the CBA and incorporated herein as part of this report.

Issue 10

ARTICLE 13 – LEAVES

EMPLOYER'S POSITION

The Employer proposed several changes in Article 13. They are:

1. that sick leave be earned at the rate of 3.1 hours for each eighty hours of service;
2. that sick leave be compensated as follows: 100% pay for 1 to 40 hours use of sick leave per year; and, 60% pay for more than 40 hours use of sick leave per year;
3. that employees using more than eight hours sick leave shall be required to submit a doctor's slip;
4. that Section 13.3 be deleted and in its place put the following language: "Employees are entitled to military leave in accordance with applicable law";
5. that the last three sentences of Section 13.5 be deleted since the Employer already has the authority granted by those provisions; and,
6. that Section 13.6 be deleted in its entirety.

UNION'S POSITION

The Union has stated that it can agree to the deletion of Section 13.3 and replacing it with the Employer's proposed language. However, the Union does not agree to changes effecting sick leave accrual or usage, medical notice changes or any other changes put forth by the Employer.

FINDING AND OPINION

In the absence of evidence that sick leave and personal leave have presented a problem for the Employer and/or created a financial burden, it is opinion of the Fact Finder that the changes proposed by the Employer cannot be justified. Since the parties agree on the deletion of Section 13.3 relating to military leave and replacing it with the language set forth in the following recommendation, such should be adopted.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that be no change in Article 13 of the CBA, which expired April 1, 2012, except that Section 13.3 shall be deleted in its entirety and replaced with the following provision: " Employees are entitled to military leave in accordance with applicable law."

Issue 11

ARTICLE 14 – VACATION

EMPLOYER'S POSITION

The Employer proposed the following changes to Article 14.

1. Section 14.5 – Delete the last sentence in this section that provides: The Engineer shall have the right to deny vacation requests in excess of two (2) bargaining unit

employees at the same time in order to maintain effective and efficient operating levels.

2. Section 14.6 and 14.8 – limit vacation accrual to one (1) year instead of three (3) years.
3. Section 14.10 (new) Employee shall be prohibited from making more than two vacation requests by the same bargaining unit employee for days following or proceeding [sic] a holiday in a calendar year
4. Section 14.11 (new) Employees are not to take leave to extend the date for retirement or resignation.

The Employer is seeking more flexibility in controlling vacation leave in order to effectively and efficiently provide services to the public.

UNION'S POSITION

The Union maintains that the additional encumbrances the Employer wishes to impose of the bargaining unit employees are unnecessary and should be rejected. Also, it proposes the following be added as Section 14.10.

> All vacation requests shall not be unreasonably denied. All vacation requests shall be answered by the Employer within 1 (one) business day. If the vacation request is not answered within the aforementioned time period the vacation request shall be deemed approved by the Employer. Vacation requests may be submitted to the Employer no longer than twelve (12) months in advance. Up to seven (5) [sic] employees at one time shall be granted vacation to attend the Champaign County Fair.

FINDING AND OPINION

There are legitimate conflicting interests here. The Employer must have adequate staffing in order to provide public services to the community, and the bargaining unit employees should have the right to use the vacation they have accumulated without any loss of vacation time or pay. There is insufficient knowledge and information submitted in the record upon which a knowledgeable, reasonable and fair recommendation can be made. Based upon the proposals, it is obvious that there have been problems with the use of vacation leave. However, there is no evidence as to the nature and extent of any specific problem, or its cause. To recommend the adoption of any proposal from either side could do more harm than good in solving the problems. Thus, it is suggested that the parties in good faith make every effort to

agree upon a solution to the use of vacation leave that will take into consideration the interests of both parties. In addition, it is the Fact Finder's opinion that should this matter be unresolved that it be considered by the parties at the re-opener for the second year of the contract, i.e., April 1, 2013 through March 31 2014.

In view of the foregoing, it is the opinion of the Fact Finder that no change or addition be made to Article 14, except for the new Section 14.11 proposed by the Employer, to which the parties have indicated they could agree. Also, if the parties have not resolve the use of vacation leave, it can be considered at the re-opener in 2013.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change in Article 14 of the CBA, which expired April 1, 2012, except a new Section 14.11 shall be added, which reads as follows: "Employees are not entitled to take leave to extend the date for retirement or resignation."

Issue 12

ARTICLE 18 – HEALTH AND SAFETY

EMPLOYER POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes a change to Section 18.2 stating that Labor Management Committee shall meet "quarterly" as opposed to every two months.

UNION POSITION

The Union is opposed to the reference change; however, it has indicated that it can accept the Employer's proposal.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change in Article 18, except the last sentence of Section 18.2 should read as follows: " The committee shall meet quarterly or upon request of either party at a mutually agreed –upon time. "

Issue 13

ARTICLE 19 – PROBATIONARY PERIOD

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposes changes to Article 19. The first change would be consistent with that proposed by the Employer to Section 2.1, i.e., to exclude probationary employees from the bargaining unit until they have completed their probationary period. The second change involved Section 19.3 requiring any leave used during the probationary period in excess of eight (8) hours shall extend the probationary period by and equivalent period.

UNION'S POSITION

The Union opposes the reference change; however, it has indicated that it can accept the Employer's proposal.

FINDING AND OPINION

Based upon the previous recommendation regarding probationary employees remaining in the bargaining unit, it is the opinion of the Fact Finder that there should be no change in Article 19, except as proposed by the Employer in Section 19.3.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change in Article 19 of the CBA, which expired April 1, 2012, except Section 19.3 should read

as follows: "For purposes of this article, any leave used during the probationary period in excess of eight (8) hours shall extend the probationary period by an equivalent period."

Issue 14

ARTICLE 20 – LABOR/MANAGEMENT MEETINGS

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposed changes to Section 20.2 by deleting Section 20.2(E).

UNION'S POSITION

The Union opposes the reference change; however, it has indicated that it can accept the Employers proposed changes.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that there be no change in Article 20 of the CBA, which expired April 1, 2012, except that Section 20.2 (E) providing for consideration and discussion of health and safety matters relating to employees shall be deleted.

Issue 15

ARTICLE 24 – LAYOFF AND RECALL

UNION'S POSITION

The Union proposes to add language in Section 24.2 that would require the Assistant Highway Maintenance Workers be laid-off before any other classification of worker. According to the Union these are the most junior and less skilled than those who have promoted past assistant. Also, the Union rejects deleting the word Union.

EMPLOYER'S POSITION

The Employer has not raised any opposition to this proposal in either its pre-hearing statement or post hearing brief.

FINDING AND OPINION

The Union's proposal seems redundant. Section 24.3 grants bumping rights to more senior employees who have the skill and can perform in the lower classification. However, further examination indicates that this proposal would not only protect more senior employees, but also the jobs in the higher paying classification. The result is that the more senior employee in the higher classification would not bump into a lower paying job.

In the absence of any strong opposition from the Employer, and considering the nature of the employer's operation, the Fact Finder finds that this proposal is reasonable, and it should be adopted.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the Union's proposal be adopted. Article 24, Section 24.2 should read as follows:

Section 24.2 Order of Layoff Whenever a reduction in the work force occurs, bargaining unit member shall be laid off in the inverse order of seniority. Employees in the classification of Assistant Highway Maintenance Worker shall be laid off before any other employee in any other classification within the bargaining unit is laid off.

Issue 16

ARTICLE 25 – BULLETIN BOARDS

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association", the Employer proposed a change in Section 25.2 by providing new language stating that "postings shall be posted no longer than two weeks, except for postings relating to safety and health issues."

UNION'S POSITION

The Union opposes the reference change: however it has indicated it could agree to the Employer's proposal provided that a copy of the CBA and grievance forms was added to the exceptions proposed by the Employer.

FINDING AND OPINION The requests of both parties appear to be reasonable. It is the Fact Finder's opinion that both can be accommodated.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that be no change in Article 25 of the CBA, which expired April 1, 2012, except that the following provision shall be added: "Postings shall be posted no longer than two (2) weeks except for a copy of the CBA, blank grievance forms and postings relating to safety and health."

Issue 17

ARTICLE NEW ARTICLE – AFSCME CARE PLAN

UNION'S POSITION

The Union proposed the adoption of the AFSCME Care Plan, which would require the Employer to contribute thirty-four dollars per month for Dental Level II coverage and six dollars and seventy-five cents for vision. The payment would be due by the twentieth of the month.

EMPLOYER'S POSITION

The Employer is opposed to any proposal that would increase its costs.

FINDING AND OPINION

The Union's proposal must be rejected. First, there was no specific information provided at the hearing regarding the plan. Second, this type of plan would ultimately require approval from the County Commissioners. Third, there was no comparison of benefits with current plans in the County. For these reasons, the Fact Finder is of the opinion that there is insufficient knowledge and information upon which to make recommendation to adopt the plan.

RECOMMENDATION AND FINDING

Therefore, it is the finding and recommendation of the Fact Finder that the Union's proposal for the adoption of the AFSCME Care Plan be rejected.

Issue 18

ARTICLE 26 – DURATION

EMPLOYER'S POSITION

In addition to changing the reference to "Union" to "Association," the Employer proposes that the successor agreement be effective as of the date of execution and remain in force until March 31, 2015. The Employer also proposes to set forth specific dates for notice of amending or terminating the CBA instead of references setting for a period of time prior to the expiration date.

UNION'S POSITION

The Union seeks a three year contract from April 1, 2012 to March 31, 2015. It does not wish to put specific dates into the contract for notification purposes as proposed by the Employer, but it is willing to compromise by putting in specific dates in addition to the current language.

FINDING AND OPINION

It is the opinion of the Fact Finder that the CBA be effective upon execution and terminate March 31, 2015 and that specific dates be added as proposed by the Union, as an addition. There should be no other changes to Article 26.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Section 26.1 of Article 26 should read as follows:

> Section 26.1 Unless otherwise provided for herein, the provisions of this Agreement shall be effective as of the date of execution of this agreement and shall remain in full force and effect until March 31, 2015 unless otherwise terminated as provided herein.
>
> If either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to the expiration date (December 2, 2014), nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice may be hand delivered. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

(N.B. the remaining language of Article shall remain the same as in the CBA, which expired April 1, 2012)

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted October 3, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan____
John F. Lenehan
Fact Finder

November 9, 201

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PROOF OF SERVICE

This fact-finding report was electronically transmitted this 9th of November, 2012, to the persons named below.

TO: **VIA E-MAIL**

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