

**FACTFINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

IN THE MATTER OF	:	
FACTFINDING BETWEEN	:	
	:	
CITY OF CAMPBELL, OHIO	:	
PUBLIC EMPLOYER	:	REPORT OF THE
	:	FACTFINDER
-AND-	:	
	:	WATER & STREET
AFSCME, OHIO COUNCIL 8, LOCAL 759,	:	DEPARTMENTS
EMPLOYEE ORGANIZATION	:	

SERB CASE NUMBER(S): 2013-MED-09-0948

BARGAINING UNIT:

Included: Operator; Operator I; Operator II; Operator III; Chemist/Operator; Meter Reader; Utility Laborer; Utility Laborer/Truck Driver; Account Utility Clerk; Janitor; Mechanic; Equipment Operator; Foreman; Plant Maintenance Man.

Excluded: Supervisors in Water & Street; Secretaries to the Mayor and Law Director; all other Management Level, Confidential, and Professional Employees; Students; Seasonal and Casual Employees.

Approximate Number of Members in this Bargaining Unit – 14

MEDIATION / FACT-FINDING SESSION:

January 26, 2015; Campbell, Ohio

FACTFINDER:

David W. Stanton, Esq.

APPEARANCES

FOR THE CITY OF CAMPBELL:

Michael L. Seyer, Account Manager - CNA
William J. VanSuch, Mayor
Dr. Michael R. Evanson, Finance Director
Joseph Tovarnak, Water Superintendent

FOR AFSCME LOCAL 759:

John J. Filak, Regional Director
Gary Bednarik, Foreman
Christopher Carson, Utility Operator
Shawn McCormick, Assistant
Superintendent

ADMINISTRATION

By E-mail correspondence dated February 11, 2014, from Donald M. Collins, General Counsel, for the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Factfinder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-09-05 (J) in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a successor Collective Bargaining Agreement proved unsuccessful.

Through the course of the administrative aspects of scheduling this matter, the Factfinder discussed with these Parties the overall collective bargaining atmosphere relative to the negotiations efforts engaged in by and between them and learned that overall these Parties have enjoyed, and likely will continue to enjoy, what can best be characterized as a mature and amicable, yet achieved by incremental measures, collective bargaining relationship.

On January 26, 2015, at the City of Campbell Municipal Building, the Parties engaged in mediation facilitated by the Factfinder, wherein the remaining unresolved issues were resolved subject to Tentative Agreement. The Parties have stipulated that those Articles that were not “opened” during Negotiations and those Tentative Agreements, reached prior to the Factfinding/Mediation, as identified herein, be included in the successor Collective Bargaining Agreement upon its ratification and approval. Additionally, the Parties have indicated the mediated fact-finding positions of the Parties be set forth in the Fact-Finding Report as agreed to by and between them during the course of the January 26, 2015 Hearing/Mediation session. Those issues that were at

impasse were ultimately resolved during the mediation efforts engaged in by the Parties and the Undersigned culminating in the Tentative Agreement reached and are the subject matter for the issuance of this Report.

STATUTORY CRITERIA

The following, as mutually agreed to by the Parties, are hereby offered for consideration by the Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Factfinding component of the statutory dispute –resolution process as follows:

1. Past collectively-bargained agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the Bargaining Unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare of the public and the ability of a Public Employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the Public Employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

THE BARGAINING UNIT DEFINED: ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

The City of Campbell, hereinafter referred to as the “Public Employer” and/or the “Employer” is Party to a Collective Bargaining Agreement, Joint Exhibit 1, with the American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO, and its affiliated Local 759, hereinafter referred to as the “Employee Organization” and/or the “Union”. The City of Campbell is located in northeast Ohio. The Employees in this Bargaining Unit are responsible for repairing and maintaining the streets and water services within its boundaries. The Collective Bargaining Agreement addresses the Water and Street Departments and the Bargaining Unit numbers approximately fourteen (14) members. The Collective Bargaining Agreement expired on December 31, 2013.

Article 2, titled “Recognition” of the predecessor Collective Bargaining Agreement, acknowledges the Employer’s recognition of AFSCME, Local 759, Ohio Council 8 as the sole and exclusive bargaining agent for all Campbell, Ohio City Employees as listed:

Included: Operator; Operator I; Operator II; Operator III; Chemist/Operator; Meter Reader; Utility Laborer; Utility Laborer/Truck Driver; Account Utility Clerk; Janitor; Mechanic; Equipment Operator; Foreman; Plant Maintenance Man.

Excluded: Supervisors in Water & Street; Secretaries to the Mayor and Law Director; all other Management Level, Confidential, and Professional Employees; Students; Seasonal and Casual Employees.

Under the Ohio Statutory Dispute Resolution Process, the Factfinder is required to consider comparable Employee Units with regard to their overall make-up and services provided to the members of their respective communities. As is typical, and as is required by statute, the Parties in their respective Pre-hearing Position Statements, filed in accordance with procedural requirements of the statutory process, and the supporting

documentation provided at the Fact-finding/Mediation session, each have relied upon comparable jurisdictions and/or municipalities concerning what they deem “comparable work/jurisdictions” provided by this Bargaining Unit. While there are indeed certain similarities among the jurisdictions cited there are no “on-point comparisons” relative to this Bargaining Unit concerning the statutory criteria. In other words, while their duties and responsibilities may be exact to other jurisdictions relied upon, the overall makeup of the public entity will differ with respect to geography, infrastructure, staffing and the makeup of the employees performing these and other functions.

It has been and remains the position of this Factfinder/Mediator that the Party proposing any addition, deletion, or modification of either current Contract language; or, a *status quo* practice wherein an initial collective bargaining unit/Agreement may exist, bears the burden of proof and persuasion to compel the addition, deletion, or modification as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that represents a previous policy, collective bargaining provision or a practice previously engaged in by the Parties.

The Parties met in pursuit of negotiating a successor Collective Bargaining Agreement wherein Proposals were exchanged and certain Tentative Agreements were reached regarding numerous Articles recognized in the predecessor Collective Bargaining Agreement. As requested by the Parties, the following Articles are recognized as Tentative Agreements and are to be included, based on current Contract language, as such in the successor Collective Bargaining Agreement:

I. The following Articles were not opened and remained unchanged for inclusion in the successor Collective Bargaining Agreement:

Preamble

Article 1	Intent of Contract
Article 3	Management Rights
Article 5	Supervisory Work
Article 6	Work Rules
Article 7	Separability and Legality
Article 8	Union Dues/Fees Deduction
Article 9	Seniority
Article 10	Reduction in Force
Article 11	Recall From Layoff
Article 12	Grievance Procedure
Article 13	Disciplinary Procedures
Article 16	Vacation Buy-Back
Article 17	Attendance Incentive Program
Article 18	Holidays - Pay - Holidays Declared
Article 19	Uniforms – Uniform Allowance
Article 20	Funeral Leave
Article 21	Life Insurance
Article 23	Injury On Duty Pay
Article 24	Safety and Health
Article 27	Subcontracting
Article 30	Drug and Alcohol Policy
Article 31	Vacancies, Promotions and Transfers
Article 32	Call-In Pay
Article 36	Bargaining Unit Application of Civil Service Law

II. Prior to Fact Finding/Mediation, the Parties reached Tentative Agreement to the following Articles and, as such, are be incorporated into the successor Collective Bargaining Agreement:

Article 2	Recognition
Article 14	Vacation Schedule and Pay
Article 28	Probationary Period
Article 34	Non-discrimination
Article 35	Miscellaneous

III. The Parties bargained to impasse regarding the following issues:

Article 4	Hours of Work
Article 15	Sick Leave
Article 22	Health Insurance
Article 25	Longevity
Article 26	Shift Differential
Article 29	Wages
Article 33	Licenses
Article 37	Termination and Renegotiations (Duration)

The Parties reached Tentative Agreement during Mediation regarding the following issues and are incorporated in this Fact-finding Report as follows:

(New Contract language is set forth in “bold print” and/or “Italics”)

ARTICLE 4 **HOURS OF WORK**

Section 4.1. Normal Hours. The normal hours of work each day shall be consecutive. Each work shift shall have a regular starting and quitting time as determined by the departmental "work rules."

Section 4.2. A normal work week shall consist of five (5) consecutive, eight (8) hour days, or that number of scheduled hours over eight (8) per day as agreed to by the parties, including one-half (1/2) hour lunch period within the confines of a calendar week, except for employees engaged in a continuous operation, the work week shall be established as five (5) consecutive, eight (8) hour days, or that number of scheduled hours over eight (8) per day as agreed to by the parties, including one-half (1/2) hour lunch period with two (2) consecutive days off. Continuous operation shall be defined as any operation in which an employee or group of employees are in operation for which there is regular scheduled employment, for twenty-four (24) hours, seven (7) days each week.

For employees working in the Municipal Building, the normal work week, because of the exclusive nature of the Municipal Building's hours of operation, shall be governed by ordinance.

Section 4.3. The regular, normal work day, except for those employees working in the Municipal Building, shall consist of eight (8) consecutive hours of work, or that greater number of scheduled hours over eight (8) per day as agreed by the parties, including one-half (1/2) hour paid lunch period.

Section 4.4. All hours paid in excess of the normal scheduled work day and normal scheduled work week shall be defined as overtime work in the Street and Water Treatment Plant. Overtime compensation shall be at the rate of one and one-half (1 1/2) times the employee's hourly rate. The hourly rate shall include the premiums, tack-on, and differential pay that the employee is receiving.

Section 4.5. Part-time employees shall not be assigned to overtime which has traditionally been worked by full-time employees.

Section 4.6. All employees who are required to work overtime must have the approval of the head of the department and the approval of the Director of Administration prior to commencing overtime work.

Section 4.7. *Overtime will be distributed based upon accumulated overtime hours. Employees will be listed in order of seniority and accumulated overtime*

hours in specific job classifications. Employees with the lowest amount of total overtime within the classification requiring overtime will be called first and then in order of lowest to highest.

Section 4.8. *Employees who are contacted and are physically able shall be required to report for work when such work is of an emergency nature.*

ARTICLE 15 **SICK LEAVE**

Section 15.1 Crediting Sick Leave. Sick leave credit for full-time employees shall be earned at the rate of 4.6 hours/or each eighty (80) hours of service in active pay status, including paid vacation and sick leave, but not during a leave of absence or layoff, to a limit of one hundred and twenty (120) hours per year. Unused sick leave shall accumulate without limit. Any accumulated sick leave earned by an employee with the Employer prior to the execution of the agreement shall remain to the employee's credit until used.

Section 15.2. Expiration of Sick Leave. If illness or disability continues beyond the time covered by earned sick leave, the employee may be granted a personal leave in accordance with the appropriate section of this agreement.

Section 15.3. Charging of Sick Leave. Sick leave shall be charged in minimum units of one (1) hour. An employee shall be charged for sick leave only for days upon which he would otherwise been scheduled to work. Sick leave payment shall not exceed the normal scheduled work day or week earnings.

- A. Sick leave shall be granted to an employee upon approval of the Employer and for the following reasons:
1. Illness or injury of the employee or spouse, children (residing within a fifty [50] mile radius of the City of Campbell);
 2. Medical, dental or optical examination or treatment of employee during normally scheduled working hours;
 3. If a member of the immediate family is afflicted with a contagious disease and when, through exposure to a contagious disease, the presence of the employee at his job would jeopardize the health of others; and
 4. Pregnancy and/or childbirth and other conditions related thereto.

Section 15.4. Evidence Required for Sick Leave Usage. The Employer shall require an employee to furnish a standard written signed statement to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action.

Section 15.5. When an employee is unable to work, he shall notify the supervisor or other designated person within one (1) hour before the time he is scheduled to report to work on each day of absence, unless emergency conditions make it impossible or unless the employee has made other reporting arrangements with the supervisor.

Section 15.6. *Abuse of Sick Leave.* Employees intentionally failing to comply with sick leave rules and regulations shall not be paid. Applications for sick leave with intent to defraud may result in disciplinary action and refund of salary or wage paid.

Section 15.7. *Physician Statement.* If medical attention is required, the employee shall be required to furnish a statement from a licensed physician or psychologist notifying the Employer that the employee was unable to perform his duties. Such physician statement shall be required after an absence of more than two (2) consecutive work days due to illness. Whenever the Employer suspects abuse of the use of sick leave, he may require proof of illness in the form of a physician statement of disability or other appropriate proof satisfactory to the Employer to approve the use of such leave.

Section 15.8. *Those employees covered under this agreement who are eligible or who become eligible to retire shall be entitled to convert accrued but unused sick leave to acash payment on the following:*

Upon retirement with ten (10) years or more:

<i>10 years – 20 years</i>	<i>40% up to 480 Hours</i>
<i>20 years+</i>	<i>60% up to 720 Hours</i>

Payments will be made in three (3) annual installments.

For the purposes of this provision, retirement shall be considered the criteria established for retirement from active employment with the City at the time of separation under the Ohio Public Employees Retirement System (OPERS).

Section 15.9 *Conversion.* Upon death on the job, the employee's estate shall be paid sick leave on the following schedule:

3– 10 years of service - 30% up to 30 days (240 hours) accumulated sick leave;

10- 20 years of service - 40% up to 60 days (480 hours) accumulated sick leave;

20 plus years of service - 60% up to 90 days (720 hours) accumulated sick leave.

- A. 4:00 P.M. to 12:00 A.M. Twenty-five (\$0.25) per hour additional
- B. 12:00 A.M. to 8:00 A.M. Thirty (\$0.30) per hour additional

ARTICLE 29
WAGES

Bargaining unit employees shall receive the wages and pension pick-up benefits set forth in "Appendix A" attached hereto.

Employees who are employed as of the effective date of this Agreement shall receive a lump sum bonus payment of eleven hundred dollars (\$1,100.00) each, payable within thirty (30) calendar days following execution of the Agreement. Said amount shall be subject to all/any required deductions.

Effective January 1, 2016, employees shall receive a two percent (2%) increase in their hourly rate of pay.

Effective January 1, 2017, employees shall receive a two percent (2%) increase in their hourly rate of pay; and, each employee shall receive a thirty-six cents (\$0.36) per hour increase in their hourly rate of pay.

ARTICLE 33
LICENSE PAY

Section 33.1. Employees who must travel out of the City of Campbell to take a license exam will be reimbursed for reasonable travel expenses. Employees who must travel out of the City of Campbell to complete continuing education courses will be reimbursed for reasonable travel expenses. Employees are eligible for such reimbursement one time only for each type of license, as described in Section 2. Reasonable travel expenses shall be as follows:

- A. Employees shall be reimbursed for mileage at the current Employer rate for the use of a privately owned vehicle
- B. Mileage reimbursement shall be payable to only one (1) or two (2) or more employees traveling on the same trip and in/on the same vehicle. The names of all persons traveling together shall be listed on the travel voucher.
- C. Charges incurred for parking at the destination and highway tolls, if any, are reimbursable at the actual amount. Receipts for parking costs and highway tolls are required when charges are in excess of two dollars (\$2.00).

Section 33.2. The Employer shall reimburse employees, one time only, the fees and

expenses associated with taking the license exam for each Water Treatment Class license or COL. In no event will the Employer reimburse for subsequent attempts to obtain any one level or type of license or CDL exam; the Employer will, upon prior approval, pay fifty percent (50%) of the tuition cost up front and fifty (50%) upon course completion. Documentation of course attendance and/or completion is required.

Section 33.3. An employee taking a license examination shall not lose straight time pay for the first attempt at each license Class or a CDL. Employees may use vacation or compensatory time for any subsequent attempts at obtaining the same license.

Section 33.4. Employees who are assigned as a heavy equipment operator (HEO), or who hold a Commercial Driver's License or a Water Treatment Lab License, as required by their respective job duties, will receive *seventy-five cents (\$.75)* per hour for such position (HEO) or license over the base hourly rate.

Section 33.5. Employees who are temporarily assigned by the supervisor to perform the duties as a heavy equipment operator (HEO) shall be paid an additional fifty cents (\$.50) per hour for all hours performing such assignment.

Employees who hold a Commercial Driver's License (CDL) and who are temporarily assigned by the supervisor to perform duties that require a CDL shall be paid an additional fifty cents (\$.50) per hour for all hours performing such assignment.

Employees who are assigned to repair sewer basins shall receive an additional fifty cents (\$.50) per hour for all hours performing such work.

Employees who hold an Ohio EPA license(s) shall receive the following:

- \$.50 per hour for Class I Ohio EPA license
- \$ 1.00 per hour for Class II Ohio EPA license
- \$ 1.50 per hour for Class III Ohio EPA license

The above-referenced amounts are non-cumulative.

Effective the first full pay period following the first anniversary date of the Agreement:

- \$.75 per hour for Class I Ohio EPA License***
- \$1.25 per hour for Class II Ohio EPA License***
- \$1.75 per hour for Class III Ohio EPA License***

The above-referenced amounts are non-cumulative.

Employees hired after the effective date of this agreement into a classification that the Employer requires a minimum class license must obtain said license no later than two (2) years following the date of hire. Failure to obtain such license shall be considered just cause for termination of employment.

ARTICLE 37
TERMINATION AND RENEGOTIATIONS
DURATION

Section 37.1. This Agreement shall be effective *January 1, 2015*, and shall remain in full force and effect until the 31st day of December *2017*, unless otherwise terminated as provided herein.

Section 37.2. Except as otherwise mutually agreed by the parties, if either party desires to modify, amend or terminate this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days, nor later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be certified by mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent.

Section 37.3. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated to bargain collectively or individually with respect to any subject or matter referenced to or covered in this Agreement, except as mutually agreed.

* * * * *

As indicated by and between the Parties, the aforementioned represents the mediated Factfinding positions of the Parties, and are to be included in the successor Collective Bargaining Agreement. Such takes into consideration the data presented, the evidence of record, and the positions articulated to the Factfinder/Mediator during the course of the Hearing Session that occurred on January 26, 2015.

* * * * *

IV. ARTICLES NOT SPECIFICALLY ADDRESSED HEREIN

Those issues/Articles, if any, not subject to the presentation of evidence, or identified/addressed during the course of the Mediation session, or those not referenced by either Party, shall be subject to a *status quo* recommendation relative to whatever policy, practice, contractual provision, or procedure that may have existed, relative to the predecessor Collective Bargaining Agreement. Such shall be maintained for consideration/inclusion in the successor Collective Bargaining Agreement ratified, approved and implemented by these Parties.

V. CONCLUSION

The recommendations contained herein, and those stipulated by the Parties as set forth in the mediated Factfinding positions of these Parties, are indeed deemed reasonable in light of the economic and contractual data presented and reviewed by the Factfinder; the presentations made by the Parties; and, are based on the common interests of both entities recognizing the painstaking efforts at the bargaining table resulting in the many Tentative Agreements reached before and during the Hearing/Mediation Session. Such are supported by the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory process; the Tentative Agreements reached by and between them during the course of mediation and the negotiations efforts endeavored prior to; the stipulations of the Parties as set forth in the mediated Factfinding positions of the Parties; and, are made based on the mutual interests and concerns of each Party to this successor Collective Bargaining Agreement.

David W. Stanton

David W. Stanton, Esq.,
Factfinder/Mediator

March 12, 2015
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Factfinding Report, based on the mediated Factfinding Positions of the Parties hereto, has been forwarded by electronic mail to: Michael L. Seyer, Principal Representative for the City of Campbell, Account Manager with Clemans, Nelson & Associates, 2351 South Arlington Road, Suite A, Akron, Ohio 44319; John J. Filak, Principal Representative for AFSCME, Local 759, Regional Director, AFSCME, Ohio Council 8, AFL-CIO, 150 South Four Mile Run Road, Youngstown, Ohio 44515-3137; and to the State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 42315 on this 12th day of March 2015.

David W. Stanton

David W. Stanton, Esq. (0042532)
Factfinder / Mediator