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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding Between:	)	
COSHOCTON COUNTY ENGINEER'S OFFICE	)	**Case No. 12-MED-04-0517**
-and-	)	
	)	**Jonathan I. Klein, Fact-Finder**
AFSCME, OHIO COUNCIL 8, LOCAL 343	)	

FACT-FINDING REPORT and RECOMMENDATIONS

Appearances

For the Union:

Shelby L. Woodall, Staff Representative
Mark Murphy, AFSCME Budget Analyst
Scott Kestler, President Local 343
Justin Lapp, Union Representative
Cliff McPeak, Union Representative

For the Employer:

Marc Fishel, Esq.
Fred Wachtel, County Engineer
Andrew Jones, Deputy Cty. Engineer

Date of Issuance: December 13, 2012

I. PROCEDURAL BACKGROUND

This matter came on for hearing on November 26, 2012, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14, and Ohio Administrative Code Section 4117-9-05, on September 26, 2012. The hearing was conducted between the Coshocton County Engineer's Office ("Employer"), and the American Federation of State, County and Municipal Employees (AFSCME), Ohio Council 8, Local 343 ("Union"), at the Richard Downing Airport located at 4569 Airport Road, Coshocton, Ohio 43812. The Union is the sole and exclusive bargaining representative of all employees in the Coshocton County Engineer's Office occupying the positions of Highway Maintenance Worker; Mechanic and Head Mechanic. (Union Position Statement, Tab 1). The bargaining unit is comprised of approximately 17 full-time employees. (Union Position Statement, Tab 1; Employer's Fact-Finding Brief, 1).

As of the fact-finding hearing, the following issues remained open and are properly before the fact-finder for resolution:

1. Article 2 - Recognition
2. Article 6 - Grievance Procedure
3. Article 9 - Hours of Work/Overtime
4. Article 13 - Layoff/Recall Procedure
5. Article 19- Health and Safety
6. Article 23 - Vacation
7. Article 31 - Health Insurance
8. Article 34 - Wages
9. Article 35 - Commercial Driver's License (CDL)
10. Article 43 - Duration of Agreement
11. New Article - One-Time Lump Sum Payment

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations, and any provision of the current collective bargaining agreement not otherwise modified during negotiations and the fact-finding process. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

> (1) Past collectively bargained agreements, if any, between the parties;
>
> (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
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> (3) The interest 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) Any stipulations of the parties;

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introduction

The record establishes that in 2011 the population of Coshocton County was approximately 36,955 residents according to the United States Census Bureau. (Union Position Statement, Tab 9). Coshocton County comprises 563.91 square miles, and the Employer indicated that there are approximately 350 miles of paved roads and 60 to 70 miles of gravel roads within the County. (Union Position Statement, Tab 9). According to the Employer, it repaves approximately 28 miles of road per year, and it will take approximately eight to ten years to repave all of the roads in Coshocton County.

The most recent collective bargaining agreement between the parties expired on August 31, 2012. Since that time, the parties have engaged in bargaining concerning the provisions of a new contract. Although the parties reached a tentative agreement on September 12, 2012, the bargaining unit members voted against the proposed contractual provisions. The parties remained at impasse regarding the abovementioned issues.

At hearing, both parties presented argument and documentary evidence concerning the financial condition of the Employer and its ability to pay proposed wage rate increases during the term of the new contract. Evidence was also introduced regarding various county engineers which the Employer considered to be suitable comparables. Based upon the record presented in this case, the fact-finder determines those county engineers in the following counties shall be utilized as comparables: Guernsey; Holmes; Knox; Licking; Muskingum; and Tuscarawas. (Employer's Exhibit Book, Tab 4). The arbitrator notes that the Union neither objected to nor offered any evidence in contradiction to the Employer's list of comparable jurisdictions.

Issue 1: Article 2 - Recognition

Position of the Union

The Employer currently assigns custodial duties to a bargaining unit employee although he is classified as a highway maintenance worker. According to the Union, he is assigned custodial duties such as grounds keeping, cleaning and loading salt trucks because he can no longer perform outside highway maintenance work. The employee has been performing these duties for more than 10 years, and ". . . this work should remain within the bargaining unit as these duties are being performed by a bargaining unit member." (Union Position Statement, at 2). At the hearing, the Union reiterated its position that it "wanted the work to stay within the bargaining unit."

Position of the Employer

The Employer points out that the custodial assignment is a "person specific position because the employee is not capable of performing outside maintenance work." Furthermore, this matter is a moot point because the employee in question is retiring at the end of the year. Moreover, the Employer maintains that "nobody will be put in this position even if it is awarded [by the fact-finder]." Instead, the work will simply be divided and assigned to other bargaining unit employees.

The Employer also proposes the elimination of some non-bargaining unit positions to reflect the current composition of its workforce. The Employer further proposes to add the non-bargaining unit position of administrative assistant.

Final Recommendation

The fact-finder recommends that the classification of custodian should not be added to Section 2.2 of the collective bargaining agreement. The Union has presented insufficient evidence that it is necessary to add such a classification to the contract. The fact-finder notes that the employee currently performing custodial duties will retire at the end of this year, and the Employer expressly stated that the responsibility for performing his assignment will be distributed among current bargaining unit members, rather than placing a specific individual in that position.

At the hearing, the parties agreed upon the elimination of various employee classifications specifically excluded from the bargaining unit as set forth in Section 2.3 of the collective bargaining agreement, and the parties agreed to add the positions of Administrative Assistant, Manager of Operations and Superintendent to the list of employees excluded from the bargaining unit. Accordingly, Section 2.3 of the collective bargaining shall provide as follows:

> Excluded from the bargaining unit are all confidential employees, management-level employees, professional employees and supervisors as defined in 4117 O.R.C. including:
>
> County Engineer
> Deputy County Engineer
> Administrative Assistant
> Construction Supervisor
> Manager of Operations
> Superintendent

Issue 2: Article 6 - Grievance Procedure

Position of the Union

The Union has proposed adding language to Section 6.4 of the collective bargaining agreement which would require hearings at both Steps 2 and 3 of the grievance procedure. The current language is "one-sided" and the Employer has the discretion whether or not to hear a grievance at Step 2. Furthermore, "[r]equiring a hearing at [S]tep 3, and not simply by request only, also helps to facilitate a discussion between the parties and potential resolution of the grievance." (Union Position Statement, at 7). The Union reiterated its position at the hearing that

the proposed language is intended to facilitate the resolution of grievances. However, it acknowledged that there have been no procedural problems with the current grievance process.

The Union has also proposed adding language to Step 3 of the grievance procedure which would require the Employer to provide both the Union and the grievant with am answer to the grievance. It points out that the current contract provides that only the grievant is issued a Step 3 decision.

Position of the Employer

At the hearing, the Employer agreed to the Union's proposal that the word "Employer" contained in the first paragraph of Step 3 of the grievance procedure should be changed to "Engineer." The Employer also agreed that it would provide the local Union representative with a copy of the Step 3 grievance decision as proposed by the Union. However, the Employer does not agree with the Union's other proposals regarding the provisions contained in Article 6 of the collective bargaining agreement. According to the Employer, "there have been no problems to warrant the added changes from a procedural standpoint." It notes that this is a "mature contract" and the changes are not needed.

Final Recommendation

It is the fact-finder's recommendation that Article 6 of the new contract should contain the changes discussed above which were agreed upon by the parties at the hearing. Specifically, "Engineer" should replace "Employer" in the first paragraph of the Step 3 provision contained in

Section 6.4, and both the grievant and the Union shall each receive the Employer's Step 3 decision. However, the fact-finder recommends that the Union's proposed changes to Steps 2 and 3 of the grievance procedure as set forth in Section 6.4 concerning the requirement of meetings at those Steps to discuss the grievance should not be incorporated into the new contract. The fact-finder determines that the Union presented insufficient evidence to warrant the addition of such mandatory language. There was no showing by the Union that there have been any procedural issues regarding the processing of grievances such that its proposal is necessary to effect a prompt resolution of those matters.

Issue 3: Article 9 - Hours of Work/Overtime

Position of the Union

The Union proposes to increase the amount of compensatory time that bargaining unit members may accrue from 120 hours to 160 hours as set forth in Section 9.4 of the collective bargaining agreement. It notes that some bargaining unit employees work more overtime than others.

The Union has also proposed additional language in Section 9.5 of the contract ". . . to ensure that employees that the employer attempts to contact and that are not available, and those that refuse overtime will not be subject to discipline when they refuse overtime, or when the employer attempts to contact an employee and no contact is made with the employee." (Union Position Statement, at 9). The Union points out that some bargaining unit employees prefer to

work little or no overtime, and it expressed concerns at the hearing that the Employer would discipline those individuals who could not make calls. The Union notes that unlike officers employed by the Coshocton County Sheriff, bargaining unit members are not paid to be on call.

The Union also seeks to increase the minimum time paid to bargaining unit members who are called back to work by the Employer after their scheduled shifts have ended. Currently, bargaining unit members are guaranteed a minimum of three hours under such circumstances. The Union proposes that Section 9.6 of the collective bargaining agreement should be modified to provide as follows: "An employee called back to work at a time not contiguous with his shift such that additional travel is necessitated shall be guaranteed a minimum of five (5) hours pay or work at the appropriate rate."

The Union expressed its disagreement at the hearing regarding the Employer's proposal to modify the manner in which overtime is calculated. The Union asserts that the current language in Section 9.3 should be maintained as there have been "no major problems with this." The Union also claims that its proposal concerning Section 9.5 does not constitute a violation of the negotiation ground rules as argued by the Employer. According to the Union, it is simply a "counter proposal to what they [the Employer] are throwing out to the employees."

Position of the Employer

The Employer proposes to modify the manner in which overtime is calculated in Section 9.3 of the collective bargaining agreement. Currently, bargaining unit employees receive

overtime whenever they are in a pay status in excess of 40 hours during a work week. "Under the Employer's proposal, time spent in paid sick leave, vacation leave, personal leave and compensatory time will not count as hours worked for purposes of overtime." (Employer's Position Statement, at 9). At the hearing, the Employer noted that its proposal regarding this matter is consistent with provisions contained in the Fair Labor Standards Act.

The Employer also proposes to modify the call in pay language contained in Section 9.6 of the collective bargaining agreement. Specifically, bargaining unit members would be paid only for the actual time worked if they are called back in by the Employer. The Employer maintains that there should be no minimum guaranteed hours.

The Employer opposes the Union's proposal to increase compensatory time from 120 hours to 160 hours. According to the Employer, it prefers a "pay as we go" approach. It also indicated that scheduling would become more difficult if compensatory time is increased as proposed by the Union. At the hearing, the Employer argued that the Union's proposed language in Section 9.5 of the contract is a "brand new proposal in violation of Paragraph 10 of the Ground Rules. (Employer Ex. 12). Under the ground rules for the negotiation process, no new proposals are permitted after the third meeting. The Employer maintains that the subject matter of this proposal was never discussed by the parties during the negotiations. Furthermore, the Employer opposes the Union's proposal on the basis that it "needs the maximum ability to call in employees because the department has gotten smaller over the years." The Employer is not

willing to relinquish this management right, and no change to the current language contained in Section 9.5 is warranted under the circumstances.

Final Recommendation

The fact-finder recommends that there should be no change to the language contained in Sections 9.4, 9.5 and 9.6 of the collective bargaining agreement. The Union presented insufficient evidence which would warrant an increase in the amount of compensatory time currently afforded bargaining unit employees under Section 9.4 of the contract. Additionally, in support of its proposed Section 9.5 language, the Union relied on mere speculation and the "rumor mill" that the Employer would discipline bargaining unit employees who failed to respond to calls for overtime work. Furthermore, notwithstanding the fact that the Union's proposal regarding this matter may constitute a violation of the parties' negotiation ground rules, no evidence was presented by the Union that the Employer has ever initiated disciplinary action under such circumstances. As it concerns Section 9.6 of the contract, the fact-finder determines that neither party presented sufficient evidence to warrant a change in the number of guaranteed hours of pay or work afforded a bargaining unit employee who is called back to work at a time not contiguous with his shift.

The fact-finder further recommends that the Employer's proposed modification to Section 9.3 should be incorporated in the new collective bargaining agreement. Therefore, Section 9.3 should provide as follows:

> When an employee is required by the Employer to actually work more than forty (40) hours in a calendar week, he shall be paid overtime pay for all time worked in excess of the forty (40) hours. Time spent on vacation leave, sick leave, personal leave, compensatory time or holidays shall not count for purposes of computing overtime. Overtime pay shall be paid at the rate of one and one-half (1 ½) times the employee's regular hourly rate of pay. Overtime may only be worked upon express authorization of the supervisor on duty.

In support of this recommendation, the fact-finder notes that such language is consistent with the manner in which overtime is calculated under the Fair Labor Standards Act.

Issue 4: Article 13 - Layoff/Recall Procedure

Position of the Union

Section 13.2 of the current collective bargaining agreement provides, in pertinent part, as follows: "The Employer further agrees that casual and seasonal employees, if any, in the affected classification shall be laid off before bargaining unit employees in the same classification." The Union proposes that the aforementioned language should be modified to provide that "[t]he Employer further agrees that casual and seasonal employees, if any, shall be laid off before bargaining unit employees."

The Union also proposes to modify the language contained in Section 13.9 of the contract to provide that employees who are recalled shall have five days following the date on which they receive the recall notice to notify the Employer of their intention to return to work. According to the Union, "[u]nder the current language there is a strong probability that an employee may not

receive a recall notice within the five days from the time of mailing and be able to respond timely to the employer of their intent to return to work." (Union Position Statement, at 11).

Position of the Employer

At the hearing, the Employer agreed to the Union's proposed modification of the language contained in Section 13.9 of the collective bargaining agreement. However, the Employer maintains that no change to Section 13.2 is necessary under the facts and circumstances. It maintains that the provision which the Union seeks to modify contains "long-time language." According to the Employer, there have been no layoffs in the department and a reduction in the workforce has been the result of attrition. Therefore, no changes are needed.

Final Recommendation

As agreed to by the parties, Section 13.9 of the new collective bargaining agreement shall be modified to provide as follows:

> The recalled employee shall have five (5) calendar days following the date of receipt of the mailed recall notice to notify the Employer of his intention to return to work and shall have ten (10) calendar days following the receipt of the recall notice in which to report for duty, unless different date for returning to work is otherwise specified in the notice.

The fact-finder further recommends that the Union's proposed modification to Section 13.2 should not be included in the new collective bargaining agreement. At the hearing, the Union presented no evidence in support of its proposed modification to the current contract language. The record indicates that the number of bargaining unit employees has decreased over

the years as a result of attrition, rather than layoffs, and at least one employee will be retiring at the end of this year. There is no evidence in the record of any issues related to application of the existing provision, and therefore, no change is warranted at this time.

Issue 5: Article 19 - Health and Safety

Position of the Union

Bargaining unit employees are required to wear protective steel toed work boots. Under Section 19.2 of the current contract, the Employer pays up to $125.00 per year for the replacement of an employee's work boots through a voucher system. The Union proposes to increase the work boot allowance to $225.00 per year. According to the Union, "[t]he costs of steel toed work boots has increased greater than $125.00 for a decent pair of boots that will last the employees throughout the year while performing their job duties." (Union Position Statement, at 17).

Position of the Employer

The Employer is opposed to the Union's proposal to increase the boot allowance from $125.00 to $225.00 per year.

Final Recommendation

The fact-finder recommends that the work boot allowance afforded bargaining unit employees under Section 19.2 of the collective bargaining agreement should not be increased at this time as proposed by the Union. The Union presented insufficient evidence regarding both

the average cost of work boots which the Employer requires bargaining unit employees to wear and the average replacement period for those work boots. The fact-finder notes that bargaining unit employees have the option to carry over one year's allowance for the purchase of work boots to the next year under the current contract.

Issue 6: Article 23 - Vacation

The Union seeks to amend Section 23.4 of the collective bargaining agreement to incorporate the memorandum of understanding entered into by the parties in February 2010. At the hearing, the Employer agreed to the Union's proposal regarding this issue. Accordingly, Section 23.4 of the new collective bargaining agreement shall contain the Union's proposed language.

Issue 7: Article 31 - Health Insurance

Position of the Union

Article 31 of the collective bargaining agreement currently provides as follows:

> For the duration of this Agreement, the Employer shall provide health insurance coverage at the same level of benefits as set forth in the plan established by the Coshocton County Board of Commissioners. Nothing in this section shall be construed as limiting the Employer's right to determine the provider, or to solicit and implement cost containment features.
>
> Employees who select the core plan offered by the Coshocton County Board of Commissioners shall make a pre-tax contribution of thirty dollars ($30.00) per pay for the duration of this Agreement

> for the cost premium for the employee and his spouse and dependents, if any, as long as such pre-tax contributions remain acceptable to the Internal Revenue Service.
>
> If the Coshocton County Board of Commissioners offers health insurance alternatives to the core plan, the Employer may reopen the collective bargaining agreement solely for the purpose of negotiating the premium contributions for the alternative plans. The Employer has the sole discretion to reopen the agreement for these purposes. Any reopener negotiations shall be conducted pursuant to Chapter 4117 of the Ohio Revised Code.
>
> Employees who are eligible for family health insurance and decide to waive coverage shall be eligible to receive a yearly payment of four thousand ($4,000.00) dollars at the conclusion of the term year. Employees who are eligible for family coverage and select a reduced single coverage shall receive one thousand six hundred dollars ($1,600.00) in lieu of family coverage. In each case, the employee must prove medical coverage exists for the family from another source and the employee must not have been on the County's plan during the plan year. There will be no payments to employees who are only eligible for single coverage. The payment will take place in December of the next term.

The Union acknowledges the rising costs of health insurance and proposes increases in the amounts paid by bargaining unit employees towards the cost of the premiums each year under the new contract. According to the Union, "[a]ssuming the employees are granted the proposed increase in their wages, a gradual increase of the premiums will not cause a dramatic loss to the employees." (Union Position Statement, at 14). The Union proposes that Article 31 of the new contract should be modified, in part, to include the following language:

> Employees who select the core plan offered by the Coshocton County Board of Commissioners shall make a pre-tax contribution up to forty dollars ($40.00) per pay effective January 1, 2013 for

> the cost premium for the employee and his spouse and dependents (family coverage), or a pre-tax contribution of up to thirty-two dollars and fifty cents ($32.50) per pay effective January 1, 2012 for the employee only (single coverage) as long as such pre-tax contributions remain acceptable to the Internal Revenue Service.
>
> Effective January 1, 2014, Employees who select the core plan offered by the Coshocton County Board of Commissioners shall make a pre-tax contribution of up to forty-two dollars and fifty cents ($42.50) per pay effective January 1, 2012 for the cost premium for the employee and his spouse and dependents (family coverage), or a pre-tax contribution of up to thirty-five dollars ($35.00) per pay effective January 1, 2012 for the employee only (single coverage) as long as such pre-tax contributions remain acceptable to the Internal Revenue Service.
>
> Effective January 1, 2015, Employees who select the core plan offered by the Coshocton County Board of Commissioners shall make a pre-tax contribution of up to forty-five dollars and fifty cents ($45.00)[sic] per pay effective January 1, 2015 for the cost premium for the employee and his spouse and dependents (family coverage), or a pre-tax contribution of up to thirty-seven dollars and fifty cents ($37.50) per pay effective January 1, 2015 for the employee only (single coverage) as long as such pre-tax contributions remain acceptable to the Internal Revenue Service.

At the hearing, the Union reiterated its proposal to gradually increase the cap on the premium which bargaining unit employees contribute per pay to the cost of their health insurance. The Union also noted that employees of the Coshocton County Sheriff's department contribute up to 15% of the monthly premium for their health insurance, and "they do not pay 15 percent as argued by the Employer." The Union further argues that the amount of health insurance premiums paid by County employees "is not necessarily equitable and bargaining unit and non-bargaining unit increases do not occur at the same time." According to the Union,

"bargaining unit employees were paying more [for their health insurance] while higher paid non-bargaining unit employees were paying less for awhile." However, it acknowledged that "the cash payment for not taking insurance is the same for bargaining unit and non-bargaining unit employees." The Union maintains that the premiums paid by bargaining unit employees would double under the Employer's proposal.

Position of the Employer

The Employer proposes to treat both bargaining unit and non-bargaining unit employees the same for purposes of health insurance premium contributions. At the present time, bargaining unit employees receive the same benefits as all other County employees. Therefore, "[t]here is no reason why they should be treated differently for premium contributions than these employees." (Employer Position Statement, at 5). Under the current collective bargaining agreement, bargaining unit employees pay $30.00 per pay period for either single or family health insurance coverage if they select the core plan offered by the Coshocton County Board of Commissioners. This is equal to a monthly premium contribution of $65.00.

Prior to October 1, 2012, the County offered only one plan with a single and family option which was considered "the core plan."[1] The Employer points out that it has absorbed the entire premium increase in the health insurance plan every year since 2005. Therefore, "[t]his arrangement puts bargaining unit employees outside the norm in the public sector because other public employees have been required to pay more for their health insurance premiums every

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1. The health insurance year for Coshocton County employees begins October 1.

year." (Employer Position Statement, at 5-6). According to the Employer, bargaining unit employees paid the equivalent of 10.1% of the single premium and 4.3% of the family premium, while non-bargaining unit employees paid 13% of both the single and family health insurance premiums. Additionally, employees of the Coshocton County Sheriff's Office, the only other bargaining unit within the County, paid 15% of their health insurance premiums.

"Beginning October 1, 2012, the Coshocton County Commissioners offered all County employees three health insurance options, designated as Plan A, Plan B and Plan C. Plan B is the core plan. Plan A is a buy-up plan and Plan C is a high deductible plan with a lower premium." (Employer Position Statement, at 6). The Employer points out that employees who decline single coverage receive an annual payment of $1,600.00 and employees who decline family coverage receive an annual payment of $4,000.00. It also notes that within the bargaining unit, six employees have selected Plan A; six employees have selected Plan B; one employee has selected Plan C; and three employees have waived coverage.

The Employer asserts that the internal comparables support its position regarding this issue. Additionally, ". . . depending on their individual circumstances, bargaining unit employees could benefit from the new plans being offered." (Employer Position Statement, at 7). The Employer points out that its ". . . proposal will only affect those employees who select the core plan. Even under the current language, bargaining unit employees must pay the premium set by the County for Plan A and Plan C. The $30 per pay period premium contribution is limited to the

core plan." (Employer Position Statement, at 7). Therefore, the inquiry in this matter is focused on the premium contribution required for bargaining unit employees who select Plan B.

According to the Employer, bargaining unit employees who select Plan B single coverage will receive a reduction in their premium contribution from $30.00 per pay period to $23.76 per pay period. Under Plan B coverage, bargaining unit employees will pay the following premium contributions per pay period: single plus spouse- $49.90; employee plus children- $40.40; and the family plan- $70.10. The Employer also notes that bargaining unit employees who select single, employee plus spouse or employee plus children under Plan C will also receive a reduction in their premium contributions. Under the Employer's proposal, bargaining unit employees who select Plan B will contribute 10.6% of the monthly premium cost. As such, their contribution will be identical to all other County employees with the exception of bargaining unit employees of the Coshocton County Sheriff's Office who will have to pay 15% of the premium. The Employer asserts that bargaining unit employees who select Plan C would pay approximately 5% of the monthly premium and those who select Plan A would pay approximately 15-16% of the monthly premium under its proposal.

The Employer also maintains that its proposal compares favorably to other unionized employees in the State of Ohio. It points out that "[i]n counties with population[s] less than 50,000, employees are required to pay $72 per month for single coverage and $213 per month for family coverage. These amounts represent 14.2% of the single premium and 15.5% of the family premium. By comparison, the employer's proposal would require monthly contributions of

$51.47 for single coverage and $151.88 for family coverage or 10.6% of the premium." (Employer Position Statement, at 8). The Employer notes that since 2005, the health insurance costs for employers in the public sector in Ohio have increased by 39.7% for single coverage and 51% for family coverage. (Employer Exhibit 11). However, during the same period, bargaining unit employees have paid a lower percentage of the premium contribution each year while the Employer has absorbed the entire increase.

The Employer asserts that there is no logical reason for bargaining unit employees to be treated differently than other County employees especially since the County Engineer cannot purchase health insurance on its own. "The Union cannot have it both ways. Bargaining unit employees benefit from being part of a larger group of employees with health insurance." (Employer Position Statement, at 8). At the hearing, the Employer indicated that "everyone is in the same pool and they get the same benefits, therefore they should pay the same amount." The Employer "cannot afford to continuing paying the full brunt of premium increases." Therefore, the Employer proposes that the second paragraph in Article 31 of the collective bargaining agreement should be modified to provide as follows: "Employees shall pay the same premium contribution as paid by non-bargaining unit employees of the Engineer's Office."

Final Recommendation

Based upon the evidence of record presented by the parties regarding the issue of health insurance, the fact-finder recommends that the Employer's proposed contract language with the

addition of a cap on the premium contribution paid by the bargaining unit employees should be incorporated into the successor agreement.

The record establishes that the Employer's bargaining unit and non-bargaining unit employees are covered under the same health insurance plans established by the Coshocton County Board of Commissioners. Bargaining unit employees who selected the "core plan" pay only $30.00 per pay for either single coverage or family coverage under the current contract. The fact-finder notes that $30.00 per pay is equal to a monthly contribution of $65.00. However, under the Employer's proposal, bargaining unit employees would pay the same premium contributions which are paid by non-bargaining unit employees under each of the three health insurance plans currently offered to County employees. Effective October 1, 2012, the three health insurance plans offered the County's employees are: Plan A, Plan B, and Plan C.

According to the Employer, Plan B is the equivalent of the former "core plan." The record indicates that an employee who selects Plan B would pay the following contributions per pay: $70.10 for family coverage; $49.90 for employee plus spouse coverage; $40.40 for employee plus children coverage; and $23.76 for single coverage. Therefore, the monthly premium contributions for bargaining unit employees who select Plan B would increase from $65.00 per month to approximately $151.88 per month for family coverage. However, the monthly premium contributions for bargaining unit employees who select Plan B would decrease from $65.00 per month to $51.48 per month for single coverage. Although there would be a significant increase in the monthly premium paid by bargaining unit employees who select family

coverage under Plan B, the proposed contribution amount under the Employer's proposal is slightly less than the average monthly premium contributions paid by other employees in the public sector according to data compiled by SERB. SERB's 2012 Report on the Cost of Health Insurance in Ohio's Public Sector Report provides, in part, as follows:

> SUMMARY OF KEY FINDINGS
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> * * *
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> The one-year increase in medical premiums, when prescription is included in the medical premium, between January 1, 2011 and January 1, 2012 is 6.8% for single coverage and 7.0% for family coverage (Table 3.2).
>
> Average monthly employee contributions to bundled medical premiums, including prescription drug coverage, are $55 for single coverage and $157 for family coverage. Employee premium contributions for single coverage rose 19.6% from last year and employee contributions for family coverage rose 15.4% from last year. Calculations include employee contributions of $0 towards the medical premium (Table 3.2).
>
> * * *
>
> When employees pay a portion of the medical premium, the average employee monthly contribution is $63 for single and $173.00 for family coverage. This represents an increase in premium cost to employees of 16.6% for single coverage and 14.6% for employees with family coverage from 2011. Calculations exclude employees who contribute $0 towards the medical premium (Table 4.1 found in the appendix).
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> * * *

(Employer Exhibit 11, at 3).

As noted above, bargaining unit employees who select single coverage under Plan B would actually contribute less per month towards the premium cost of their health insurance under the Employer's proposal as compared to their payments under the current contract. However, the evidence of record is unclear concerning the specific type of coverage selected by bargaining unit employees under the Plan B option (i.e. family health, employee + spouse, single health, or employee + children). Nonetheless, the fact-finder concludes that the monthly premium contributions paid by bargaining unit employees who select health insurance coverage under Plan B are comparable to the monthly premium contributions for other public sector employees in the State of Ohio. This fact weighs in support of the Employer's proposal regarding this matter.

According to the Employer, bargaining unit employees who select Plan B will contribute 10.6% percent of the monthly premium cost. (Employer Exhibit 8). This percentage was not disputed by the Union at the hearing. As discussed above, the Employer's non-bargaining unit employees also contribute this same percentage towards the cost of their health insurance premiums. Given the fact that both bargaining unit and non-bargaining unit employees are afforded the same health insurance coverage and mutually benefit from being part of the same pool of participants under the County's health insurance plans, it is reasonable that their premium contributions be comparable. Additionally, the record establishes that individuals employed by the Holmes County Engineer, Knox County Engineer, Licking County Engineer and Muskingum County Engineer contribute between 9.25 and 20 percent towards the costs of their health

insurance premiums. (Employer Exhibit 8). As such, the percentage premium contribution paid by bargaining unit employees under the Employer's proposal would be comparable to that which is paid by employees of county engineers in contiguous counties.

Although the Employer asserts that Plan B coverage is the equivalent of the former "core plan," the fact-finder believes that Plan A is more similar to the former "core plan" based upon a comparison of the benefits under those plans which are set forth in Union Exhibit 8. Under the Employer's proposal, bargaining unit employees who select Plan A would pay approximately $251.00 per month for family coverage and approximately $85.00 per month for single coverage.[2] Although both of those figures are higher than the average monthly premium contributions paid by other public sector employees in the State of Ohio, the fact-finder determines that such increases are not unreasonable in light of the fact that the Employer's non-bargaining unit employees will also contribute the same amount towards the cost of their health insurance premiums. Further, while the record establishes that since at least 2008 bargaining unit employees have continued to pay only $65.00 per month for either single or family health insurance coverage, the gross monthly health insurance premiums for family coverage have increased from $814.78 in 2008 to $1,529.75 in 2012. (Employer Ex. 8). Additionally, as discussed below, the fact-finder recommends the Union's proposed wage rate increases for each

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2. Similar to the uncertainty regarding which types of coverage were selected by bargaining unit employees under Plan B, the evidence of record is unclear concerning the type of coverage selected by bargaining unit employees under the Plan A option. The fact-finder also notes that no evidence was presented concerning the type of coverage selected by the sole bargaining unit employee who chose the Plan C health insurance option.

of the three years under the new contract without a wage reopener in the third year as proposed by the Employer.

At hearing the Employer maintained that employees of the Coshocton County Sheriff's Office contribute 15% of the monthly premium cost for their health insurance. However, the record establishes that the Employer is not completely accurate regarding this assertion. Section 25.2 of the current collective bargaining agreement between the Coshocton County Sheriff and the Fraternal Order of Police, Ohio Labor Council, Inc. which covers the sergeants, corrections officers and communications officers provides as follows: "The employees' contribution of the monthly premiums for health, dental, and life insurance shall be *no more than* fifteen percent (15%) for the life of the Agreement. The Employer shall provide life insurance for each employee in the amount of $20,000.00." (Employer Exhibit 10; Italics supplied).

The fact-finder recommends that such a cap on the premium contribution paid by bargaining unit employees should be incorporated with the Employer's proposed health insurance language in the new collective bargaining agreement. Accordingly, the fact-finder recommends the Employer's proposal with the following modified language to be contained in the second paragraph of Article 31: Employees shall pay the same premium contribution as paid by non-bargaining unit employees of the Engineer's Office, however, the monthly premium contribution paid by Employees shall not exceed fifteen percent (15%) of the total monthly premium under the selected health insurance plan.

Issue 8: Article 34-Wages

Position of the Union

The Union proposes four percent wage rate increases each year during the term of the new three-year contract effective September 1, 2012. Alternatively, the Union requests a wage rate increase for bargaining unit employees in year one of the new contract which is comparable to the increase received by the Employer's non-bargaining unit employees, and four percent increases in each of the following two years. The Union specifically requests that the wage rate increase for bargaining unit employees should be retroactive to September 1, 2012.

In support of its position, the Union points out that bargaining unit employees had a wage freeze during the last contract while the cost of living continued to increase. Additionally, non-bargaining unit employees received an average wage rate increase of 5.6% in August 2012. According to the Union, "[i]n granting such wage increases to the highest paid employees in the Engineer's office, this in and of itself is an indicator that the Engineer is able to afford similar increases to bargaining unit employees." (Union Position Statement, at 16). The Union notes that the increases in health care costs were the same for both non-bargaining unit and bargaining unit employees. Furthermore, ". . . despite past declines in revenues, the Engineer's office has maintained a strong fund balance and is capable of affording wage increases." (Union Position Statement, at 16).

At the hearing, Mark Murphy, an AFSCME fiscal policy analyst assigned to the Union's Washington, D.C. office, discussed his analysis of the Employer's finances and its ability to pay

the wage rate increases proposed by the Union. He indicated that although the Employer has faced challenges, "the motor vehicle and gasoline fund which primarily pays for the Engineer's office is good." Murphy pointed out that the Employer's revenue has been relatively stable throughout the recession, and there have been no sharp declines. (Tab 12, Chart 2). Additionally, there was a surplus of $900,000 in 2009 and the Employer has spent only one-half of that surplus in the period following that year. Murphy also noted that the Employer has a "very strong" rating by Standard & Poor's. (Tab 12, Chart 4). According to Murphy, the Employer regularly draws down the motor vehicle and gasoline tax fund balance, and that fund routinely outperforms budget forecasts. (Tab 12, Charts 5 and 6). He maintained that the Employer "can afford to pay a reasonable increase in compensation to its employees because of a built in cushion every year in the budget." Murphy further asserted that the Employer's fund balances will increase as a result of the improving unemployment rate. (Tab 12, Chart 7). He maintained that there is little difference in the cost between the proposals of the Union and the Employer. (Tab 12, Charts 8 and 9). In further support of his position that the Employer has the ability to pay for the Union's wage proposal, Murphy stated that the Coshocton County Detailed Trial Balance reveals a "good sign that revenues are on target for the year."

On cross-examination, Murphy acknowledged that there has been a deficit in the motor vehicle and gas fund in three of the last four years. (Tab 12, Chart 3). Murphy also confirmed that he is "unaware if any limited grants had been put into the motor vehicle and gas fund, and it is possible that his charts included one-time grants." He also admitted that he "does not know

what the Government Reimbursements and Issue II/ODOT Direct Pays accounts reflected in the Detailed Trial Balance can be used for." However, the cost differential between the Union's proposal and the Employer's proposal regarding the issue of wages is ". . . so minimal that his conclusion may not change even if some revenue sources are removed." He further acknowledged that he "did not predict increases in the cost of road work which could effect the availability of funds." On re-direct examination, Murphy maintained that his "final analysis would not change even in light of increased roll-up costs" under the Union's proposal. He asserted that the "motor vehicle and gasoline fund is in good condition and the Employer can afford the Union's proposal.

Position of the Employer

For the following reasons, the Employer proposes a wage rate increase of 40 cents per hour effective upon the execution of the new collective bargaining agreement, and an increase of 40 cents per hour in the second year of the contract. It also proposes a wage reopener in the third year of the contract. The Employer notes that it pays the bargaining unit employees' entire share of the PERS contribution which ". . . represents an additional 10% on top of the actual wages." (Employer Position Statement, at 3).

The Employer has three major sources of revenue: the gas tax; license revenue; and permissive license revenue. Additionally, the Employer has previously received reliable income from interest payments. However, it points out that interest payments have been significantly reduced as a result of lower interest rates. According to the Employer, gas tax revenues which

represent more than one-half of its total funding have decreased since 2007. In 2012, the Employer projects gas tax revenues to be $2,295,000. Additionally, license tax revenue has remained stagnant since 2007, and permissive license tax revenue has slightly decreased since that time. The Employer also notes that current receipts are below the amount budgeted. Although revenue has either decreased or remained stagnant, it points out that expenditures have increased since 2007.

At the hearing, the Employer asserted that there have been "reductions in revenue over time due to [decreased] grants and state funding." Additionally, the gas tax is collected on a statewide basis and there is "no way to estimate [the impact of] an increase in economic activity on revenue." Furthermore, Government Reimbursements and Issue II/ODOT Direct Pays accounts are "project specific and cannot be used to fund wages for bargaining unit employees." It also points out that ODOT "writes the check directly to the contractor." According to the Employer "it cannot spend money that it does not have." Moreover, although Utica shale drilling in Coshocton County and other nearby counties "may boost economic activity state-wide, the overall sales tax does not go to the Engineer's Office." Additionally, no direct revenue or economic benefits for the Employer have been generated as a result of these drilling operations.

According to the Employer, it has a very limited ability to fund a wage increase, and "[n]either the 2012 nor the 2013 budgets have appropriations for wage increases." (Employer Position Statement, at 3-4). The Employer asserts that its proposal which represents a 2.4% wage increase for highway maintenance workers in the first year of the contract and a 2.3% wage

increase in the second year ". . . compare[s] favorably to wage increases throughout the State and those in contiguous counties." (Employer Position Statement, at 4). Additionally, the Employer's proposal is greater than the wage increases recently awarded by the fact-finder in negotiations between the City of Coshocton and AFSCME.

The Employer maintains that bargaining unit employees are ". . . not in need of a catch up wage increase." (Employer Position Statement, at 4; Employer Exhibit 5). Since 2006, bargaining unit employees have received a wage rate increase of 20.5% while "[d]uring the same period, unionized employees throughout the State received increases of 13.05%." Furthermore, the bargaining unit employees' wage rates compare favorably with the rates afforded employees in surrounding counties. The Employer points out that "[b]argaining unit employees are in the middle when compared to the six counties contiguous to Coshocton County despite the fact several of these counties are significantly larger than Coshocton County. (Employer Exhibit 4). The Employer's proposed wage increase will allow these employees to maintain their ranking." (Employer Position Statement, at 4). At the hearing, the Employer reiterated its position that the "wage rate proposal is more than adequate to keep the wages similar with neighboring counties." However, it also acknowledged that "part of the non-bargaining unit employees' wage increase is because they had to pay more for healthcare." The Employer asserts that the Union's wage proposal is absurd and "resembles a wish list . . ." (Employer Position Statement, at 5). According to the Employer, no public employees in Ohio are receiving the type of wage increases proposed by the Union.

Final Recommendation

Under the wage schedule contained in Section 34.1 of the current collective bargaining agreement, highway maintenance workers and mechanics are each paid $16.80 per hour and head mechanics are paid $17.20 per hour. For the following reasons, the fact-finder recommends that the bargaining unit employees should receive a four percent (4%) wage rate increase effective September 1, 2012; a four percent (4%) wage rate increase effective September 1, 2013; and a two percent (4%) wage rate increase effective September 1, 2014. Accordingly the wage schedule contained in Section 34.1 of the contract should provide as follows:

Classification	Effective 9/1/2012	Effective 9/1/2013	Effective 9/1/2014
HMW	$17.47	$18.17	$18.53
Mechanic	$17.47	$18.17	$18.53
Head Mechanic	$17.89	$18.60	$18.97

At the hearing, each party presented evidence regarding the financial condition of the Employer and its ability to fund wage rate increases for the bargaining unit employees during the term of the new contract. The record reveals that the Employer's total annual revenue has remained relatively stable since 2007. (Employer Exhibit 2; Union Exhibit 12, Chart 2). Additionally, although there were slight deficits in the motor vehicle license and gasoline tax fund in 2010 and 2011, that fund had a significant surplus in 2009. Furthermore, the motor vehicle license and gasoline tax fund balance is rated "very strong" by Standard & Poor's. (Union Exhibit 12, Chart 4). Although the Employer maintains that the Union's proposal

regarding wages is a "wish list," it presented insufficient evidence of an inability to pay the wage rate increases proposed by the Union.

The evidence of record establishes that the top wage rates afforded highway maintenance workers employed by county engineers in contiguous counties as of November 26, 2012, are as follows:

Holmes County Engineer	$23.82 per hour
Muskingum County Engineer	$20.46 per hour
Licking County Engineer	$20.17 per hour
Knox County Engineer	$18.20 per hour
Guernsey County Engineer	$18.15 per hour
Tuscarawas County Engineer	$17.20 per hour

(Employer Exhibit 4).

The average hourly wage rate for highway maintenance workers employed by the abovementioned county engineers is $19.67 per hour.[3] Under the current contract, bargaining unit employees assigned to the highway maintenance worker and mechanic classifications are paid $18.48 per hour, including the pension pick up. Therefore, bargaining unit employees assigned to the highway maintenance worker classification are currently paid $1.19 less per hour than the average of their counterparts at comparable employers. Additionally, the record establishes that they are paid less per hour than highway maintenance workers at three of the

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3. The record indicates that unlike the Coshocton County Engineer's Office which picks up the bargaining unit employees' entire 10 percent PERS contribution, the comparable county engineers listed above do not pick up any portion of their employees' pension contributions.

comparable employers (Holmes County Engineer; Muskingum County Engineer; and Licking County Engineer), and more per hour than highway maintenance workers at three of the comparable employers (Knox County Engineer; Guernsey County Engineer; and Tuscarawas County Engineer).

Under the Union's proposed wage rate increases, bargaining unit employees assigned to the highway maintenance worker classification would receive wage rates including the pension pick up of $19.22 per hour effective September 1, 2012; $19.99 per hour effective September 1, 2013; and $20.79 per hour effective September 1, 2014. Therefore, even under the Union's proposal, the Employer's highway maintenance workers would still receive a lower average wage rate than employees in the same position at comparable employers during the first year of the new contract. During the second year of the contract, those employees would receive only slightly more per hour than the average wage rate currently afforded their counterparts at comparable employers. Under the fact-finder's recommendation bargaining unit employees assigned to the highway maintenance worker classification would receive an hourly wage rate during the third year of the contract, including pension pickup which will be $.71 per hour more than the current average wage rate of highway maintenance employees at comparable employers. However, the fact-finder notes that the average wage rates at comparable employers will likely

increase by August 31, 2015, the expiration date of the new collective bargaining agreement, as a result of both current and future contract negotiations involving the comparable employers.[4]

The same scenario also holds true regarding the wage rate increases in the classifications of mechanic and head mechanic under the Union's proposal as compared to the top wage rate for mechanics employed by comparable county engineers. Specifically, under the Union's proposal, mechanics and head mechanics would receive wage rates including the pension pick up of $19.22 per hour and $19.68 per hour, respectively in the first year of the contract; $19.99 per hour and $20.47 per hour, respectively in the second year of the new contract; and $20.79 per hour and $21.29 per hour, respectively in the third year of the new contract. The record reveals that the current average wage rate is $20.29 per hour for mechanics at the top step who are employed by comparable county engineers. (Employer Exhibit 8).

The fact-finder notes that under the Union's proposal, the wage rates afforded bargaining unit employees assigned to the classification of highway maintenance worker during the third year of the new contract will not surpass the current wage rates afforded their counterparts employed by the Holmes County Engineer, and will be only slightly higher than the current wage rates received by employees in the highway maintenance worker classification at the Licking County Engineer's Office. Additionally, the wage rates for the mechanic and head mechanic classifications during the third year of the new contract under the Union's proposal will receive

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4. The record indicates that the Guernsey County Engineer's Office is currently in negotiations with its bargaining unit employees regarding the terms of a new collective bargaining agreement. (Employer Exhibit 4).

less per hour than the current wage rate afforded the top step mechanics employed by the Holmes County Engineer and Licking County Engineer.

In further support of a finding that the Union's proposed wage rate increase in the first two years of the collective bargaining agreement and a two (2) percent increase in the third year is warranted under the facts and circumstances presented, the fact-finder notes that there will be a significant increase in the health insurance premium contributions paid by bargaining unit members during the term of the new collective bargaining agreement. In accordance with the fact-finder's recommendation, bargaining unit employees who select family coverage under Plan B will pay $70.10 per pay. Under the current contract, those employees pay only $30.00 per pay, a difference of $40.10 per pay less than the amount that they will be required to pay under the new contract. However, under the Union's proposed wage rate increase in the first year, highway maintenance workers and mechanics will receive 74 cents per hour more than their current wage rates, including the pension pick up. Therefore, a bargaining unit employee assigned to either of the aforementioned classifications will receive $59.20 more per pay, assuming an 80-hour pay period. This results in only a net increase of $19.10 per pay, including the pension pick up, for highway maintenance workers and mechanics who select family coverage under Plan B when the cost of health insurance premium contributions are factored into the equation. However, bargaining unit employees who select family coverage under Plan A will pay $85.94 more per pay than their premium contribution under the current contract.

Issue 9: Article 35 - Commercial Driver's License (CDL)

Position of the Employer

Article 35 of the collective bargaining agreement currently provides as follows:

> If an employee loses his CDL license and is retained by the Employer, he shall be paid 80% of his regular salary for up to six months. If the employee does not obtain the CDL license within six months, he shall be subject to termination. Any decision not to retain an employee shall be subject to Article 5.

The Employer proposes that the aforementioned language should not be incorporated into the new collective bargaining. The Employer points out that "[i]n general, employees are required to have a commercial driver's license as a condition of employment." (Employer Position Statement, at 9). It maintains that "all employees are required to pull their own weight and they don't meet the minimum qualifications if they do not have a CDL."

Position of the Union

The Union is opposed to the Employer's proposal to remove the current provision regarding commercial driver's licenses from the new collective bargaining agreement. According to the Union, there have been "no problems" with this contract language. Additionally, it points out that a bargaining unit employee may not be at fault regarding the loss of his commercial driver's license. It points out that medical issues may result in a temporary loss of a CDL.

Final Recommendation

The fact-finder recommends that there should be no changes to Article 35 of the new collective bargaining agreement. The Employer presented insufficient evidence which would indicate that its proposal is either warranted or necessary. The fact-finder notes that the Employer acknowledged at the hearing that there have been no previous issues concerning the application of the current contact language.

Issue 10: Article 43 - Duration of Agreement

Both the Union and the Employer have proposed a three year agreement. Accordingly, the fact-finder recommends that Section 42.1 of the new collective bargaining agreement contain the following agreed language: "This Agreement shall be effective September 1, 2012 and shall remain in full force and effect through August 31, 2015."

Issue 11: New Article - One-Time Lump Sum Payment

Position of the Union

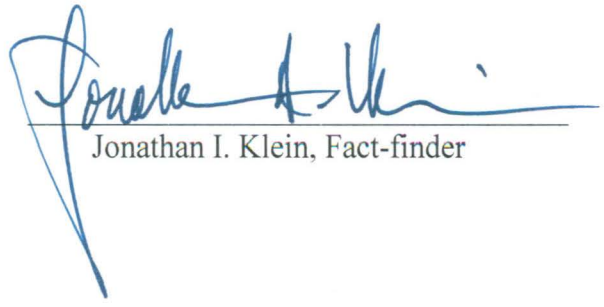
The Union proposes that upon execution of the new collective bargaining agreement, each bargaining unit member shall receive a one-time lump sum payment of $500.00 to be paid within the next full pay period.

Position of the Employer

Employer is opposed to the Unions' proposal regarding a one-time lump sum payment for each bargaining unit employee upon execution of the contract. The Employer maintains that its wage rate proposal is reasonable.

Final Recommendation

It is the fact-finder's recommendation that the Union's lump-sum payment provision should not be added to the new collective bargaining agreement. The Union presented insufficient evidence to warrant such a payment in addition to the annual wage rate increases afforded bargaining unit employees under the new contract. As discussed above, the wage rate increases recommended by the fact-finder are reasonable under the fact and circumstances.



Jonathan I. Klein, Fact-finder

Dated: December 13, 2012

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served on Shelby L. Woodall, Staff Representative, AFSCME Ohio Council 8, Local 343, at 1145 Massillon Road, Akron, Ohio 44306 (akregionafscme8.org); Marc A. Fishel, Esq., Downes Fishel Hass Kim LLP, Attorney for Employer, at 400 South Fifth Street, Suite 200, Columbus, Ohio 43215 (mfishel@downesfishel.com); and upon Donald Collins, General Counsel & Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 (donald.collins@serb.state.oh.us), each by electronic mail this 13th day of December 2012.

Jonathan I. Klein, Fact-finder