

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING  
BETWEEN**

**Case No. 2012-MED-11-1328**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 377,**

**“Employee Organization/Union”**

**and**

**CITY OF YOUNGSTOWN,**

**“Employer”**

---

**REPORT OF FACT-FINDER  
AND RECOMMENDATIONS**

**DATE OF REPORT AND DATE OF TRANSMISSION: October 31, 2013**

---

**Representatives on Behalf of Employee  
Organization / Union:**

Richard Sandburg, President  
Teamsters Local Union 377  
11223 Teamster Drive  
Youngstown, Ohio 44502  
Email: [richardsandberg377@gmail.com](mailto:richardsandberg377@gmail.com)

Susan D. Jansen, Esq.  
Doll, Jansen, Ford & Rakay  
111 West First Street, Suite 1100  
Dayton, OH 45402-1156  
Telephone: 937.461.5310  
Email: [sjansen@djflawfirm.com](mailto:sjansen@djflawfirm.com)

**Representatives on Behalf of Employer:**

Sandy Conley, Account Manager  
Clemans, Nelson and Associates, Inc.  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319-1907  
Telephone: 330.785.7700  
Telecopier: 330.785.4949  
E-mail: [sconley@clemansnelson.com](mailto:sconley@clemansnelson.com)

Anthony J. Farris, Director of Law  
City of Youngstown  
26 South Phelps Street, 4<sup>th</sup> Floor  
Youngstown, Ohio 44503  
Email: [AJF@CityofYoungstownOH.com](mailto:AJF@CityofYoungstownOH.com)

**FACT-FINDER:  
DONALD N. JAFFE, ESQ.**  
The Tower at Erievuew  
1301 East 9<sup>th</sup> Street, Suite 1900  
Cleveland, Ohio 44114-1862  
Telephone No.: 216.687.3262  
Telecopier No.: 216.621.8369  
E-mail: [djaffelaw@aol.com](mailto:djaffelaw@aol.com)

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. BACKGROUND.....</b>	<b>2</b>
<b>III. INCLUSION OF CURRENT CONTRACT.....</b>	<b>4</b>
<b>IV. AGREED ISSUES.....</b>	<b>4</b>
<b>V. UNRESOLVED ISSUES.....</b>	<b>4</b>
Article 23 (Out of Classification Assignments).....	4
Article 24 (Salary and Wages).....	4
Article 25 (Insurance Benefits).....	5
Article 27 (Non-Use of Sick Leave).....	6
Article 31 (Commercial Driver’s License Bonus).....	6
Article 32 (PERS Pick-Up).....	6
Article 46 (Duration).....	7
Side Letter No. 8 (Pilot Program Development).....	7

**I. INTRODUCTION.**

This matter comes before the Fact-Finder as a result of a referral on July 29, 2013, by the State Employment Relations Board (“SERB”) pertaining to fact-finding protocol between the International Brotherhood of Teamsters, Local 377, as the collective bargaining representative (“Union”), and the City of Youngstown (“Employer”).

On September 27, 2013, the parties met with the Fact-Finder, however, both prior to the Fact-Finder’s appointment and prior to the scheduling of fact-finding, the parties had engaged in negotiations pertaining to the Collective Bargaining Agreement.

A fact-finding hearing was held on September 27, 2013 at the offices of the Law Department of the City of Youngstown located at 26 South Phelps Street, 4<sup>th</sup> Floor, Youngstown, Ohio.

The Fact-Finder received and has taken into consideration the numerous exhibits and materials presented by both parties, including the parties’ respective pre-hearing position statements and the current Collective Bargaining Agreement between the parties effective January 1, 2010 through December 31, 2012. Although not every exhibit or document has been enumerated or analyzed in this Report, the Fact-Finder has reviewed each and, with the parties’ understanding, the Fact-Finder is addressing the issues in summary fashion. In that context, the Fact-Finder would be remiss if he did not commend the representatives of both the Union and the City for their presentation, their efforts and the materials presented.

In addition to the material presented and the arguments of the parties, the Fact-Finder has also taken into consideration the statutory guidelines enunciated in Revised Code §4117.14(C)(4)(a) through (f). In particular, Subsection (e) states in pertinent part: “In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.” Subsection (G)(7) identifies the considering factors as:

- “(a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.”

Consistent with the provisions of Revised Code §4117.14(C)(4)(e) and (G)(7)(a)-(f), SERB has set forth similar standards in Administrative Code 4117-9-05(J) and (K)(1) through (6).

## **II. BACKGROUND.**

The City of Youngstown is located in the northeast portion of Ohio, Youngstown being the county seat in Mahoning County.

In addition to the instant bargaining unit, the City also has eight other collective bargaining units, to wit:

- (1) AFSCME, Local 2312-B, representing approximately 13 part-time Park and Recreation Department employees.
- (2) AFSCME, Local 2312, representing approximately 77 professional, technical and clerical employees.
- (3) AFSCME, Local 2762, representing approximately 79 employees in the Water Department.

- (4) Youngstown Police Association/Ohio Patrolmen's Benevolent Association (OPBA), representing approximately 107 patrol officers in the Police Department.
- (5) OPBA, representing approximately 13 dispatchers in the Police Department.
- (6) Youngstown Police Ranking Officers Association, representing approximately 43 employees in the classifications of sergeant, detective, detective sergeant, lieutenant and captain in the Police Department. It is also noted that OPBE employees of the Sheriff's Office are also party to another contract with the FOP/LOC representing social workers, data security specialists, full-time registered nurses, full-time licensed practical nurses, chaplains and program analysts in the Sheriff's Department. This unit is referred to by the parties as "Unit 3".
- (7) International Association of Firefighters, Local 312, representing approximately 136 firefighters.
- (8) United Steel, Paper & Forestry, Rubber, Manufacturing & Energy, Allied Industrial, and Service Workers' Union, Local 2163-6 (Steelworkers), representing approximately 67 service employees.

Additionally, it was further represented that earlier this year, fact-finding was undertaken between the City and the Youngstown Police Ranking Officers Association (YPA) but, as of the date of this Report, the Fact-Finder's report and recommendations with that collective bargaining representative had not yet been issued.

The instant bargaining unit consists of approximately 30 service personnel within the Department of Streets, having classifications of operator/laborer, driver/laborer, paver/mason, blacksmith, laborer, mechanic and auto maintenance clerk. As set forth in Article 1, Section 3, fiduciary, management, confidential personnel, professional, supervisory, temporary, probationary and seasonal employees, for example, are not included in the bargaining unit. It was also noted in that section that "employees not specifically included in the bargaining unit are excluded."

**III. INCLUSION OF CURRENT CONTRACT.**

Except as otherwise set forth in this Report and Recommendations, or as agreed to by the parties in writing, the Fact-Finder recommends retention of current contract language.

**IV. AGREED ISSUES.**

The Fact-Finder finds that as a result of the parties previous bargaining sessions, the parties have reached preliminary, tentative agreement on the following:

Article 3 (Non-Discrimination)

Article 14 (Drug and Alcohol Testing Program)

Appendix B: City of Youngstown Drug and Alcohol Testing Program

Deletion of "Side Letter No. 4, Wage Schedule Implementation set forth in the January 1, 2010 to December 31, 2012 Collective Bargaining Agreement

The Fact-Finder Recommends approval of the above-cited tentative agreements and incorporates those provisions in this Report and Recommendation.

**V. UNRESOLVED ISSUES.**

**Article 23 (Out of Classification Assignments).** The Fact-Finder recommends that current Article 23 be retained in its present contract language. However, based on discussions occurring during fact-finding between the parties, the Fact-Finder notes that an issue regarding a unique set of circumstances pertaining to Gary Boris and Lance Jones, both of whom currently hold the classification of driver/laborer within the Department of Streets are worthy of separate resolution. In that context, the Fact-Finder finds that a Memorandum of Understanding ("MOU") has been proposed, which MOU is recommended by the Fact-Finder for inclusion of instant case, a copy of the MOU being attached at Page 10 of this Report.

**Article 24 (Salary and Wages).** The Fact-Finder recommends that Section 1 be amended to read as follows:

“Effective January 1, 2013, bargaining unit members shall receive a zero percent (0.0%) general increase.

Effective January 1, 2014, bargaining unit members shall receive a zero percent (0.0%) general increase.

Effective January 1, 2015, the parties shall reopen negotiations pertaining to Article 24 (Salary and Wages).”

In light of the provision set forth above for the year effective January 1, 2015, the Fact-Finder recommends that Section 2 of the present contract be deleted.

**Article 25 (Insurance Benefits).** The Fact-Finder recommends that Section 5 of Article 25, entitled “Employee Contributions,” be deleted in its entirety and, in lieu thereof, the following is substituted:

“Effective January 1, 2013, and for the duration of the instant Collective Bargaining Agreement, employees shall contribute ten percent (10%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage.

Notwithstanding the foregoing, any new employee hired on or after October 1, 2013 by the City and a member of the within bargaining unit shall contribute fifteen percent (15%) of the total premium for medical, hospitalization, prescription, vision, and dental coverage.”

The Fact-Finder recommends a new Section 10 entitled “Health Insurance Review Committee” (HIRC), which section will read as follows:

“The City may create and maintain a health insurance review committee (HIRC) for the purpose of studying and recommending cost containment programs for medical, prescription, and dental coverages, reviewing usage, and recommending changes to the plan and benefit levels. Once created, the Union agrees to participate in the committee. The committee shall consist of one (1) representative from each of the bargaining units, one (1) non-bargaining unit employee, and a number of management representatives of the Employer equivalent to the total number of city bargaining unit representatives participating. The insurance committee shall have the authority to recommend alterations to the plan and benefit levels and/or recommend adjustments to coverage levels through majority vote.

Specifically, the committee may recommend any of the following options:

- A. To keep the same plan and/or benefit levels and pass on any cost increases to the parties consistent with the levels set forth in Section 5 of this Article; or
- B. To change the plan and/or alter the benefit levels so that there is no increase in the cost of the plan; or
- C. To change the plan and/or alter the benefit levels to reduce or minimize the increase in the cost of the plan to be passed on to the parties.

Recommendations of the committee will not be unilaterally changed by the City. Recommendations of the committee and Employer actions to carry out those recommendations are final and shall not be subject to the grievance procedure. If, however, the committee makes no recommendation by April 15 or fifteen (15) calendar days prior to the plan expiration date as applicable, for the following plan year, the City may unilaterally adjust the plan and benefit levels, and cost increases, if any, will be passed on to the parties consistent with the levels set forth in Section 5 of this Article. Recommendations of the committee and Employer actions to carry out those recommendations, or actions of the Employer in the event that the committee fails to act, are final and shall not be subject to the grievance procedure.”

**Article 27 (Non-Use of Sick Leave).** The Fact-Finder recommends that current Section 1 of Article 27 be deleted in its entirety and, in lieu thereof, the following is substituted:

“Bargaining unit members that maintain a minimum balance of 120 hours of sick leave and do not use their sick leave during the agreed upon time periods shall be eligible to receive a quarterly incentive payment in the amount of \$159.92 per quarter, provided, however, that an employee is ineligible for said bonus if a disciplinary suspension is incurred during the particular quarter. Quarterly time periods are measured as follows:

First Quarter	–	January 1 – March 31
Second Quarter	–	April 1 – June 30
Third Quarter	–	July 1 – September 30
Fourth Quarter	–	October 1 – December 31”

**Article 31 (Commercial Driver’s License Bonus).** The Fact-Finder recommends that current contract language be retained.

**Article 32 (PERS Pick-Up).** The Fact-Finder recommends that Section 1 of the current contract be deleted in its entirety and the following be inserted in lieu thereof:

“Section 1. The City agrees to “pick up” (assume and pay) as a fringe benefit eight and one-half percent (8.5%) of the employee’s statutorily required PERS contribution share to the Ohio Public Employees Retirement System (OPERS) that the individual employee is required to pay pursuant to Federal and Ohio laws, resulting in no modification of the employee’s taxable salary. Any additional percentage of the statutorily required employee PERS contribution will be withheld through salary reduction from the gross pay of each employee, thereby reducing the employee’s taxable salary by such percentage, and remitted on behalf of the employee to PERS along with the “pick up” referenced previously. No employee shall have the option of receiving the statutorily required contribution directly instead of having it “picked up” by the City of Youngstown.”

Further, the Fact-Finder recommends that new Sections 2 and 3 be added to read as follows:

“Section 2. Reporting. The City shall, in reporting and making remittance to the PERS, report that the employee’s contribution has been made as required by statute. The gross wage or salary of the employee subject to the “pick up” provided by this section shall not change as a result of this “pick up.”

Section 3. Notwithstanding Sections 1 and 2 above, employees hired on or after January 1, 2014, shall be responsible for the full statutorily required employee PERS contribution.”

**Article 46 (Duration).** The Fact-Finder recommends that current Article 46, Section 1, be deleted in its entirety and the following substituted in lieu thereof:

“This Agreement shall be effective upon execution and shall cover the time period from January 1, 2013 through December 31, 2015. This Agreement shall expire on December 31, 2015, unless either party gives timely written notice to the other of their intent to commence negotiations. Notice shall be given no sooner than one hundred twenty (120) days nor later than sixty (60) days prior to the expiration of the Agreement. If such notice is given, negotiation shall commence and the provisions of this Agreement will be maintained until such time as a successor Agreement is in effect.”

**Side Letter No. 8 (Pilot Program Development).** The Fact-Finder recommends that the present Side Letter No. 8 set forth in the Collective Bargaining Agreement which expired on December 31, 2012 be deleted and the following be inserted in lieu thereof as follows:

**“Side Letter No. 8 (Pilot Program Development).**

The parties agree that during the term of this Agreement, they shall meet through the Labor Management Committee to discuss the parameters of a mutually agreeable job bidding program. Discussions will commence within sixty (60) days of the date of execution of this Agreement.”

\* \* \* \* \*

Executed at the City of Cleveland, Cuyahoga County, Ohio, this 31<sup>st</sup> day of October,  
2013.

Respectfully submitted,

*Donald N. Jaffe*

---

DONALD N. JAFFE  
Fact-Finder

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendations has been forwarded, via email transmission, this 31<sup>st</sup> day of October, 2013, on the following:

Richard Sandburg, President  
Teamsters Local Union 377  
11223 Teamster Drive  
Youngstown, Ohio 44502  
Email: [richardsandberg377@gmail.com](mailto:richardsandberg377@gmail.com)

Susan D. Jansen, Esq.  
Doll, Jansen, Ford & Rakay  
111 West First Street, Suite 1100  
Dayton, OH 45402-1156  
Email: [sjansen@djflawfirm.com](mailto:sjansen@djflawfirm.com)

Sandy Conley, Account Manager  
Clemans, Nelson and Associates, Inc.  
2351 South Arlington Road, Suite A  
Akron, Ohio 44319-1907  
E-mail: [sconley@clemansnelson.com](mailto:sconley@clemansnelson.com)

Anthony J. Farris, Director of Law  
City of Youngstown  
26 South Phelps Street, 4<sup>th</sup> Floor  
Youngstown, Ohio 44503  
Email: [AJF@CityofYoungstownOH.com](mailto:AJF@CityofYoungstownOH.com)

Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213  
Email: [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us)



---

DONALD N. JAFFE  
Fact-Finder

### MEMORANDUM OF UNDERSTANDING

The City of Youngstown (hereinafter referred to as the "City" or "Employer") and the International Brotherhood of Chauffeurs, Teamsters, Warehousemen and Helpers, Local 377 (hereinafter referred to as the "Union"), collectively referred to as the "parties", do hereby recognize and agree to the following:

1. Gary Boris and Lance Jones both currently hold the classification of Driver/Laborer within the Department of Streets.
2. Due to a unique set of circumstances, Mr. Boris and Mr. Jones have, over an approximate two (2) year period, frequently and repeatedly worked a temporary job/assignment in the higher classification of Operator/Laborer in accordance with the provisions of Article 22, Temporary Jobs/Assignments, and Article 23, Out of Classification Assignments, of the collective bargaining agreement effective January 1, 2010 through December 31, 2012 (CBA).
3. In consideration of the unique circumstances and notwithstanding the provisions of Article 6, Management Rights and Article 21, Promotional Vacancies, Sections 1 through 3, of the CBA, Mr. Boris and Mr. Jones will each be reclassified to the position Operator/Laborer effective with the first full pay period following execution by the parties of a successor collective bargaining agreement. Notice of the reclassification will be submitted to Mr. Boris and Mr. Jones in writing with a copy to the Union.
4. This Memorandum of Understanding addresses specific and unique circumstances and shall not be deemed nor construed to establish a precedent in any future matters between the parties.

This Memorandum of Understanding shall be effective with the execution by the parties of a collective bargaining agreement successive to the CBA which expired December 31, 2012 and shall expire thirty (30) calendar days thereafter.

{10/4/2013 00123675.DOCX}