

STATE EMPLOYMENT  
RELATIONS BOARD  
2014 OCT 20 PM 2:36

IN THE MATTER OF FACT FINDING PROCEEDINGS

City of Cleveland ( Case Nos: 2012-MED-12-1405  
( 2012-MED-12-1406  
(  
(  
and (   
( Date of Hearing: August 20, 2014  
(  
IBEW Local 39, AFL-CIO (   
(   
( Findings and Recommendations

Representing the City: George S. Crisci, Esq.  
Attorney

Representing the Union: Susannah Muskovitz, Esq.  
Attorney

William J. Miller, Jr.  
Arbitrator

## **SUBMISSION**

This matter concerns the fact-finding proceedings between the City of Cleveland (hereafter referred to as the "City") and IBEW Local 39, AFL-CIO (hereafter referred to as the "Union"). The State Employment Relations Board appointed William J. Miller, Jr, as fact-finder for this matter.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law, and the rules and regulations of the State Employment Relations Board, as amended. The City and Union previously engaged in the collective bargaining process before the appointment of the fact-finder. The parties advised the fact-finder regarding a number of tentative agreements that have been agreed to, and such tentative agreements, have been incorporated in this report as attached.

Prior to the hearing, the parties submitted detailed position statements to the fact-finder in accordance with the Ohio Revised Code. These statements have been received and carefully considered. The fact-finding occurred on August 20, 2014. Subsequent to the conclusion of fact finding the parties agreed to extend the submission of this report until October 21, 2014. The following issue was considered during fact-finding.

## **ISSUE**

No fault attendance.

## **CITY POSITION**

It is the position of the City that it has had attendance problems with certain employees in the bargaining unit, and that necessary changes are needed in Article 14, leaves of absences of the prior Agreement (April 1, 2011 through March 31, 2013 contract between the City of Cleveland and Local No. 39 of the International Brotherhood of Electrical Workers, AFL-CIO, herein referred to as the "Agreement"). The City contends it has made different proposals during negotiations, in an attempt to address sick leave use problems. In doing so, the City has attempted to obtain a City wide attendance policy. It is contended by the City, that by having a "no fault" attendance policy would provide that attendance and any necessary discipline issues would be handled in a consistent and fair manner to all concerned. The City contends the policy bases progressive discipline on large scale usage rates irrespective of the so called reason for the use, except absences based on certified FMLA covered leaves or other carve outs negotiated by the parties. The City asserts that its position will not create a situation where the City will spring a no-fault policy on the Union. It is also contended by the City that the proposal it is making is reasonable by any standard, and the new attendance policy will most likely contain caps on the time span to count absences, carve outs for certain absences protected by law, and multistep discipline.

The City contends the excessive amount of sick time being used by bargaining unit employees demonstrates the need for the proposal being advanced by the City. Based on all of the evidence, the City contends it should be given the right to implement a no-fault attendance policy to better address sick leave use and abuse. The City therefore requests that the fact-finder recommend its no-fault attendance proposal, consistent with the pattern that has emerged and based on a demonstrated need.

### **UNION POSITION**

It is the position of the Union that the work performed by members of the bargaining unit is highly skilled and dangerous work. The Union recognizes that on occasion employees cannot be at work due to various reasons, but it contends that sick leave is in fact a mandatory subject of bargaining. It is the position of the Union, by the City asking that the sick leave policy be revised, that the City is requesting that the Union waive its right to bargain on this issue. The Union contends, this should not be done, as this is a critical issue for members of the bargaining unit. The Union asserts the City is not changing the policy in order to catch the sick leave abusers, but rather to eliminate the rights of the bargaining unit.

### **FINDINGS AND RECOMMENDATIONS**

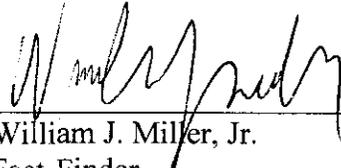
I have carefully considered the arguments and positions of the parties in conjunction with the evidence which has been established. It is evident that the City has the inherent managerial right to expect that employees who are scheduled to work need to be at work on a regular basis. This is necessary due to the very important kind of work being performed by the bargaining unit, and the difficulty of the work responsibilities of the bargaining unit employees. I also recognize that, generally speaking, most employees do fulfill their work responsibilities, but in certain instances, employees do not do what is expected to complete their work responsibilities. This is why the City needs to have in place policies and procedures which will show employees what is expected regarding coming to work on a regular basis.

It is my recommendation that the parties have negotiations concerning changes to the existing policy regarding sick leave and how to control and eliminate sick leave abuses. During such discussions, the parties should be mindful of the applicable contractual provisions that are in existence, be aware of and consider the applicable provisions of the law as such provisions relate to leave provisions, consider how to approach and reduce pattern absences and other situations that may have a bearing on controlling unauthorized absences, and determining situations where sick leave may be appropriate. The parties should also consider, during their discussions, the kinds of disciplinary penalties that may be appropriate to correct inappropriate absences from work.

If the discussions between the parties do not prove to be successful, the City should then issue a policy that it perceives to be a reasonable approach to correcting unauthorized absences from work. Should the Union believe such policy is not reasonable, it would have the right to grieve the policy concerning what it considered to be unreasonable. If this occurs, the matter should proceed to immediate arbitration, and the decision of the arbitrator would be binding on the parties. The policy, with any changes made by the arbitrator, can then be implemented by the City.

**CONCLUSION**

In conclusion, this Fact Finder submits his findings and recommendations as set forth herein.

  
\_\_\_\_\_  
William J. Miller, Jr.  
Fact-Finder  
October 21, 2014

Case Number: 2012-MED-12-1405 Case Number: \_\_\_\_\_ Case Number: \_\_\_\_\_  
 Case Number: 2012-MED-12-1406 Case Number: \_\_\_\_\_ **Fact-finding Report/Conciliation Award**  
 Employer Name: City of Cleveland County: Cuyahoga Neutral: William J. Miller Jr  
 Employee Organization: \_\_\_\_\_ Date Issued: \_\_\_\_\_ # of Issues 1 FF/Conciliation

**For internal entry only** BU: \_\_\_\_\_ Employee Type: \_\_\_\_\_ Employer Type: \_\_\_\_\_

**ISSUE PAGE**  
 Assignment/Reassignment. . . . . \_\_\_\_\_  
 Attend/Sick Leave Bonus. . . . . \_\_\_\_\_  
 Bargaining Unit Work. . . . . \_\_\_\_\_  
 Breaks/Meal Time. . . . . \_\_\_\_\_  
 Civil Service Reference. . . . . \_\_\_\_\_  
 Class Size. . . . . \_\_\_\_\_  
 Compensatory Time. . . . . \_\_\_\_\_  
 Differential (CIRCLE ONE)  
     Rank/Shift. . . . . \_\_\_\_\_  
 Discipline. . . . . \_\_\_\_\_  
 Drug Testing. . . . . \_\_\_\_\_  
 Duration. . . . . \_\_\_\_\_  
 Education Stipend. . . . . \_\_\_\_\_  
 Employee Rights. . . . . \_\_\_\_\_  
 EMT/Paramedic Certification. . . . . \_\_\_\_\_  
 Evaluation/Merit Pay. . . . . \_\_\_\_\_  
 Fair Share. . . . . \_\_\_\_\_  
 FMLA. . . . . \_\_\_\_\_  
 Grievance Procedure. . . . . \_\_\_\_\_  
 Hazard Pay. . . . . \_\_\_\_\_  
 Holidays. . . . . \_\_\_\_\_  
 Hours of Work. . . . . \_\_\_\_\_  
 Injury Leave. . . . . \_\_\_\_\_  
 Insurance. . . . . \_\_\_\_\_  
 Interim Bargaining. . . . . \_\_\_\_\_  
 Job/Shift Bidding. . . . . \_\_\_\_\_  
 Layoff/Recall. . . . . \_\_\_\_\_  
 Leaves. . . . . \_\_\_\_\_ **(Circle below)**  
*Funeral, Union, Add'l Holiday, Personal Lv, Court*  
 Licensure/Certification. . . . . \_\_\_\_\_  
 Longevity. . . . . \_\_\_\_\_  
 MAD. . . . . \_\_\_\_\_  
 Management Rights. . . . . \_\_\_\_\_  
 Me Too Clause. . . . . \_\_\_\_\_  
 Minimum Staffing. . . . . \_\_\_\_\_  
 Call-In/Call-out. . . . . \_\_\_\_\_  
 Outside Employment. . . . . \_\_\_\_\_  
 Overtime. . . . . \_\_\_\_\_  
 Paid Time Off (PTO). . . . . \_\_\_\_\_  
 Parking. . . . . \_\_\_\_\_  
 Pension Pick-up. . . . . \_\_\_\_\_  
 Personnel File. . . . . \_\_\_\_\_  
 Physical Fitness. . . . . \_\_\_\_\_

**ISSUE PAGE**  
 Probationary Period. . . . . \_\_\_\_\_  
 Promotion . . . . . \_\_\_\_\_  
 Recognition . . . . . \_\_\_\_\_  
 Residency. . . . . \_\_\_\_\_  
 Retirement Incentive. . . . . \_\_\_\_\_  
 Retroactivity. . . . . \_\_\_\_\_  
 Reopener Clause . . . . . \_\_\_\_\_  
 Rules and Regulations. . . . . 1-3  
 Seniority. . . . . \_\_\_\_\_  
 Sick Leave. . . . . \_\_\_\_\_  
 Sick Leave Severance. . . . . \_\_\_\_\_  
 Signing Bonus. . . . . \_\_\_\_\_  
 Special Assignment. . . . . \_\_\_\_\_  
 Stand-By Pay / On-Call . . . . . \_\_\_\_\_  
 Sub-Contracting. . . . . \_\_\_\_\_  
 Tool Allowance. . . . . \_\_\_\_\_  
 Training/Tuition. . . . . \_\_\_\_\_  
 Uniform Allowance. . . . . \_\_\_\_\_  
 Vacancies. . . . . \_\_\_\_\_  
 Vacation Leave. . . . . \_\_\_\_\_  
 Wage. . . . . \_\_\_\_\_  
 Wage/Pay Step . . . . . \_\_\_\_\_  
 Working Conditions. . . . . \_\_\_\_\_  
 Zipper Clause. . . . . \_\_\_\_\_

**Please list Issues not found above** **Page**  
 Issue #1 \_\_\_\_\_  
 Issue #2 \_\_\_\_\_  
 Issue #3 \_\_\_\_\_  
 Issue #4 \_\_\_\_\_  
 Issue #5 \_\_\_\_\_

**PERCENT WAGE INCREASE PROPOSALS** **Page**  
**Increase Date**  
 Employer % WAGE Increase. . . . . % \_\_\_\_\_  
 Employer % WAGE Increase. . . . . % \_\_\_\_\_  
 Employer % WAGE Increase. . . . . % \_\_\_\_\_  
 Union % Wage Increase . . . . . % \_\_\_\_\_  
 Union % Wage Increase . . . . . % \_\_\_\_\_  
 Union % Wage Increase . . . . . % \_\_\_\_\_  
 Neutral's % wage Increase. . . . . % \_\_\_\_\_  
 Neutral's % wage Increase. . . . . % \_\_\_\_\_  
 Neutral's % wage Increase. . . . . % \_\_\_\_\_

2014 OCT 20 PM 2:37  
 STATE EMPLOYMENT  
 RELATIONS BOARD

IBEW Local 39 and City of Cleveland

SERB Case No. 2012-MED-12-1405 (Linemen)

SERB Case No. 2012-MED-12-1406 (Foremen)

B.W.  
8/14/14

BL  
8/14/14

Tentative Agreement

August 14, 2014

ARTICLE 2

RECOGNITION

Section A. The Union is recognized as the sole and exclusive representative for all employees of the City in the job classifications of the bargaining unit as set forth for purpose of establishing rates of pay, wages, hours, and other terms and conditions of employment.

Section B. The Union's exclusive bargaining unit shall include all of the employees in the following job classifications and the City will not recognize any other union, organization, or person as the representative for any employees within such classifications:

- Lineman Leader
- Line Switchman
- Trouble Lineman
- Senior Lineman
- ~~Lineman~~
- Lineman Apprentice 4th
- Lineman Apprentice 3rd
- Lineman Apprentice 2nd
- Lineman Apprentice 1st
- Line Helper/Driver Trouble
- Line Helper/Driver 2nd Year
- Line Helper/Driver Start
- Intern Apprentice
- Senior Cable Splicer
- ~~Cable Splicer 1~~
- Cable Splicer Apprentice 4th
- Cable Splicer Apprentice 3rd
- Cable Splicer Apprentice 2nd
- Cable Splicer Apprentice 1st
- Splicer Helper 2nd Year
- Splicer Helper Start
- Electric Meter Instruction Specialist & General Tester
- Electric Meter Industrial Installer
- Electric Meter Industrial Installer Leader

Electric Meter Service Installer I  
Electric Meter Service Installer II  
Meterman Apprentice 4th  
Meterman Apprentice 3rd  
Meterman Apprentice 2nd  
Meterman Apprentice 1st  
Transformer/Gas Turbine Repairman  
Transformer/Gas Turbine Repairman Apprentice 4th  
Transformer/Gas Turbine Repairman Apprentice 3rd  
Transformer/Gas Turbine Repairman Apprentice 2nd  
Transformer/Gas Turbine Repairman Apprentice 1st  
Senior Electric Switchboard Operator  
Junior Electric Switchboard Operator  
Line Clearance Man  
~~Line Clearance Man Start~~  
Electric Transmission & Distribution Inspector  
Dispatcher Electric System Operator  
Tele-Communications Technician  
Low Tension Leader Lineman  
Low Tension Lineman  
Low Tension Trouble Lineman  
Low Tension Line Helper Driver Trouble  
Low Tension Line Helper Driver 2nd  
Low Tension Line Helper Driver Start  
Low Tension Lineman Apprentice 3rd  
Low Tension Lineman Apprentice 2nd  
Low Tension Lineman Apprentice 1st  
Traffic Signal Control Technician I  
Traffic Signal Control Technician II

In the event that the City creates a position with a community of interest, the City shall notify and meet with the Union within seven (7) days for the purpose of negotiating wages. If agreement cannot be reached within twenty-one (21) days, either party may request that the dispute be resolved in accordance with the Grievance Procedure, as set forth in this Contract.

#### RECOGNITION - FOREMAN

The Union is recognized as the sole and exclusive representative for all employees of the City in the job classifications of the bargaining unit as set forth for the purpose of establishing rates of pay, wages, hours, and terms and conditions of employment.

The Union's exclusive bargaining unit shall include all of the employees in the following job classifications and the City will not recognize any other union, organization or person as the representative for any employees within such classifications:

Meter Service Foreman  
Line Foreman  
Cable Foreman  
Underground Conduit Foreman  
Transformer/Gas Turbine Repair Foreman  
Switchboard Operator Foreman  
Low Tension Line Foreman  
Trouble Lineman Foreman

In the event that the City creates a position with a community of interest, the City shall notify and meet with the Union within seven (7) days for the purpose of negotiating wages. If agreement cannot be reached within twenty-one (21) days, either party may request that the dispute be resolved in accordance with the Grievance Procedure, as set forth in this Contract.

ARTICLE 11  
EMPLOYEE SENIORITY

Unless otherwise indicated, classification seniority shall refer to classification within the Division.

The job classifications of Lineman, Senior Lineman, Leader Lineman, Trouble Lineman, Line Switchman, Line Foreman (Day), and Line Foreman (Night) shall be considered High Tension, unless specifically designated as Low Tension.

FOR THE DIVISION OF CLEVELAND PUBLIC POWER

Temporary assignments and job bids will be based on the following SENIORITY PROGRESSION:

Leader Lineman, Senior Lineman, ~~Trouble Lineman~~

The employee with the most journeyman lineman or higher classification seniority in the Division of Cleveland Public Power. Time spent as a low tension lineman or a low tension leader, after first being certified and serving as a lineman or above shall also count for the purposes of journeyman lineman classification seniority.

Trouble Lineman

Shall have eighteen (18) months of senior lineman experience. The employee with the most journeyman lineman or higher classification seniority in the Division of Cleveland Public Power. Time spent as a low tension lineman or a low tension leader, after first being certified and serving as a lineman or above shall also count for the purposes of journeyman lineman classification seniority.

#### Line Switchman

Shall have ~~one year~~ two (2) years of trouble lineman ~~experience or one (1) year of or~~ senior lineman experience.

The employee with the most journeyman lineman or higher classification seniority in the Division of Cleveland Public Power.

#### Transformer/Gas Turbine Repair Foremen

~~All employees currently holding the position of Transformer Repair Foreman on April 1, 1992 shall be grandfathered into this position. In the future, this~~ This position will be filled by the employee with the most journeyman transformer/gas turbine repair seniority in the Division of Cleveland Public Power. If there are no journeyman transformer/gas turbine repairmen, then the foreman position shall be filled by the employee with the most journeyman seniority in a classification covered by the Lineman Progression.

#### Line Clearanceman

After first being certified as a Line Clearanceman, employees in that classification may utilize their seniority as a Line Clearanceman to bid on a Line Helper Driver, Line Helper Trouble Driver, Cable Splicer Helper, or Switcher driver positions.

### ARTICLE 13

#### PROBATIONARY PERIOD

Section 1. Effective January 1, 2002, employees shall normally serve a probationary period of ~~(six) 6~~ six (6) months for initial hires and one hundred twenty (120) days for promotions. The appointing authority may request a longer probationary period for initial hires only, not to exceed one additional month. The City shall have the sole right to discipline or terminate a new hire or to demote a newly promoted employee during the employee's probationary period. Approved leaves of absence in excess of thirty (30) days will not count for purposes of calculating probationary period.

Section 2. All employees who have been promoted or who have changed classifications shall retain the right to return to a vacancy in their previous classification within thirty (30) days of the change in classification, which may be extended by one additional thirty (30) day period by agreement between the City and the Union.

Section 3. Effective April 1, 1992, new employees shall not receive seniority credit for any prior governmental or public service for any purposes, including the computation of vacation and sick leave benefits. Employees who previously worked for the City of Cleveland, and either quit, retired, were discharged for cause or lost recall rights and are later rehired, shall be considered new employees pursuant to this Section. Employees who transferred from any Division in the City to a position in this bargaining unit will maintain all seniority for purposes of benefits only.

## ARTICLE 14

### LEAVES OF ABSENCE

#### Section A - General Leave

All leaves of absence (and any extensions thereof) must be applied for and granted in writing on forms to be provided by the City. An employee may, upon request, return to work prior to the expiration of any leave of absence if such early return is agreed to by the City. When an employee returns to work after a leave of absence, he will be assigned to the position which he formerly occupied, or to a similar position, if his former position is not vacant or no longer exists.

If it is found that a leave of absence is not actually being used for the purpose for which it was granted, the City may cancel the leave, direct the employee to return to work, and impose disciplinary action, up to and including discharge.

An employee who fails to report to work at the expiration or cancellation of a leave of absence or fails to secure an extension of such leave shall be deemed to be absent without leave. An employee who is absent without leave for ~~five (5)~~ three (3) working days shall be considered to have voluntarily resigned. An employee in an unpaid leave of absence does not accrue credit toward vacation, paid sick leave, steps, longevity or P.E.R.S., unless otherwise specified below.

City policy on excused docks will remain unchanged.

### Section G - Funeral Leave

1. An employee will be granted Funeral leave, to be charged against his accumulated sick leave with pay, in the event of the death of a member of his immediate family, defined as: spouse, mother, father, grandparent, grandchild, mother-in-law, father-in-law, child, brother or sister, or a person who has been loco parentis to the employee as follows:

A. Five (5) working days, if the Funeral is within the State of Ohio.

B. Seven (7) working days, if the Funeral is outside the State of Ohio.

To be eligible for Funeral leave, an employee must provide the City with a funeral form (to be supplied by the City), if requested, and must attend the funeral. Proof of death by a statement from the Mortician, a death certificate, or a statement from the Funeral Home is required, if requested. Any misrepresentation of facts related to Funeral Leave, shall be proper cause for disciplinary action, up to and including discharge, and/or ~~inclusive~~ of forfeiture of pay for the leave.

2. At the discretion of the Appointing Authority, employees may be granted four (4) hours of sick leave with pay as Funeral Leave to attend the Funeral of a fellow employee within the Division. The Appointing Authority shall determine the number of employees which can be granted such Funeral Leave at each work location without negatively affecting operations or causing an overtime situation.

3. For the purposes of assessing usage of sick leave in regard to absence abuse, funeral leave shall not be a factor.

Consideration of requests for such Funeral Leave shall be in accordance with operational needs and seniority within the Division.

Employees must attend the Funeral and provide documentation and proof of same.

### Section H - Sick Leave with Pay

All regular full-time employees shall be credited with paid sick leave at the rate of ten (10) hours per month or fifteen (15) work days per year. Unused paid sick leave has been cumulative in accordance with the provisions of the Memorandum of October, 1972, and sick leave shall continue to accumulate without limitations.

1. Paid sick leave shall be granted only for pregnancy leave, actual sickness or injury, confinement by reason of a contagious sickness, or visit to a doctor or

dentist for medical care of the employee or his immediate family, and pregnancy (including postpartum periods).

2. Paid sick leave will be credited, but cannot be used until the employee has satisfactorily completed his initial probationary period with the City.
3. No paid sick leave shall be granted, unless the Division authority designated by the City is notified of the sickness no later than one (1) hour prior to the employee's scheduled starting time on the first day of the absence on account of sickness.

Provided that for employees who are engaged in a 24-hour operation and mandatory relief, no paid sick leave shall be granted unless the division authority designated by the City is notified of the sickness no later than one (1) hour before the employee's scheduled starting time on the first day of the absence on account of sickness. Absences not reported as stated above may be excused by his employer, if the Appointing Authority or his designee determine that there were unusual circumstances which were beyond the employee's control. An employee is required to call in on each day off, or notify the City of the duration of his absence.

4. A certificate from a licensed physician shall be required immediately upon returning to work for any sickness from an employee who has been so notified in writing or after any illness requiring hospitalization. The certificate must include: re-employment date, work capable of being performed, all restrictions. An employee may be required to bring in a doctor's certificate for any sickness beyond three (3) days, prior to returning to work.

The validity of all medical excuses and physician's certificates are subject to review by a City physician, an Appointing Authority, or the Department of Human Resources. Any reviews or medical examinations by the City shall be done on City time.

For purposes of review of sick leave, employees who work a rotating shift shall be considered to be working a non-traditional shift pursuant to the City's Absence Abuse policy. [This needs further discussion.]

5. Upon retirement or death, an employee, or his legal representative, shall have the right to convert his accumulated paid sick leave into cash at the rate of one (1) day's pay for each three (3) days of unused accumulated paid sick leave. The pay rate used shall be the same three (3) years average of earnings, overtime and longevity pay divided by 2080 hours.

- ~~6. Once each year, the City will distribute to all regular full-time employees an annual statement fully advising the employee of his paid sick leave status.~~
76. An employee who is hurt on the job shall have the option of using his paid sick leave, workers' compensation benefits, or his vacation, whichever he prefers.
87. An employee who incurs a permanent partial disability shall be offered a job, if available, within the bargaining unit, he is capable of performing.

#### Section L - Voluntary Sick Leave Contribution

Effective upon execution, employees who are not on an absence abuse list shall be entitled to voluntarily contribute earned but unused, accumulated paid sick leave for the use of another bargaining unit employee who is experiencing a serious or chronic health condition as defined by the FMLA, who must have exhausted his own sick leave, vacation and personal leave and who also must not be on the absence abuse list. The following conditions shall apply:

- a) An employee may normally contribute up to a maximum of forty (40) hours of his accumulated paid sick leave within a calendar year but must retain at least one hundred (100) hours of accumulated leave after any contribution. In circumstances where the recipient has exhausted his or her 12 weeks of FMLA leave, employees may contribute an additional sixty (60) hours to that employee. The employee so contributing his paid sick leave shall have such contributed time deducted from his accumulated sick leave balance.
- b) Any agreement to contribute must be in writing and signed by the contributing employee and his union representative and subject to final approval by the City's Office of Labor Relations. A copy of the agreement will be placed in each employee's file.
- c) The City may, at its election, cancel this program by serving notice to the Union three (3) months in advance of said cancellation date. Said cancellations shall not be done on an arbitrary or capricious basis.
- d) As appropriate, the City will designate an employee's use of paid and unpaid time as Family medical leave consistent with the Family Medical Leave Act and sick leave and leave of absence policies.

- e) Employees who are on the City's attendance policy abuse list shall not be eligible to receive any sick leave contributions.
- f) Any employee determined to have "sold" sick leave to another employee shall be discharged, subject to grievance and arbitration.

## ARTICLE 16

### ASSIGNMENT OF WORK - TEMPORARY CHANGE OF CLASSIFICATION

All employees shall be required to perform any and all temporarily assigned duties, regardless of their usual or customary duties or job assignment. A temporary assignment which results in a change of classification shall not exceed thirty (30) consecutive working days, except (1) to fill a vacancy caused by an employee being on an approved leave of absence, (2) to provide vacation relief scheduling, (3) to fill an opening temporarily pending permanent filling of such opening, or (4) to meet an emergency situation. In the event a temporary assignment exceeds 30 consecutive working days for any reason other than the exceptions listed in this section the City will process personnel request, post a bid notice and the bid procedure section of this contract shall take effect. The City will provide the Union with a dated copy of the approved Personnel Request within five (5) days after approval.

When an employee is temporarily assigned to another classification:

- A. If the rate of pay for such other classification is lower than his regular rate, he shall maintain his regular rate of pay;
- B. If the rate of pay for such other classification is higher than his regular rate, he shall receive an adjustment in pay within his own classification. An employee must work in the higher classification for four (4) hours or more in order to receive the higher rate of pay.
- C. If a temporary assignment which results in a change to a higher classification within the bargaining unit, with the exclusion of Leader Lineman, Low Tension Leader Lineman, or Foreman, is expected to exceed five (5) consecutive working days or in fact does exceed five (5) consecutive working days, the temporary assignment shall be offered to the employee, within the Division, with the most job classification seniority provided that he has the ability to perform the work involved.
- D. Any temporary vacancy in excess of four (4) days, which would result in a change of classification to Leader Lineman or Low Tension Leader Lineman shall be first based upon job classification seniority then on operational needs, then on qualifications as determined by management. An employee who has been

temporarily assigned to a Leader Lineman or Low Tension Leader Lineman position will be evaluated by management with regard to the ability to lead, and job performance; any unsatisfactory or unacceptable performance will be reduced to writing and submitted to the affected employee and discussed at a consultation. The Union and the employee may submit the unsatisfactory evaluation as an item for discussion and reconsideration through the Labor-Management Committee; after reconsideration, it may be mutually agreed to grant the employee another opportunity to correct and improve his job performance; if his performance remains unsatisfactory as determined by management, he shall be removed from further consideration for such position for a period of one (1) year.

- E. Any temporary vacancy in excess of five (5) days, which would result in a change of classification to Foreman, shall be first based on job classification seniority, then on operational needs, then on qualification as determined by management. Any employee who has been temporarily assigned to Foreman will be evaluated by management with regard to the ability to lead and job performance; any unsatisfactory or unacceptable performance will be reduced to writing and submitted to the affected employee and discussed at a consultation. The Union and the employee may submit the unsatisfactory evaluation as an item for discussion and reconsideration through the Labor-Management Committee; after reconsideration, it may be mutually agreed to grant employee another opportunity to correct and improve his job performance. If his performance remains unsatisfactory as determined by management, he shall be removed from consideration for such position for the period of one (1) year.
- F. Any temporary vacancy which results in temporary assignment and changes of classification for less than five (5) consecutive working days shall be based on operational needs and management's judgment of qualifications.
- G. If no qualified employees agree to accept a temporary change in classification in the Trouble Department, lasting five (5) or more consecutive work days, the least senior qualified employee shall be assigned to the position. As soon as a less senior qualified employee becomes available, that less senior employee shall be assigned.
- GH. The City shall not rotate temporary transfer assignments in order to deprive employees of the opportunity to qualify for a higher rate of pay under these temporary transfer provisions.

## ARTICLE 17

### BID PROCEDURE

Whenever Management determines there is a vacancy in a classification (other than Line Helper Driver), within the exclusive bargaining unit covered by this Contract, the City shall post a listing of the position, job duties and special qualifications, if any, for seven (7) consecutive working days. Employees who meet the minimum qualifications may fill out job bidding forms, with a copy provided to the employee. When an employee is offered the position, the employee must sign the Acceptance/Decline form within 24 hours of notification. E-mail or facsimile notification shall be accepted. If the employee fails to respond in writing within 24 hours, the City shall construe it as a rejection. Five (5) days thereafter, a notice shall be posted stating who, if anyone, has been awarded the position, a list of employees who bid for the position and a copy of the notice of award shall be forwarded to the Union. If nobody is awarded the position, the Union will be notified in writing. An employee may submit forms for a job which may become available for the next six (6) month period.

An employee who has been suspended for five (5) days pursuant to the City's Attendance Policy in the last six months will be disqualified from bidding for any promotion and/or will be removed from shift work.

Bid notices shall be posted for the following vacancies as they are determined by the City:

- A. A vacancy in a work location to be filled by an employee from another work location in the same classification within the Division, within the bargaining unit.
- B. A vacancy on a shift to be filled by an employee from a different shift and/or from another work location in the same classification within the Division within the bargaining unit.

These types of vacancies shall be awarded to the employee with the most seniority in the following order: (1) job classification bid seniority, as set forth in Article 11 of this Agreement within the Division; (2) bargaining unit seniority within the Division; (3) Division seniority; (4) City seniority; and (5) the last four digits of the employee's social security number, with the lower number having greater seniority, provided he- the employee has the ability to perform the work involved. For the purpose of bid procedure, job classification bid seniority shall include all time spent in a higher or similar series classification. For example, a high tension lineman's job classification bid seniority shall include time spent as a trouble lineman, senior lineman, line switchman, and/or line foreman. A Meter Service Installer II's job bid seniority shall include time spent as a Meter Service Installer I, Meter Industrial Installer, Instrument and General Tester, and/or Meter Service Foreman and so on.

- C. A vacancy in a classification within the bargaining unit to be filled by an employee holding the same, or other classification within the bargaining unit.

These types of vacancies shall be awarded to the employee with the most seniority in the following order: (1) job classification bid seniority, as set forth in Article 11 of this Agreement; (2) bargaining unit seniority within the Division; (3) Division seniority; (4) City seniority; and (5) the last four digits of the employee's social security number, with lower numbers having greater seniority, provided the employee has the ability to perform the work involved. These types of positions will be awarded to the employee with the most job classification, seniority within the Division, then employment seniority, provided he has the ability to perform the work involved.—If, as the result of this award, the change in classification results in a promotion, the affected employee shall receive the applicable higher rate of pay for such classification. Low Tension Linemen Apprentices who are enrolled in the three-level apprenticeship program administered by the City of Cleveland shall be considered as Apprentices either at Cleveland Public Power or in the Department of Public Service and the Department of Finance, and their respective appointment to a Low Tension Lineman position shall be to that respective Division or Department and shall not be considered a bid position.

When the Mayor approves the promotion of an employee into a higher paying job classification, the higher pay for sick time, vacation time, etc. shall be paid retroactive to the date the promotion was approved by Cleveland Public Power or the Department of Public Service or the Department of Finance.

During January of each year, trouble linemen and/or trouble drivers may notify the City that they wish to transfer out of the Trouble Department to become either senior linemen and/or line helper drivers, respectively. In such case, the City shall post at least two (2) positions pursuant to the bidding procedure in this Article and shall fill the positions accordingly. If more than two (2) trouble linemen and/or trouble drivers (collectively) notify the City of their desire to leave the Trouble Department, then the employees who have spent the most time in the Trouble Department, immediately prior to the notification, will be given the opportunity to transfer.

## ARTICLE 18

### HOURS OF WORK

The normal work week for regular full-time employees shall consist of forty (40) hours per week, excluding meal periods. The normal work day for non-shift employees shall consist of eight (8) hours between 8:00 a.m. to 4:30 p.m. daily. The normal work week of such employee's shall consist of five (5) days, Monday through Friday inclusive. Traffic Signal starting time will begin at 7:30 a.m. and end at 4:00 p.m.

~~Effective August 1, 2006, all employees assigned to the East Side Service Center shall work from 7:00 a.m. to 3:30 p.m. on a six-month trial basis. Any issues with the new hours shall be addressed by the Labor/Management Committee. The new hours may be continued for the duration of the Agreement upon agreement between the City and the Union. The new work hours may also be implemented, on a trial basis, to other work locations with the agreement of the Union and the City. It is understood that from 7:00 a.m. to 8:00 a.m. and from 3:30 p.m. to 4:30 p.m., the City shall have the right to assign any available workforce to job assignments as deemed necessary regardless of location.~~

The normal work week shall begin at 12:01 a.m. Monday and end at 12:00 midnight Sunday.

A. All employees who work a regular work day shall be allowed not less than thirty (30) uninterrupted minutes for a lunch period, the normal lunch is 12:00 p.m. to 12:30 p.m. or as scheduled by the Supervisor. All lunch periods shall be taken at the job site or within five (5) minutes of the job site. Lunch travel time is included in the one-half ( $\frac{1}{2}$ ) hour. The crew will notify dispatch when breaking for lunch and when the crew returns to the job site.

B. There shall be two (2) fifteen (15) minute rest periods on each shift each work day. The rest periods will be scheduled by a Supervisor during the middle two (2) hours of each half ( $\frac{1}{2}$ ) shift. All breaks will be taken at the job site.

C. When an employee works beyond his regular quitting time, the employee shall receive one (1) fifteen (15) minute paid rest period after an additional two (2) hours of work. An employee will receive an additional thirty (30) minute meal period after four (4) consecutive hours of overtime.

D. The City will dock employees on the basis of one tenth (or six (6) minutes) per hour.

E. Where safe and proper operating practices allow with the approval of the Supervisor, all employees on shift schedules will be permitted to eat meals and take rest periods on the job.

F. When an employee is required to work two (2) hours or more as a result of a call-out or scheduled overtime work, he shall be furnished an unpaid meal period every four (4) hours of work. An employee shall also receive one (1) fifteen (15) minute break in the middle two (2) hours of every four (4) hours worked. All lunch periods shall be taken at the job site or within five (5) minutes of the job site, and fifteen (15) minutes breaks will be taken at the job site. Lunch travel time is included in the thirty (30) minute meal period. Lunches and breaks to be scheduled by the Supervisor.

G. When clocks are advanced one hour at the beginning of daylight saving time, scheduled workers on the midnight to 8:00 a.m. shift will be paid for eight (8) hours at straight time. When clocks are set back one hour at the end of daylight saving time, workers on the midnight to 8:00 a.m. shift will receive eight (8) hours pay at straight time.

## ARTICLE 19

### INCLEMENT WEATHER

Section A. Inclement weather shall be defined as follows:

1. 10 degrees Fahrenheit or below as determined by the National Weather Service at Cleveland Hopkins Airport.
2. Rain.
3. Snow Squalls.
4. Snow other than light or dry snow. Light snow deals with the amount and quantity of snow. Dry snow shall mean snow that does not remain packed when compressed by hand.

~~Inclement weather shall initially be determined at the reasonable discretion of the Foreman or Leader who shall then notify his immediate supervisor who shall have authority, unless otherwise directed by the Commissioner or his designee to determine inclement weather conditions.~~

Inclement weather shall initially be determined at the reasonable discretion of the Foreman or Leader who shall then notify their Dispatcher via two way radio of their location and the start time of the inclement weather. The Dispatcher shall log the information in the Dispatch log and notify, by text message, the crew's immediate supervisor who shall have the authority, unless otherwise directed by the Commissioner or his designee to determine inclement weather. Upon cessation of inclement weather, the Foreman or Leader shall notify their Dispatcher via two way radio of their location and the end time of the inclement weather. The Dispatcher shall log the information in the Dispatch log and notify, by text message, the crew's immediate supervisor. For emergency inclement weather, the Superintendent of the service center shall determine which crews or employees are assigned to work the inclement weather assignment.

If there are issues with the process, a Labor Management Committee shall be convened to determine any changes required in the process. The existing process shall remain in place until Labor and Management agree upon any changes to the process.

Section B. During inclement weather, employees shall be assigned the following unless during such time as an emergency is declared by the Commissioner or his designee. Both the declaration of the existence of or the cessation of an emergency shall state specifically when the emergency started or ceased.

1. Installation of de-energized equipment in areas where there is no immediate energized equipment (during light snow/dry snow) or removal of de-energized equipment in areas where there is no immediate energized equipment (during light precipitation, light snow/dry snow), provided that the work can be done in a manner with regard to employee and general public policy.
2. Loading and unloading of electrical materials, including stocking inventory, etc.
3. Maintenance and cleaning in substations and consumer vaults.
4. Cleaning, stocking and maintenance of trucks, tools and equipment.
5. Other work as assigned indoors or in areas sheltered or protected from extremely inclement weather conditions, including training, safety meetings, viewing safety films, etc.
6. Work in a manhole may be performed by cable splicers in the Division of Cleveland Public Power, provided the employees have the proper inclement weather protection as follows:
  - a. Manhole tent.
  - b. Manhole ring.
  - c. Intercom device for man in hole and man in truck.

This provision will only apply as long as the weather is not 10 degrees or below as determined by the National Weather Service at Cleveland Hopkins Airport.

Section C. When an emergency is declared by the Commissioner or his designee, work which may be performed is defined in the emergency conditions clause of this Contract, reasonable warm-up time shall be allowed.

Section D. It is the intent of these provisions to allow the City to maintain productivity and service, while not unnecessarily causing employees to work in extreme weather conditions which would constitute an unnecessary electrical safety hazard or health risk.

Section E. An emergency need not be declared for trouble lineman or line switchman to work in inclement weather. However, they shall not be required to do routine repair work in inclement weather.

## ARTICLE 20

### EMERGENCY CONDITIONS DURING INCLEMENT WEATHER

Section A. Emergencies are declared during inclement weather by the Commissioner or his designee, and only under the following circumstances:

1. Repairs to any primary voltages which are affected by a forced outage.
2. Wires on the ground, or otherwise in a dangerous condition.
3. Poles in a dangerous condition.
4. Distribution or customers out of service, including traffic signal installations, pedestrian signals or fire boxes.
5. Other conditions created by God and man that causes Cleveland Public Power facilities, Fire or Traffic equipment to be hazardous to the health or safety of the public.
6. Replacement of failed transformers.
7. Switching, fault location, proof testing and other service restoration work normally performed by Line Switchman or Trouble Lineman (not routine fixture replacement).
8. Energization of a customer to meet a coordinated cutover or in-service date.

Section B. ~~If an emergency has not been declared before 8:00 a.m. on a normal work day (Monday-Friday), any work required to return commercial circuits, street light feeders, street light circuits, traffic signal installations, or pedestrian signals to service will be declared an emergency at 12:00 p.m. and be worked until completion. If the work goes beyond 4:30 p.m., the call-in pay provision of this Agreement will apply. If the City requires this work to begin between 8:00 a.m. and 12:00 p.m., the employees will be paid at the rate of time and one-half the normal rate of pay between those hours. Any emergency work done during inclement weather shall be paid at the rate of time and one-half.~~

Section C. All CPP employees involved in Mutual Aid assistance shall be paid at double time their regular rate of pay for all hours worked on Mutual Aid assistance. Travel time to the location of the Mutual Aid shall be paid at the appropriate normal rate of pay. Assignment of Mutual Aid assistance shall be on a voluntary basis followed by inverse seniority in those classifications where work is required.

## ARTICLE 21

### SAFETY

The City agrees to adopt the Safety Procedures and Guidelines as set forth by the APPA as they apply to the Division of Cleveland Public Power. Employees will rotate through monthly training sessions with one (1) session each month for twelve (12) consecutive months. The City of Cleveland, Division of Cleveland Public Power, will use its "PCB Prepared and Handling Procedures" booklet on PCB's.

There shall be a safety meeting once a month at which three (3) representatives of the Union (two (2) from West 41st Street and one (1) from Meter) meet with representatives of the Commissioner's Office.

The City agrees to adopt the Safety Procedures and Guidelines as set forth in the City of Cleveland Safety Procedure Manual, as they apply to the Department of Public Safety.

There shall be a safety meeting once every other month with three (3) Union representatives (one (1) officer and two (2) representatives from the Department of Public Safety) and three (3) representatives from management on behalf of the Department of Public Safety. All Union representatives are to be selected by the Business Manager.

### HIGH VOLTAGE

1. All conductors carrying in excess of 600 volts shall be considered high voltage.
2. All rubber gloves and protective equipment shall be tested monthly each man is responsible for his own equipment; foreman and leaders for truck equipment.
3. At least two (2) qualified journeyman or one (1) qualified journeyman and one (1) qualified apprentice shall be assigned to all high voltage work, with one (1) qualified journeyman or one (1) qualified apprentice on the ground. Trouble lineman are exempt at their discretion.

4. Work on energized lines 5-15KV shall require at least two (2) journeymen in the classification of senior lineman. For training purposes, an apprentice may be added if the apprentice is deemed qualified to perform the work.

5. No one shall work on two different phases at the same time.

6. No work shall be done on energized lines 5KV-15KV off direct pole contact (aerial lifts or hotsticks shall be used).

7. All aerial lift trucks shall be dielectrically tested annually, and cleaned and treated as needed.

8. Painting structures supporting energized high voltage lines shall be done only in the presence of a Lineman; painting of steel poles may be done by Lineman, Line Clearance Men, Apprentices, or Line Helper Drivers. Line Helper Drivers cannot paint out of a bucket.

9. Switching shall be performed by either a Senior Lineman, Trouble Lineman or Line Switchman.

10. Fireproofing of cables shall be done by qualified employees under the direction of a Journeyman.

## ARTICLE 23

### STAFFING

#### CREWS

A. Cable Pulling Crews—Manual

Six (6) men, inclusive of two (2) journeymen and one (1) foreman.

B. ~~Cable Pulling Crew—Hydraulic~~

~~Five (5) men, inclusive of two (2) journeymen and one (1) foreman.~~

ARTICLE 26

DISCIPLINE

Section 1. Disciplinary action taken by the City shall only be for just cause.

Section 2. Prior to any discipline being rendered, the employee shall be entitled to a pre-disciplinary hearing. During such pre-disciplinary hearing, the employee shall have the right to (1) union representation, (2) be informed of the charges, (3) be informed of the evidence which the City has against the employee and provided with copies of any relevant documents and (4) be afforded a meaningful opportunity to respond. This shall include any discipline rendered pursuant to Article 45.

Section 3. The pre-disciplinary hearing shall be held and the written notice of the results of the pre-disciplinary hearing shall be provided within fifteen (15) working days (Monday through Friday) from the time the City has knowledge of the conduct for which the employee may be disciplined.

Section 4. The written notice of the results of the pre-disciplinary hearing shall include reasons for any discipline rendered.

Section 5. Any disciplinary action against a non-probationary employee may be appealed to either the Civil Service Commission in accordance with its rules and regulations or be processed in accordance with the grievance procedure of this Contract beginning at the level where the disciplinary action was meted out to the employee.

Section 6. When computing days of suspension, holidays shall count as working days. However, in those instances where a disciplinary suspension causes an employee to be in inactive pay status on the last work day prior to the holiday, such employee shall not be entitled to holiday pay. In no event will the City purposefully schedule any suspension so that an employee will be deprived of the holiday pay.

Section 7. The City shall not consider, as a basis of progressive discipline, any reprimand, suspension or other disciplinary action which occurred more than two (2) years previous.

Section 8. In the cases of suspension or discharge, the employee has a right to have his union representative present, and upon request, will be permitted to discuss his suspension or discharge with the union representative in an area made available by the City before he is required to leave the premises.

Section 9. The Union shall receive a copy of any letters in which discipline is rendered. The Union will provide the City with written notice of where such letters are to be sent.

Section 10. At least five (5) working days prior to meetings of the Accident Review Committee, the City shall provide the Union with the names of any bargaining unit members whose accidents are being reviewed at that meeting and copies of any reports or statements regarding the accident.

Section 11. ~~Effective upon ratification of the 1998-2001 Agreement, all~~ All employees are obligated to report convictions for DUI or drug related offenses. Employees who are required to drive for work, and who have their driving privileges suspended without work privileges, must likewise report this to the City. ~~and failure~~ Failure to report may result in discipline, up to and including immediate discharge.

## ARTICLE 27 GRIEVANCE PROCEDURE

### STEP 2

If the grievance is not satisfactorily settled at Step 1, the Union shall, within ten (10) working days after receipt of the Step 1 answer, appeal to the Labor Relations Office, and include the initial grievance, any amendments to same, and the Step 1 response. However, failure to provide the referenced paperwork shall not defeat the appeal. The Labor Relations Officer shall meet with the Local Union President, Local Officer(s) within ten (10) working days after receipt of the written appeal, and shall render an answer, in writing, to the Union within ten (10) working days after the Step 2 meeting. An International Representative of the IBEW may be present at this Step of the Grievance Procedure to assist the Local Union.

## ARTICLE 28

### OVERTIME

D. The City shall equalize all overtime among employees within the same classification on the same shift, within the same work location, within the same division, on an annual basis. The City shall credit employees for all overtime hours worked and/or for all overtime hours offered for which employees have declined or failed to work for any reason, they shall be charged the hours offered. Voluntary overtime offered to an employee which the employee declines to perform shall be counted the same as those overtime hours actually credited to the other employees, such hours to be added to and computed in the employee's overtime balance. For the purpose of computing overtime credit, any new employee hired, or

any employee appointed, promoted or temporarily assigned to a position for twenty (20) working days or more, shall be placed on the overtime list and shall automatically be with such overtime hours as are equal to those credited overtime hours of the employee in the same classification, then having the greatest number of overtime hours to his or her credit. Any employee temporarily assigned to a position for less than twenty (20) working days, and who works overtime, shall have those hours added to the overtime list covering the employee's regular job classification. The City shall maintain an overtime call-out list which shall be posted every week for all employees, by classification, by seniority, and a record of all overtime hours credited or refused, with a copy of the call-out list sent to the Union. Issues related to matters of overtime equalization will be addressed by the Labor Management Committee in Article 25.

The Labor Management Committee may also modify the overtime call-out procedure, on a six (6) month trial basis. At the end of the six (6) month trial, the Union may agree to continue the modified procedure, agree to change the modified procedure, or return to the prior call-out procedure.

## ARTICLE 32

### LONGEVITY

Longevity is tenure with the City while in a pay status. Time in authorized unpaid leaves of absence shall be deducted for purposes of computing the amount of employment. For an employee to be eligible to receive longevity pay in a given year, his longevity time must have been accumulated by March 1 of that year and the employee must have been in a pay status at some time between January 2 and March 1 of that year.

On or before March 31 of each year, all regular full-time employees shall receive longevity pay as follows:

after 5 years	\$300.00
after 10 years	\$475.00
after 15 years	\$575.00
after 20 years	\$750.00

ARTICLE 33

HOLIDAYS

All regular full-time employees shall be entitled to ~~eleven (11)~~nine (9) paid holidays as follows:

- |                             |                  |
|-----------------------------|------------------|
| New Years Day               | Good Friday      |
| Martin Luther King, Jr. Day | Labor Day        |
| President's Day             | Thanksgiving Day |
| Memorial Day                | Christmas Day    |
| Independence Day            |                  |

Employees are entitled to an additional two (2) floating holidays in each calendar year. Floating holidays will normally be used in increments of eight (8) hours, with at least 48 hours' notice, contingent upon operational needs. However, floating holidays may be used in increments of two (2) hours and with less than 48 hours notice, in cases of personal emergency, contingent upon operational needs. If the operational needs of the Department cannot be met because there are too many requests for a specific day, or for any other reason, the requests will be considered and approved in accordance with seniority guidelines. A new hire cannot use floating holidays during his probationary period.

To be entitled to holiday pay, an employee may not use sick leave on his or her last scheduled work day before or first scheduled work day after the holiday unless the employee actually works the holiday or unless the employee has a doctor's excuse or an FMLA-qualifying illness or injury.

If any of the above holidays fall on a Sunday, the following Monday shall be observed as the holiday. If any of the above holidays fall on a Saturday, the preceding Friday shall be observed as the holiday.

ARTICLE 34

VACATIONS

All regular full-time employees shall be granted the following vacation leave with full pay for each year based upon their length of City service as of the previous year, as follows:

<u>Years of Service</u>	<u>Vacation</u>
After 1 year	10 days
After 8 years	15 days
After 12 years	20 days
After 22 years	25 days

The Administration of Vacations (including eligibility requirements) shall be in accordance with the following rules and regulations:

A. Any employee who has completed less than one (1) year of continuous employment by December 31 of the previous year shall receive one (1) work day off for each month worked prior to December 31 of the previous year, but not to exceed ten (10) days. New employees whose starting day is prior to the 16th of the month shall be credited with one (1) day of vacation for that month. New hires cannot use vacation time during their probationary period. Employees terminated during their initial probationary period shall not be eligible to cash-out accrued vacation.

B. For vacation purposes, an employee's continuous employment is defined as the period of time during which he is continuously listed as an employee on the rolls of the City, including authorized paid leaves of absence.

C. If an employee is discharged for cause or quits, and is re-employed at a later date, his length of continuous employment will be computed from the date of his re-employment.

D. An employee who is laid-off and later re-employed shall be given credit for his service before the lay-off, but no credit will be given for that period of time during which the employee did not work.

E. Time in authorized leave of absence shall be deducted for purposes of computing the amount of employment, except as otherwise noted here in this contract.

F. An employee transferred from one Division to another shall be given credit for his service elsewhere with the City providing such employment has been continuous.

G. An employee who is on leave of absence without pay for a period totaling more than thirty (30) calendar days in any calendar year, shall earn vacation leave at the rate for which he is eligible based on length of service as follows:

One (1) day per month, not to exceed ten (10) days; eight (8) years, but less than twelve (12) years' service - one and one-half (1½) days per month, not to exceed fifteen (15) days; twelve (12) years, but less than twenty-two (22) years' service - two (2) days per month, not to exceed twenty (20) days; twenty-two (22) years'

service - two and one-half (2½) days per month, not to exceed twenty-five (25) days, except as set forth in Article 14.

H. An employee may use any vacation leave earned prior to December 31 of the preceding year. Vacation leave being earned currently in any calendar year may not be used until after December 31 of that year.

I. Vacations shall be taken during each current year, provided that the City may permit an employee to accumulate and carry over his vacation leave to the following year and must be taken during that period of time. If the City requires an employee to cancel a scheduled vacation, the employee shall have the option of either rescheduling the vacation during the same year or carrying the vacation time over to the following year.

J. If an employee is laid-off or terminates prior to taking his vacation earned, but not used for the previous year, he shall be paid in full for that vacation time, in addition to receiving pro-rata vacation earned during the current year in which he terminates.

K. The estate of a deceased employee shall receive payment for any unused vacation leave, including pro-rata vacation earned during the current year, for which the employee was eligible at the time of death.

L. Any employee eligible for vacation under existing rules, who enlists, or is inducted into the armed forces, shall, at the time of leaving for military service, be paid in full for all accrued vacation time (earned, but not previously taken).

M. A returning serviceman may be entitled to his vacation in the calendar year following the year of this return on the same basis as if he had been on the City payroll during the full preceding calendar year, providing he returns to ~~duty~~ employment within six (6) months of discharge from military service.

If a recognized holiday falls within an employee's vacation leave, the employee shall receive an additional paid vacation day in lieu of the holiday (either at the beginning, or at the end of his vacation, at his option).

Employees may take their vacation during the calendar year at the convenience of the City. During the first quarter of each calendar year, employees will be given an opportunity to indicate, on a form provided by the City, their vacation leave preferences, and promptly thereafter a written vacation schedule (by Department) will be prepared by the City with priority given to employees according to their departmental or job classification seniority to the extent consistent with operational requirements. Once the departmental vacation schedule is determined, it shall not be changed without the consent of the involved employee(s), except in response to an operational emergency. Any employee who fails to make his vacation application

during the appropriate period will be given his vacation leave without regard to seniority, based upon when his application was made.

ARTICLE 35

HOSPITALIZATION

The City agrees to provide single or family coverage, whichever is applicable, for each eligible employee enrolled in any of the health coverage plans for the term of the Labor Contract under the terms and conditions set forth in this Article. Employees shall initially maintain their current level of benefits and then will be provided benefits in accordance with Addendum A (summary description of benefits) effective on the first day of the month, following sixty (60) days after ratification of this Agreement. There shall be no duplicate coverage if both spouses are on the City's payroll. There shall be no reduction in benefit levels afforded by said plans unless by mutual agreement of the City and the Union, except as otherwise set forth in this Article.

All members shall initially contribute the currently defined contribution amounts on any hospitalization/medical plans offered by the City Effective on the first day of the month, following sixty (60) days after ratification of this Agreement, members shall contribute a percentage for such plans based on the City's costs or fully-insured equivalent cost of hospitalization, prescription drug, dental and vision coverage to be deducted from the member's wages as follows:

	<u>WELLNESS</u>		<u>NON-WELLNESS</u>	
	<u>Individual Coverage</u>	<u>Family Coverage</u>	<u>Individual Coverage</u>	<u>Family Coverage</u>
<u>MMO PLUS</u>	<u>12%</u>	<u>11%</u>	<u>16%</u>	<u>15%</u>
<u>HMO HEALTH OHIO</u>	<u>12%</u>	<u>11%</u>	<u>16%</u>	<u>15%</u>
<u>KAISER</u>	<u>12%</u>	<u>11%</u>	<u>16%</u>	<u>15%</u>

Effective April 1, 2015:

	<u>WELLNESS</u>		<u>NON-WELLNESS</u>	
	<u>Individual Coverage</u>	<u>Family Coverage</u>	<u>Individual Coverage</u>	<u>Family Coverage</u>
<u>MMO PLUS</u>	<u>13%</u>	<u>12%</u>	<u>17%</u>	<u>16%</u>
<u>HMO HEALTH OHIO</u>	<u>13%</u>	<u>12%</u>	<u>17%</u>	<u>16%</u>
<u>KAISER</u>	<u>13%</u>	<u>12%</u>	<u>17%</u>	<u>16%</u>

Employees will be provided the opportunity to enroll in an available alternative plan during the enrollment period.

Health care deductions of one-half the above amounts shall be made the first two pay periods of each month.

For all mental, nervous, and substance abuse treatment, in-patient and out-patient coverage shall be that set forth as part of the health care insurance plan selected by the employee.

The prescription program shall be that set forth as part of the health care insurance plan selected by the employee.

The City shall have the discretion to implement and offer a voluntary, optional high-deductible hospitalization plan for employees with benefit levels as outlined in Addendum B. If so implemented and elected, the premium rates shall be as follows:

	<u>WELLNESS</u>		<u>NON-WELLNESS</u>	
	<u>Individual Coverage</u>	<u>Family Coverage</u>	<u>Individual Coverage</u>	<u>Family Coverage</u>
<u>Employee Premiums</u> <u>(including Rx, dental and vision coverage)</u>	<u>8%</u>	<u>8%</u>	<u>12%</u>	<u>12%</u>

To satisfy the "wellness" requirements and be eligible for the reduced premium contributions, the employee must complete annually a health-risk assessment and have participated once annually in a biometric screening. The screening can be attained either through a program

offered by the City, at its option, or by the employee through an annual physical conducted by a physician. The screening shall require the following measurements:

- Height
- Weight
- Body mass index (BMI)
- Waist circumference
- Blood pressure

The screening shall also require a blood sample to measure:

- Total cholesterol
- High-density lipoprotein (HDL)
- Glucose
- Low-density lipoprotein (LDL) (available only with the fasting test)
- Triglycerides (available only with the fasting test)

The City shall establish the initial deadline in 2014 on which employees must satisfy the wellness survey/screening requirements. The City shall provide no less than thirty (30) days' advance notice of said deadline. Until such deadline is set, the "wellness" premium contribution rates shall apply.

No later than 150 days prior to expiration, the parties shall convene a labor management committee with no more than three (3) representatives from each party in order to discuss the possible application of health-oriented results to the Wellness Initiatives in the next contract.

Health Care Benefits. The City will provide health insurance benefits as summarized in the attached descriptions. (See Appendix B).

Employee premium cost sharing contributions and other terms are as follows:

- (1) Effective June 1, 2011, employees shall contribute the following amounts for single and family coverage:

	<u>Single</u>	<u>Family</u>
MMO Plus	\$52.50	\$105
HMO Health Ohio	\$62.50	\$125
Kaiser	\$67.50	\$135

- (2) Health care deductions of one-half the above amounts shall be made the first two pay periods of each month.

- (3) ~~For all mental, nervous, and substance abuse treatment, in-patient and out-patient coverage shall be that set forth as part of the health care insurance plan selected by the employee.~~
- (4) ~~The prescription program shall be that set forth as part of the health care insurance plan selected by the employee.~~
- (5) ~~Health care coverage shall be that set forth in the Summary Plan Description for the plan selected by the employee. (See, Appendix B).~~

Life Insurance. ~~During the term of this Contract, the City shall provide all members with Group Term Life Insurance in the amount of \$15,000.00. All regular full-time employees who have completed 90 days continuous service with the City will be provided with a \$15,000 Group Term Life Insurance.~~

Dental Insurance. ~~The City shall continue to provide all members with a dental insurance package which shall include orthodontist benefits. All regular full-time employees and dependents will be covered for Dental Care.~~

Vision Insurance. ~~The City shall continue to provide a vision insurance plan for employees. The City shall issue a request for proposals to provide a vision care benefit for all employees. The City shall begin this process as soon as practicable.~~

~~The City shall have the right to change insurance carriers or convert to, and from, a self-insured and fully-insured model, provided that benefit levels remain substantially the same. The City shall provide no less than forty-five (45) days advance notice to the Union in order to meet and confer regarding the proposed change, provided the City first convenes a Health Care Committee in which all unions are given an opportunity to be represented. The City shall negotiate through that Health Care Committee over the change in carriers before implementing any changes in insurance carriers.~~

## ARTICLE 36

### CLOTHING ALLOWANCE

Section 1. The purchase of uniforms and maintenance of uniforms is the responsibility of the employee. Any clothing material shall consist of OSHA approved/fire resistant material from vendor(s) agreed to by the City and the Union. Employees shall wear a minimum of 8 cal/cm<sup>2</sup> arc rated protection. There shall be a CPP or City of Cleveland logo, at the City's sole discretion, over the upper left breast pocket of all shirts. Any other requirements must be agreed to by the City and the Union.

Section 2. Effective March 1, 2005, the City will pay employees an annual uniform allowance of \$900.00. The City may implement a voucher system for the purchase of FR rated clothing. The Labor Management Committee shall meet to address issues related to the implementation of the voucher system. If no voucher system is implemented, clothing allowance will be paid by check.

Section 3. Each employee shall receive an annual tool/clothing and maintenance allowance of \$525.00 to be paid on March 1, to provide the following items:<sup>22</sup> Effective March 1, 2015, this amount shall be increased to \$675.00.

Boots

Shoes

Undergarments, including thermal underwear, quilted sweatshirt, hooded sweatshirt, etc.

Thermal Socks

Belt

Tools not covered by Article 22

Section 4. Issues related to this Article may be addressed in the Labor Management Committee in Article 25.

## ARTICLE 38

### WAGES

1. Percentage Increase

~~Effective upon ratification~~ April 1, 2013      1% increase in both adjusted and unadjusted rates ~~0%~~

Effective April 1, 2012-2014      3% increase in both adjusted and unadjusted rates

Effective April 1, 2015      2% increase in both adjusted and unadjusted rates

\*See ARTICLE 46 - WAGES BY CLASSIFICATION.

2. Termination Date

March 31, ~~2013~~2016.

Note: Rates in Article 46 will include the following equity adjustments, effective January 1, 2014:

Line Switchman .50

Lineman Leader .50

All Foreman .35

ARTICLE 40

DURATION

This Contract shall be effective as of the 1st day of April, ~~2007~~2013, and shall remain in full force and effect until March 31, ~~2010~~2016, or as amended or modified as hereinafter provided. Negotiations on the provisions of this Contract shall begin no later than ninety (90) days prior to March 31, ~~2010~~2016, provided either party has notified the other party in writing of its desire to terminate and/or modify the terms herein not sooner than December 1, ~~2009~~2015. In the event that either party desires to terminate this Contract, written notice must be given to the other party not less than three (3) months prior to the desired termination date which cannot be sooner than April 1, ~~2010~~2016.

ARTICLE 42

WORK JURISDICTION

Section A

The City agrees to abide by City Civil Service Commission job description for employees who are members of the bargaining unit, and shall not normally assign work falling within their jurisdiction to other City employees.

Section B

Supervisors who are not in the bargaining unit shall not work with the tools or take the place of bargaining unit employees. No Supervisor shall act in other than a Supervisor capacity except in emergencies. This is not intended to prevent a Supervisor from protecting life or property or giving emergency assistance.

Section C

Bargaining unit employees within the Department of Public Safety, Division of Safety Signal, shall be afforded the opportunity to engineer, install and maintain Tele-data communications equipment for various City divisions.

Section D

In the Underground Department of Cleveland Public Power, non-bargaining unit employee can drive pick-up trucks (including pick-up trucks to plow snow) and utility vans. This excludes all other vehicles, including dump trucks, unless otherwise agreed.

ARTICLE 43

“APPRENTICESHIP COMMITTEE POLICY”

JOINT APPRENTICE COMMITTEE

A Joint Apprentice Committee shall be appointed and shall consist of the Business Manager and three (3) members from the Union, appointed by the Business Manager and four (4) members from management. The Union members of the Committee shall be a Journeyman or higher classification.

1. The Committee will include one (1) Chairman and one (1) Secretary.
2. All matters properly coming before the Committee shall be decided by majority vote.
3. Two (2) members from each party shall constitute a quorum for a meeting.
4. If, for any reason, a member of either party cannot be present for a duly authorized meeting, that party may appoint an alternate with full voting privileges.
5. The Committee shall meet prior to the 4th Wednesday of the month to review the progress of all apprentices, and shall consider the recommendation of promotions,

demotions, transfers and any other action deemed necessary for the benefit of the Apprenticeship Program and Cleveland Public Power.

6. The Committee shall make such rules as are necessary for successful operation of the Committee and the program. Rules hereby made a supplement to this Agreement.
7. The Union shall be indemnified and held harmless by the City for any violation by the City of an employee's constitutional, common law, or statutory rights.

#### Apprentice Training Program

The parties shall establish an Apprentice/Employee Training Program through the Joint Apprenticeship Committee.

#### Apprentice Instructor

I.B.E.W., Local No. 39 Business Manager shall appoint the Apprentice School Instructors. The City will pay a minimum of two (2) instructors at time and one half (1½) their normal rate of pay for all hours of instruction. The City may use outside professional instructors and an established training program as approved by Union.

#### Apprentice Program Costs

The City agrees to absorb all cost involved with the Apprenticeship Schooling Program.

1. Costs to include Tuition, Books, Certificates.
2. The intent of this package is to maintain the high level of standards and to improve the Apprenticeship Program for the Divisions of Cleveland Public Power, Division of Traffic Signal, and Information Technology Services.

#### Eligibility Requirements of Candidates for Apprenticeship

To be considered for apprenticeship training, each applicant must meet the following requirements: Candidate may respond to posting at key locations and apply for Apprenticeship if they are:

- 1) Line Helper Driver, Line Clearance Man or Cable Splicer Helper
- 2) Transferring Apprentice from a Joint Apprentice Committee approved Apprenticeship Program

- 3) Community based pre-apprenticeship/development programs that meet the requirements of the Joint Apprenticeship Committee.

#### Appointing Apprentices

The following steps will be followed in the appointing of Apprentices for the Apprentice Program.

- 1) Eligible candidates will be pre-screened by the Joint Apprentice Committee and the Committee's recommendation forwarded to the Appointing Authority.
- 2) Signed Apprenticeship Agreements for each selected candidate will be forwarded to the Ohio State Apprenticeship Council for registration with copies to the Union and the City.
- 3) Only registered Apprentices of I.B.E.W., Local 39, will be permitted to attend the theory classes without specific permission of the Apprentice Committee.
- 4) Candidates accepted into the Apprenticeship Program shall be required to sign an Apprenticeship Agreement which shall contain an obligation to complete the Apprentice Program and a three-year service obligation that begins upon completion of the Apprentice Program. The Apprenticeship Agreement shall also state that candidates that fail to complete the Apprenticeship Program or breach their three-year service obligation may be required to reimburse the City for each year of training completed, subject to the recommendation of the Joint Apprentice Committee and approval of the Appointing Authority.
- 5) Apprentices who have served their full Apprenticeship shall be qualified for rating as Journeyman.

The recruitment, selection, employment and training of apprentices shall be conducted without discrimination because of race, color, religion, national origin, age or sex. The sponsor shall take affirmative action to provide equal opportunity in its apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30; Ohio Administrative Code 5101:11; and the Equal Employment Opportunity regulations of the State of Ohio.

#### Line-Helper Drivers

If a Line Helper Driver bids on and is accepted into the Apprentice Program and subsequently fails to complete the progression to journeyman, that employee may revert back to the position of Line Helper Driver if there is a need and budgetary approval for that position.

Intern Apprentices

After twelve (12) months, an Intern Apprentice who has passed the Civil Service examination for the Intern Apprentice classification shall be promoted to Line Helper Driver Start.

ARTICLE 44

DRUG TESTING

All employees who are required to be randomly tested under law (e.g. Department of Transportation regulations regarding employees required to have a Commercial Driver's License who drive vehicles in excess of 26,000 pounds), and all employees in Safety Sensitive Positions (Traffic Engineering and Safety Signal Employees) shall be subject to random drug/alcohol testing. Additionally, an employee involved in any accident resulting in personal injury or five hundred dollars (\$500.00) or more of property damage shall submit him or herself to post-accident drug/alcohol testing. The determination of the amount of property damage is to be based upon the supervisor's reasonable estimate, which shall be subject to the grievance and arbitration procedure. Such testing shall be conducted in accordance with the DOT procedures. Further, when there is a reasonable suspicion to believe that an individual employee is using illegal drugs or alcohol at work or is under the influence of drugs or alcohol at work, such employee will be directed to report to a City-designated physician or medical clinic, on City time and at City expense, for a fitness-for-duty examination. Random examinations, reasonable suspicion examinations and post-accident examinations are conducted for the purpose of determining the presence of illegal drugs or alcohol in the employee tested. An employee who is directed to submit to such examinations shall report to a City-designated physician or medical clinic, on City time and at City expense. The City's Manager of Labor Relations, or his designee, shall approve all drug/alcohol testing. This testing will include possible urine, blood, or breathalyzer exams as determined by the appropriate medical personnel. An employee who refuses to submit to drug/alcohol testing under the provisions herein shall immediately be charged with insubordination and will be subject to discharge. An employee who fails a drug or alcohol test for the second time during his/her employment with the City shall be discharged by the City.

An employee may be referred to fitness-for-duty screening if at least one (1) supervisor has a reasonable suspicion that the employee is then under the influence of alcohol or a controlled chemical substance. The circumstances supporting an allegation warranting reasonable suspicion testing shall be reduced to writing, signed by the supervisor, and copies to the employee and Union prior to testing. The demand for a urine, blood or breath specimen should be based only upon specific/objective facts and reasonable inferences drawn from those facts in light of experience that the employee is then under the influence of drugs or alcohol. In

addition, employees may be referred for mandatory urine, blood, or breath, for drug and/or alcohol screening under the following circumstances:

- (a) A disciplinary probation for employees who have violated the City's drug and alcohol rules; or
- (b) For employees returning from leaves of absence if they have given management a reason to suspect possible illegal drugs and/or alcohol abuse. Possible reasons to suspect substance abuse include, but are not limited to, a history of excessive absenteeism not related to a specific illness, documented evidence of deteriorating job performance or of aberrant behavior in the six months immediately preceding the leave of absence or documented involvement with drugs off the job.

An employee shall be entitled to have a Union representative present before testing is administered unless a Union representative is unavailable when the test is to be conducted and any further delay will potentially compromise the validity of the test results.

As concerns urine samples for drug testing, employees to be tested will undergo an initial screening (EMIT) test. For any positive results, a confirmatory test employing the gas chromatography/mass spectrometry (GC/MS) test will be used. The City will ensure that there is a continuous chain of custody of any sample taken from an employee. Specimen collection will occur in a medical setting. The testing procedures should not demean, embarrass or cause physical discomfort to employees. Altering or switching a specimen sample for a drug/alcohol test, or otherwise refusing to follow the established testing procedure and/or guidelines, shall be grounds for discharge.

The results of any drug or alcohol screening test will be kept strictly confidential. An employee who tests positive for drugs and/or alcohol will have the opportunity to review the test results and, if desired, a reasonable opportunity to rebut the results. Copies of test results shall be given to the City and to the individual tested. Where urine, blood or other samples have been taken, the two samples will be preserved for a reasonable period of time and tested employees will have the opportunity to direct one of these samples to a reputable physician or laboratory of their choosing for retesting.

Employees who may be drug or alcohol dependent are encouraged to voluntarily seek professional assistance through a reputable treatment program. The City's EAP program can provide counseling and referral. All records of an employee seeking medical rehabilitation for a drug or alcohol problem, either through EAP or otherwise, will be kept strictly confidential. Voluntary assistance should be sought before dependence affects job performance so as to endanger fellow employees, the public or otherwise adversely impact on the employee's ability to perform his or her job duties.

Participating in the EAP program does not supplant the normal discipline and grievance procedure. An employee subjected to disciplinary charges which include substance abuse on the job will be given access to the drug or alcohol screening results, the ability to privately test the blood, urine or other samples at an independent lab and the opportunity to rebut any allegation of chemical abuse. Any charging letter issued to an employee which includes allegations of substance abuse on the job shall list the basis upon which it was determined that there was reasonable cause to believe the employee was using drugs or was under the influence of drugs or alcohol.

Any employee found to have positive screens for drugs or alcohol must be given medical clearance by a qualified physician acceptable to the City before returning to work. Such employees may also be subject to additional random testing for a period of up to two (2) years.

An employee shall be deemed to have failed an alcohol test if:

- (a) The person has a concentration of ~~four~~three-hundredths of one gram or more by weight of alcohol in his/her blood;
- (b) The person has a concentration of ~~four~~three-hundredths of one gram or more by weight of alcohol per two hundred ten (210) liters of his/her breath;
- (c) The person has a concentration of ~~5.7~~4.5- hundredths of one gram or more of weight of alcohol per one hundred (100) milliliters of his/her urine.

The City is not responsible for any legal obligations and costs for claims based on the Union's duty of fair representation.

The Union shall be indemnified and held harmless by the City for any violation of an employee's constitutional, common law, or statutory rights.

#### ARTICLE 46 WAGES

The parties agree that the wage scale for Intern Apprentice should be adjusted to \$14.86, effective March 31, 2013.

#### APPENDIX A – LOCAL 39 CLASSIFICATION PROGRESSION

Parties need to update.