

IN THE MATTER OF FACT-FINDING

BETWEEN

THE SCIOTO COUNTY ENGINEER

AND

AFSCME OHIO COUNCIL 8 LOCAL 1354

**BEFORE: William C. Binning Ph.D.
SERB Fact-finder**

SERB CASE No. 2013-MED-09-0958

PRINCIPAL ADVOCATE FOR THE EMPLOYEE:

**Sandra S. Shonborn
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PRINCIPAL ADVOCATE FOR THE EMPLOYER:

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INTRODUCTION

This Fact-finder was properly appointed to this case by Ohio SERB on January 14, 2014. The parties agreed to a hearing date of February 27, 2014 at the County Court House in the City of Portsmouth.

There were a number of unresolved issues placed before this fact-finder. They are listed below:

1. Grievance Procedure
2. Bumping Rights
3. Paid Leave of Absence
4. Holidays
5. Health Insurance
6. AFSCME Care Plan
7. Operator/Commercial Driver License, Welding Certificate
8. Wage Rates
9. New Article on Clothing and Boots
10. Duration of Agreement

The parties did agree to existing contract language on Holidays. That issue has been tentatively agreed to.

The Fact-finder, as he is obligated to do, offered mediation. The parties preferred to begin the hearing.

The Fact-finder would like to thank the parties and their advocates for their excellent pre-hearing statements, and their patience in educating this Fact-finder about the outstanding issues.

Present at the hearing:

For the Employer:

Robert Cross, Consultant
Craig Opperman, County Engineer
Debbie Lang, Office Administrator/Personnel

For the Union:

Sandra Shonborn, Regional Director AFSCME Ohio Council 8
Jerry Huffstetler, President Local 1354
Mark Maynard, Steward
Ray Mills, Recording Secretary
Bobby Buckett, Committee 1354
Dan Sutton, Committee 1354
Mathew Kittles, Vice-President 1354

CRITERIA

OHIO REVISED CODE

In Fact-finding, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered by the Fact-finder. The criteria are listed below, and were given weight by the Fact-finder in his recommendations for this matter. The criteria are:

- 1. Past collective bargaining agreements**
- 2. Comparisons**
- 3. The interest and welfare of the public and the ability of the employer to finance the settlement**
- 4. The lawful authority of the employer**
- 5. Any stipulations of the parties**
- 6. The other factors not listed above, which are normally or traditionally used in disputes of this nature.**

ISSUE 1

ARTICLE 6: ADJUSTMENTS OR COMPLAINTS OR GRIEVANCES

The Employer Position

The Employer proposes the following change in language in Article 6 Section 6 as presented below:

“The decision of the Arbitrator resulting from any arbitration or grievance hereunder, shall be in writing and shall be final and binding. Any cost involved in obtaining the list of arbitrators shall be **paid by the party requesting arbitration** ~~shared equally by the parties.~~ **Failure of the Union to proceed to arbitration which includes scheduling a date for the hearing within 60 days shall result in the grievance being resolved on the basis of Management’s last response.** The cost of the services of the Arbitrator shall **be paid by the losing party** ~~borne equally by the parties~~

The evidence presented by the Employer was a list of seven grievances that remain unsettled. Of those seven, five cases were ones for which an arbitrator was selected but the Union has not offered dates for hearings. (Employer Tab 1).

The Union Position

The Union supports retention of current language. The Union offered as evidence the length of time this language has been in previous contracts over many years. The Union also maintains the Employer is never willing to settle any outstanding issues.

Discussion and Recommendation

The Employer makes a good case and provides evidence that the Union is not moving to set a date for these various cases that are to go to Arbitration. The Union rebuts by arguing that the Employer never wants to settle any disputes. The Fact-finder might be wrong, but it appears that none of these cases involve a suspension or a termination. FMCS urges their Arbitrators to resolve those types of cases in a timely manner. The Employer is

asking for a significant concession by the Union in changing this long standing language. If the Employer feels strongly about this language then it must bargain for the language change.

Recommendation: Current Language.

ISSUE 2

ARTICLE 13: TEMPORARY ASSIGNMENTS

EMPLOYER POSITION

Section 2: If the County Engineer temporarily assigns an employee to another job classification the employee shall:

1. Receive his regular rate of pay if the rate of pay for such other classification is lower than his regular rate. ~~In no case shall an employee be assigned to a higher classification rate for less than two (2) hours.~~ The employee will be paid at the higher classification rate for all hours he actually works in that classification **over two (2) days** ~~or a minimum of two hours.~~ If the employee works in a higher classification more than half a day he will get paid at the higher classification rate for the entire day.

Section 4: It is agreed that the employees work assignments shall remain within their respective classifications so far as possible when assigning work for the day ~~(i.e., when laborer is available truck driver won't be assigned laborer work while laborer, driver's work)~~

The Employer maintains that these language changes create an opportunity for a more efficient use of the work force.

UNION POSITION

The Union proposes retention of current language. The Union maintains there has never been a problem with the language in Article 13, Section 2, Point 1. The Union stated that under Section 4, the truck driver does not sit in the truck while others work and this has never been an issue.

DISCUSSION AND RECOMMENDATION

The Fact-finder is not persuaded that there is a reason to change the language in Section 2, Point 1. It might burden the employer because of the record keeping that is required. However, the employee will feel short changed since it is a minor wage concession that was not bargained for. Therefore the Fact-finder recommends current language for Article 13 Section 2.

The Fact-finder was not persuaded that the language in the brackets does not have the potential to result in increased costs and possible inefficiencies for the Employer. The language in Section 4, not in brackets, does afford the Employee protection by recognizing the rights of the employees within their classifications. The financial conditions of local governments in Ohio have been deteriorating and this language could lead to inefficiencies, particularly with a smaller work force.

Recommendation no change in language for Article 13 Section 2 Point 1. Recommend language change for Article 13 Section 4. See below:

ARTICLE 13: TEMPORARY ASSIGNMENTS:

Section: 2 If the County Engineer temporarily assigns an employee to another job classification the employee shall:

- 1. Receive his regular rate of pay if the rate of pay for such other classification is lower than his regular rate. In no case shall an employee be assigned to a higher classification rate for less than two (2) hours. The Employee will be paid at the higher classification rate for all hours he actually works in that classification or a minimum of two hours. If the employee works in a higher classification more than half a day he will get paid at the higher classification rate for the entire day.**

Section 4: It is agreed that the employees work assignments shall remain within their respective classifications so far as possible when assigning work for the day.

ISSUE 3

ARTICLE 16 Bumping Rights

Union Position

The Union is seeking extend recall rights in the contract from twelve calendar months to five years. The Union maintains this is fair and does not interfere with the Employer's operation. The Union offered comparables (See Union Tab 5 C). The Union language is offered below:

ARTICLE 16: BUMPING RIGHTS

SECTION 1 Employees displaced from their classification through a reduction in work force shall be recalled or returned to vacancies which 1) thereafter occur in their classifications in the order of their classification seniority (most classification senior recalled first) or 2) thereafter occur in other similarly or lower rated classifications within the employer's bargaining unit work force for which the recalled employee is qualified to perform the work, in order of their bargaining unit seniority (most senior recalled first).

Such vacancies in the classification or other lower or similarly rated classifications shall not be posted and filled from within, nor shall the Employer hire from the outside until such time as all qualified employees have exhausted their recall rights. Employees shall retain recall rights for a period of ~~twelve (12) calendar months~~ **five (5) years** from their effective date of displacement.

EMPLOYER POSITON

The Employer proposed current language of 12 calendar months. The Employer also offered comparables. (See Employer Tab 3)

DISCUSSION AND RECOMMENDATION

The spokesperson for the Union indicated this issue was very important to the members. Each side offered comparables on the length of recall rights from neighboring counties. There was no clear pattern. The other counties ranged from twelve (12) months to thirty-six (36) months.

RECOMMENDED LANGUAGE BELOW:

ARTICLE 16: BUMPING RIGHTS

SECTION 1 Employees displaced from their classification through a reduction in work force shall be recalled or returned to vacancies which 1) thereafter occur in their classification in the order of their classification seniority (most classification senior recalled first) or 2) thereafter occur in other similarly or lower rated classifications within the employer's bargaining unit work force for which the recalled employee is qualified to perform the work, in order of their bargaining unit seniority (most senior recalled first).

Such vacancies in the classification or other lower or similarly rated classifications shall not be posted and filled from within, nor shall the Employer hire from the outside until such time as all qualified employees have exhausted their recall rights. Employees shall retain recall rights for a **period of thirty-six (36) calendar months** from their effective date of displacement.

ISSUE 4

ARTICLE 17: PAID LEAVE OF ABSENCE: SECTION B –EVIDENCE REQUIRED FOR SICK LEAVE

The Union proposes two separate language changes under this Article. They will be taken up separately.

UNION POSITION ON CHANGE OF SICK LEAVE LANGUAGE

The Union maintains that the Engineer's office requires "very detailed and private information on sick leave forms." (Union Position Statement p. 4.) The Union maintains this excessive amount of personal information is not kept confidential by the Employer. (Id.) The Union maintains the evidence required for sick leave is "ridiculous and cumbersome to the employee." (Id.) The Union also maintains that the Engineer's 'Application for Use of Sick Leave' is constantly changing. The Union offered comparables. (Union Tab 5 D). The Union's proposed language is offered below:

SECTION 1 Sick Leave

B. Evidence Required for Sick Leave. **After a consecutive three (3) day absence,** the Engineer shall require an employee to furnish a standard ~~written statement~~ **sick leave form** to justify the use of sick leave, or a ~~certificate stating the nature of the illness~~ **statement** from a licensed physician, dentist, or chiropractor. Falsification or failure to provide either a written signed statement or a physician's certificate shall be grounds for disciplinary action. ~~The standard written statement shall mean compliance with the Engineer's "Application for Use of Sick Leave" which shall be submitted to the supervisor/department head for recommendation to the Engineer for approval or disapproval.~~ The written statement and the physician's certificate, if required, must be submitted within three (3) days after the employee's return to work but no later than by the end of the pay period in which the sick leave was used. Employees shall not be paid sick leave until they have submitted the above application and/ or certificate, ~~and it has been approved by the Engineer.~~

E. Uses of Sick Leave. Sick leave shall be granted to an employee only upon approval of the County Engineer and for the following reasons:

1. Illness or injury of the employee or a member of his immediate family. ~~(In case of a of the immediate family not living in the same household, the County Engineer may credit sick leave when he believes it justified but such cases will be carefully investigated.)~~

EMPLOYER POSITION

The Employer supports existing language. It argues that the existing language is long-standing. The Employer also argues under sick leave that the Employer has a legitimate right to know what medicine the employee is on.

DISCUSSION AND RECOMMENDATION

The sick leave language does appear to be very intrusive and makes it appear as if the Engineer's office has special medical knowledge. However, as the Employer representative argues this is long standing language and practice. It is not clear to the Fact-finder what all the consequences will be if the proposed language changes by the Union are adopted.

The following language is recommended:

Article 17 PAID LEAVE OF ABSENCE

Section 1 Sick Leave

B. Evidence Required for Sick Leave.

Recommendation: Existing Language.

E. Uses of Sick Leave. Sick leave shall be granted to an employee only upon approval of the County Engineer and for the following reasons:

1) Illness or injury of the employee or a member of the immediate family. ~~(In case a of a member of the immediate family not living in the same household, the~~

~~County Engineer may credit sick leave when he believes it justified; but such cases will be carefully investigated.~~

UNDER ARTICLE 17 PAID LEAVE OF ABSENCE

UNION POSITION

The Union offers a new section which allows for personal leave with full pay. The Union offers a number of comparables in support of its proposal which is offered below:

SECTION 4 Each bargaining unit employee shall be entitled to three (3) days of personal leave with full pay. Personal leave can be taken in increments of one-half (1/2) hour. Employees must notify their Supervisor prior to the start of a shift if he/she intends to utilize personal leave.

EMPLOYER POSITION

The Employer is opposed to this new language and offers into evidence the fact that in 2013 bargaining unit leave amounted total 4,509.16 in paid hours and 1,671.1 in unpaid hours for a Grand Total of 6,180.26 hours in leave. (Employer Binder Tab 4) The Employer also argues that the employee can use vacation time for personal time/days.

DISCUSSION AND RECOMMENDATION

A good number of the offered comparables offer personal leave.

The following language is recommended:

SECTION 4 Each bargaining unit employee shall be entitled to one (1) day of personal leave with full pay. Personal leave can be taken in increments of one-half hour. Employees must notify their Supervisor prior to the start of a shift if he/she intends to utilize personal leave.

ISSUE 5

ARTICLE 33 HEALTH INSURANCE

EMPLOYER PROPOSAL

ARTICLE 32: HEALTH INSURANCE

SECTION 1 The Engineer will provide hospitalization coverage through the County health insurance program **excluding dental, vision, and life insurance coverage provided under the AFSCME Care Plan in Article 33** at the same or substantially similar benefit as in effect at the signing of this Agreement. The Engineer and the employee shall share in the cost of the coverage.

A. The employee's share shall be as follows:

Five percent (5%) effective with the signing of the Agreement of the single plan, employee Spouse plan, employee children plan or family plan premium.

Seven and one-half percent (7 1/2%) effective January 1, 2015 of the single plan, Employee Spouse plan, employee children plan or family plan premium.

Ten percent (10%) effective January 1, 2016 of the single plan, Employee Spouse plan, employee children plan or family plan premium.

~~Family coverage: \$60.55 per month~~

~~Single coverage: \$30.43 per month~~

The Employer offered extensive data on the health insurance costs for the employees in this bargaining unit. (Employer Binder Tab 9) It also gave evidence of cost increases in insurance since this fixed dollar amount was agreed to. The Employer calculates the employee premium share at 3% percent. This is far below what the average premium share is for public employees in Ohio. The Employer offers into evidence the SERB, 2013 21st Annual Report on the Cost of Health Insurance in Ohio's Public Sector . (See Employer Tab 6). Employer shows increased cost incurred by the county in the last three years. (Id.). This language has been the same since 1993. Employer shows growth in its costs. The Employer is now in a multi-county consortium. Internal comparables show: Scioto County general fund employees pay a much higher premium. (Employer Binder Tab 9) The Employer argues that the internal comparables and the premium share required in other counties around the state support their proposed increase. The Engineer spends a great deal of its budget on health insurance and is seeking some relief.

UNION POSITION

The Union supports current language. The Union argues that the Engineer's Office is separately funded --not in the general fund of the county. The Union offered contract language for County Engineers for their comparables on this issue. The comparables offered did not indicate a pattern. There was a great deal of variance. The Union representative said that the information provided by the County at the hearing was not shared at the bargaining table.

DISCUSSION AND RECOMMENDATION

There were no objections to the language changes offered for the first paragraph therefore that is included below.

The argument by the Office of the Scioto Engineer is compelling. The cost of health insurance for the employees continued to grow and the Engineer had to absorb those increased costs since the early 1990s when the current premium share by the employees was determined as a fixed dollar amount. This year was quite an anomaly where premiums actually decreased for certain groups of employees. That was due to a policy change by the insurer. There are few entities where increased premium share by employees has not increased. It is recommended that the employees of the Engineer's office pay a percentage of the premium rather than a long standing fixed dollar amount.

Recommended language below:

ARTICLE 32 HEALTH INSURANCE

Section 1 The Engineer will provide hospitalization coverage through the County health insurance Program at the same or substantially similar benefit levels as in effect at the signing of this Agreement. The Engineer and the employees shall share in the cost of the coverage.

A. The employee's share shall be as follows:

Five percent (5%) effective with the signing of the Agreement of the single plan, Employee Spouse plan, employee children plan or family plan premium for the duration of the Agreement.

B. The Engineer will pay the remainder of the health insurance premium due on a monthly basis for each employee for the type of plan they are enrolled.

ISSUE 6

ARTICLE 33 AFSCME CARE PLAN

EMPLOYER POSITION

The Employer proposes to lower the Engineer's contribution to the Ohio AFSCME Care Plan. They propose to drop the five dollar contribution for the legal services. That would make their contribution \$63.75 per month. The Employer wants to drop the legal plan. They do not think the Employer should pay for this.

UNION POSITION

The Union proposes retention of current language. The members value the services provided.

DISCUSSION AND RECOMMENDATION

There was not a lot of discussion of this issue. The Union said it was content with the services provided and that the legal services were used and valued by its members. There is no justification to recommend this concession put forward by the Employer.

RECOMMENDATION: Retain current language with an Employer contribution of \$68.75 per month.

ISSUE 7

ARTICLE 36 OPERATOR/COMMERCIAL DRIVERS LICENSE

UNION POSITION

ARTICLE 36: OPERATOR/COMMERCIAL DRIVERS LICENSE

SECTION 1 Employees whose positions require a valid State of Ohio Commercial Driver's License are required to possess such license with proper and necessary endorsements. All new employees are required to hold a Valid Commercial Driver's License as a condition of employment.

SECTION 2 Employees who do not possess the required CDL with endorsements will not be permitted to operate the equipment which requires the same.

SECTION 3 An employee who loses his driving rights for a period of time due to violation of law, will be moved to the position of Highway Worker 1 and be paid the rate of the position he is assigned . The Employer will not post this position for a period of thirty (30) calendar days.

SECTION 4 The Employer agrees to reimburse employees the cost of CDL license renewal.

SECTION 5 The Employer agrees to pay all costs associated with the welding certification requirements.

The Union provided a number of contracts of neighboring counties, where there was some reimbursement for the renewal CDL. (See Union Binder Tab H).

EMPLOYER POSITION

The Employer position is retention of existing language. The Employer maintains that reimbursement is built into the salaries of drivers and welders. The Employer made a case that the welders certification costs are no longer imposed under state new rules. (Employer Binder Tab 9).

DISCUSSION AND RECOMMENDATION

The numerous comparables offered by the Union display where some or all the cost of the CDLs were paid for in whole or part by the County Engineers Office.

DISCUSSION AND RECOMMENDATION

The offered comparables support the Union's request for added language to pay part of the CDL. It should be kept in mind that this is an added cost for the Employer. The welder's certification cost cannot be addressed since the evidence presented by the Employer suggest there might not be any recertification charge.(Employer Binder Tab 9).

Recommendation:

SECTION 4 The Employer agrees to reimburse employees half the cost of a CDL license renewal.

ISSUE 8

ARTICLE 38 WAGE RATES

UNION POSITION

The Union is proposing the following wage increases per hour and longevity pay. The Union's request is offered below:

SECTION 3 Effective December 1, 2013, employees of the bargaining unit shall receive an across- the-board increase of \$1.75 per hour.

Effective December 1, 2014, employees of the bargaining unit shall receive an across-the board increase of \$.75 per hour.

Effective December 1, 2015, employees of the bargaining unit shall receive an across-the-board increase of \$.50 per hour.

SECTION 4 Employees who have completed five (5) years with the Employer shall Receive an additional \$.25 per hour.

Employees who have completed ten (10) years with the Employer shall Receive an additional \$.50 per hour.

The Union based its case on its offered comparable counties. (See Union Binder Tab I).

EMPLOYER POSITION

The Employer offered the following wage increases for all bargaining unit members: For the first year of the Contract \$0.25 per hour increase, for the second year of the Contract \$0.35 per hour increase and for the 3rd year of the Contract \$0.45 per hour increase.

The Employer did not offer longevity pay, the Employer prefers current contract language on that issue.

The Employer offered numerous arguments and offered extensive data in support of its position on wage increases. Before summarizing them below the Fact-finder notes that the Union objected to some of the exhibits offered by the Employer because the Union requested some of this information and said they were withheld. The Fact-finder takes note of the Union's objections.

The Employer offered evidence that some of the comparable counties have a two-tier wage scale. That is a lower rate for new hires. Scioto County does not have that in this Contract. The County offered into evidence the SERB annual wage increase report. The County wage increase percentage was 1.35% in that document. (Employer Binder Tab 9). The Employer provided a history of wage increases for this bargaining unit over multiple contracts and showed a pattern and maintained that pattern is replicated in their current offer. (Id.)

The Employer then offered a list of current and future projects and estimated costs funded with other entities, either state or federal highway monies. (It is on this point the Union objected on the grounds that it asked for this information and was not provided it). The overall point was that many of these projects require matching funds that come out of the same pool of funds that any increased wages must come from.

The employer offered the Scioto County Engineer's, Financial Analysis for 2013, which will be discussed below.

They entered into the record various planned road and bridge improvements that Scioto County has to fully fund.

The Employer entered into the record ORC 5543.19 Construction or Reconstruction by Force Accounts. The point of this information, as explained by the Employer is that if the cost of a project exceeds a certain dollar amount they are to bid out the work to contractors and it cannot be done by the County Engineer's workforce. The argument the Employer made was that if wages go up, the project cost goes up and more work is bid out, and then fewer employees are needed by the County Engineer. (Employer Binder Tab 9).

DISCUSSION AND RECOMMENDATION

The comparables introduced on wages were in different forms. Some wage increases were tied to the CPI, others were offered as percentages and a few were expressed in currency as the Scioto wage proposals are. After looking at the various counties offered, although there was some differences in the titles of the job classifications, it is the impression of the Fact-finder that overall Scioto Engineer employees are somewhat below the employees of other Counties. For the comparables, offered by the Union, almost all had some longevity pay steps.

The Employer makes a compelling case about the financial challenges it faces. (The Fact-finder takes into account the objections of the Union on withheld information).

One of the most compelling pieces of data entered into the record by the testimony of the County Engineer is on page 3 of the Scioto County Engineer Financial Analysis 2013. That report shows in graph form that the County Engineer's revenue sources have been flat and/or declining every year for almost ten years. (The Fact-finder wishes he could enter that graph in this report). It is also a fact that Scioto County is in "Fiscal Emergency" which is a designation by the State Auditor that the County cannot meet its future obligations without taking drastic steps. Although that does not impact the County Engineer directly, it does mean that there is no general fund revenue available for the Board of Commissioners to support the County Engineer's budget.

The problems facing the Scioto County Engineer in meeting expected obligations and providing services are not unique to Scioto County. The poor state of transportation infrastructure in Scioto County, Ohio and the United States is dire. It is generally agreed that new sources of revenue are needed. (See Penelope Lemov, "The Future of Financing Infrastructure" Governing Magazine, February 27, 2014.

That does not mean that the future financing of county infrastructure can be achieved simply by holding back the wages of Scioto County Engineer employees. However, for the short term, given all the evidence above, any wage increases should be modest. *It should be kept in perspective that the employee is asked to make a larger health insurance premium share in this total package.*

Recommendation:

SECTION 3 Effective December 1, 2013, employees of the bargaining unit shall receive an across-the board increase of \$0.60 per hour.

Effective December 1, 2014, employees of the bargaining unit shall receive an across-the-board increase of \$0.50 per hour.

Effective December 1, 2014 employees of the bargaining unit shall receive an across-the-board increase of \$0.45 per hour.

The wage increase is retroactive to December 1, 2013.

SECTION 4 Employees who have completed five (10) years with the Employer shall receive an additional \$.10 per hour.

Employees who have completed twenty (20) years with the Employer shall receive an additional \$.10 per hour.

ISSUE 10

New Article: Uniform Cleaning/Boot Allowance

UNION POSITION

The Union proposes a new article to provide uniforms and uniform cleaning to the mechanics. The Union also proposes a \$400 clothing allowance per year and a \$200 boot allowance per year. The Union provides comparables to support its position.

EMPLOYER POSITION

The Employer objects to the additional costs.

DISCUSSION AND RECOMMENDATION

There is some merit to the Union's case. However, this Fact-finder places his emphasis on the total package and particularly the recommended wage increases.

Recommendation: Proposed Union language is not recommended.

ISSUE 11

EMPLOYER PROPOSAL

The Employer proposes the following language:

ARTICLE 39 DURATION OF AGREEMENT

SECTION 1 This Agreement shall be effective upon signing and execution of the parties and shall remain in full force and effect for thirty-six (36) months from the date of the signing of the Agreement by both parties unless otherwise terminated as provided herein. The Agreement shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice to the other party of its desire to modify, amend or terminate this Agreement. Written notice of such intent shall be given no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving such notice of intent.

SECTION 2 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 this Agreement. Therefore, the Engineer 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 referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

The Employer proposes to eliminate Article 39 Section 3 in the existing contract which states:

~~SECTION 3 The parties agree that the Ohio Revised Code generally and in particular Chapter 124 of the Ohio Revised Code shall not be applicable to any Article or Section of this Agreement except as specifically referenced and authorized.~~

~~The Employer argues that the language in Section 3 restricts the rights of the Engineer in personnel matters provided in the Ohio Revised Code.~~

UNION POSITION

The Union favors current language. Furthermore, the Union was not prepared to rebut the Employer on this issue since existing language was tentatively agreed to during negotiations and initialed by the two parties. The Union presented the initialed agreement by the parties to the existing language with only changes in years for Section 1. Dated: December 17, 2013.

DISCUSSION AND RECOMMENDATION

The Employer did not challenge the Union's offered evidence that this issue was tentatively agreed to and initialed on December 17, 2013. The Employer said it had a right to change its mind, which it does. However, the Union was never given the opportunity to prepare a case for its position.

RECOMMENDATION: Existing language with the year changes tentatively agreed to by the parties on December 17, 2013. See below:

ARTICLE 39 DURATION OF AGREEMENT

SECTION 1 This Agreement shall be effective December 1, **2013** and shall remain in full force and effect until 12:00 Midnight, November 30, **2016** unless otherwise terminated as provided herein. The Agreement shall be renewed automatically on its termination date for another year in the form in which it has been written unless one party gives written notice to the other party of its desire to modify, amend or terminate this Agreement. Written notice of such intent shall be given no earlier than ninety (90) calendar days prior to the expiration date, nor later than forty-five (45) calendar days prior to the expiration of this Agreement. Such notice shall be by certified mail with return receipt. The parties shall commence negotiations within two (2) calendar weeks upon receiving such notice of intent.

SECTION 2 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 this Agreement. Therefore, the Engineer 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 referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

SECTION 3 The parties agree that the Ohio Revised Code generally and in particular Chapter 124 of the Ohio Revised Code shall not be applicable to any Article or Section of this Agreement except as specifically referenced and authorized.

This Fact-finder recommends all of the above and the tentative agreements reached by the parties.

This Fact-finder submits the above recommendations to the parties this 24th day of March 2014 in Mahoning County Ohio.

William C. Binning Ph.D.

SERB Fact-finder