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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	**:**
THE FACT FINDING BETWEEN:	**: CASE NO. 2014-MED-03-0472**
	:
TEAMSTERS' LOCAL UNION	**: FACT FINDING REPORT**
NO. 957	**: Submitted by John F. Lenehan,**
Employee Organization,	**: Fact Finder, July 22, 2015**
	: (Via Email)
and	**:**
	:
GREENE COUNTY COMMISSIONERS	**:**
GREENE COUNTY SERVICES	**:**
DEPARTMENT	**:**
	:
Employer.	

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FINDING AND RECOMMENDATION

I BACKGROUND

On April 21, 2015, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Teamsters Local Union 957 and Greene County Commissioners (Case No. 2014-MED-03-0472). A Fact Finding Hearing was held on June 15, 2015, 9:00 a.m., at the Greene County Commission Offices, 35 Greene Street, Xenia, Ohio. The Teamsters Local 957 ("Union", "Local 957" or "Employee Organization") was representative by John Doll, Esquire and Bob Smith, Business Representative. The Greene County Commissioners and the Greene County Services Department ("Employer" or "County") were represented by Marc A Fishel, Esquire. Also in attendance were members of the bargaining unit, the County Administrator Brandon Huddleson and members of the Employer's supervisory and administrative staff. Prior to the commencement of the hearing, the parties signed off on agreed contract language and discussed the possibility of mediating and settling outstanding issues. Unfortunately, they were unable to reach any further agreement.

The following report is the Finding and Recommendation of the Fact Finder regarding the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties' representatives and SERB on July 22, 2015.

A. Description of the Parties and Bargaining Units

The parties are Teamsters Local 957, affiliated with the International Brotherhood of Teamsters ("Union" or "Employee Organization"), and the Greene County Commissioners and Greene County Services Department ("Employer" or "County"). The Union was certified by SERB in Case No. 2013-REP- 09-0092 to represent all full-time and regular part-time employees in the classifications of: Administrative Support Assistant, Administrative Support Specialist, Administrative Support Technician, Fiscal Support Assistant, Automotive-Equipment Technician, Custodian, Trades Crew Leader and Trades Crew Specialist. Currently, there are twenty-two (22) employees in the bargaining unit and two (2) vacant positions. Although the certification included full and regular part-time employees, there are no part-time employees at this time.

The Greene County Services Department is under the jurisdiction of the Greene County Board of Commissioners. The Services Department is responsible for cleaning and maintaining thirty-seven County buildings. The services provided include:

- Maintenance:
  Responsible for the installation and maintenance of HVAC systems, electrical, plumbing, concrete work, roofing, building, and remolding of all county offices/buildings
- Service Garage:
  Responsible for maintain approximately 227 county- owned vehicles, approximately 61 pieces of light equipment, and 4 stationary generators
- Custodians:
  Responsible for cleaning all county buildings
- Office Supply:
  Orders and stocks office and janitorial supplies used county-wide
- County Switchboard:
  Handles and distributes all incoming calls to the county
- Mail Courier:
  In-house service for county personnel

Greene County Ohio has a population of approximately 163,204, according to the last census. The County seat is located in the City of Xenia, Ohio. There approximately 1,171 county employees. Approximately, 452 of these employees are under the jurisdiction of the Greene county Commissioners, including the employees in this bargaining unit. There are five other bargaining units in the county under the jurisdiction of separate employers, two of which are in the Greene County Sheriff's Office and the Greene County Engineer's Office. The bargaining units under the Board of County Commissioners jurisdiction are: the Greene County Department of Department of Job and Family Services (represented by the Teamsters); the Greene County Department of Job Family Services/Division of Children's Services (represented by the Professionals' Guild of Ohio); and, the Greene County Sanitary Engineer (represented by AFSME).

B. History of Bargaining

There is no existing or previous collective bargaining agreement. The negotiations in this case are for an initial agreement. The parties engaged in thirteen negotiation sessions. The first session was held on June 26, 2014 and the last session was held on March 16, 2015. A Federal Mediator was present at three (3) bargaining sessions. At the time of the last bargaining session, there were unresolved issues involving fifteen (15) articles. Since that time the parties were able

to resolve four (4) additional issues leaving eleven (11) unresolved Articles to be presented to the Fact Finder for consideration. Tentative agreements were reached on Nineteen (19) articles.

C. Agreed to or Resolved Issues

The parties have reached agreement on the following Articles and Issues:

1. Article 1 - Purpose
2. Article 3 – Union Recognition
3. Article 4 – Union Representation
4. Article 6 - Non-discrimination
5. Article 7 - Work Rules
6. Article 8 - Grievance Procedure
7. Article 9 - Corrective Action and Personnel Files
8. Article 10 - Seniority
9. Article 14 – Layoff and Recall
10. Article 15 – Performance Evaluation
11. Article 16 – Sick Leave
12. Article 17 – Leaves of Absence
13. Article 20 – Holidays
14. Article 22 – Bulletin Boards
15. Article 23 – Safety and Health
16. Article 24 – No Strike – No Lockout
17. Article 27 – Catastrophic Sick Leave Donation Program
18. Article 29 – Labor Management Committee
19. Article 30 – Savings Clause

It is the finding and recommendation of the Fact Finder that all the tentative agreements on the foregoing articles are to be incorporated in this Fact Finding Report, along with any tentative agreement reached by the parties subsequent to the Fact Finding hearing and before the filing of this report.

D. **Unresolved Issues**

1. Article 2 – Management Rights
2. Article 5 – Union Security
3. Article 11 – Hours of Work and Overtime

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4. Article 12 – Job Posting
5. Article 18 – Vacation
6. Article 19 – Paid Personal (Days)
7. Article 21 – Health Insurance
8. Article 25 – Wages
9. Article 26 – Longevity
10. Article 28 - Uniforms
11. Article 31 - Duration

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

1) Past collectively bargained agreements 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
4) Lawful authority of the public employer;
5) Stipulations of the parties; and,
6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

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III ISSUES

ARTICLE 2

MANAGEMENT RIGHTS

Employer's Position

The Employer has proposed to include in the list of management rights the ability to contract out for goods and services during the term of the contract. In addition, it has proposed language that would require a thirty (30) day notice, and upon request, a meeting with the union to discuss alternatives and the effect upon the bargaining unit employees. The Employer states that it has historically contracted work to outside contractors.

In support of its proposal, the Employer sets forth the following arguments. First, there are no restrictions on contracting out in the collective bargaining agreements under the jurisdiction of the Commissioners. Also, the proposed right to contract out has not presented any problems under the Collective bargaining agreement with the Greene County Department of Job and Family Services (DJFS) and the Teamsters. Second, the Employer cannot commit to such a restriction. The County is responsible for providing services in a manner that is efficient and cost effective. The use of private contractors is one option the County has used in the past, and this management right should not be eliminated.

Union's Position

The Union is opposed to granting the Employer an absolute right to contract out bargaining unit work at any time and without any restrictions. It is the Union's position that while the collective bargaining agreements Greene County has for its other departments contain various provisions relating to subcontracting, the most relevant is its agreement with the Sanitary Engineer. The job duties covered by the employees under the Sanitary Engineer's collective bargaining agreement are the most closely related to those of the County Services Department.

The Union states that based upon the nature of the work performed by the Sheriff Deputies, the employees in the Greene County Children Services Board bargaining unit, the employees in the Department of Jobs and Family Services and employees in the bargaining unit of the Greene County Engineer, it is unlikely that Green County would be able to easily and efficiently subcontract out the bargaining unit work covered by those collective bargaining agreements. However, such is not the case with the custodial and "building trades" work

performed by employees in the Local 957 bargaining unit. The work performed by these employees could more readily be completely subcontracted if the County was inclined to do so.

The Union argues that the language it proposed, based upon the Sanitary Engineer's agreement, provides the Employer the ability to subcontract out work, even when bargaining unit employees are on layoff, if the affected bargaining unit employees are unable to perform the work in question due to lack of skills, equipment, schedule requirements or work volume. Also, the language it proposed does not, and would not, unduly restrict the Employer from providing the necessary services to Greene County's citizens. Thus, the Union submits that its proposed language should be adopted.

Finding and Opinion

The Union's position is more persuasive. Certainly, the right to contract out is a management right. However, such has been limited both in the private and public sector labor relations. First, in the absence of specific contract language, the right to contract out has been limited by a duty to bargain under both Federal and State Collective Bargaining Laws, the effects, if not the decision to outsource. Second, by specific contract language in collective bargaining agreements the right to subcontract has been limited or restricted to specific situations.

Here, the Employer is seeking the unfettered right to outsource goods and services. Its justification for such a broad proposal is its obligation as a public entity to provide goods and services to the public in an efficient and cost effective manner. The Union's concern is the integrity of the bargaining unit and its obligation to represent all employees in the bargaining unit. As the Union argued in its prehearing statement, granting the employer the unlimited right to outsource services during the term of the collective bargaining agreement could result in the elimination of the bargaining unit and all employees in that unit.

The Employer's concern with its ability to provide services to the public in an efficient and cost effective manner is not only justified, but it has a duty to do so. Such, however, can be accomplished by incorporating into the agreement the restrictive language proposed by the Union. The language proposed by the Union is based upon the Collective Bargaining Agreement that the Greene County Sanitary Engineer has with AFSCME. The evidence submitted by the Union of job postings and descriptions for the Employer and the Sanitary Engineer (Union

Exhibits 9 and 10; and Employer's Exhibit 6) establish the similarity of the trade type work performed in both departments.

In summary, based upon the evidence submitted at the fact finding hearing and for reasons set forth above, it is the opinion of the Fact Finder that the language proposed by the Union restricting contracting out during the term of the new collective bargaining agreement should be adopted.

Recommendation

Therefore, it is recommended that Article 2 Management Rights of the Collective Bargaining Agreement read as follows:

ARTICLE 2

MANAGEMENT RIGHTS

SECTION 2.1 Recognized Rights. The Union shall recognized the right and authority of the Employer to administer the business of the County, and in addition to other functions and responsibilities which are not specifically mentioned herein, the Union shall recognize that the Employer has and will retain the full right and responsibility to direct the operations of the County, to promulgate reasonable rules ant to otherwise exercise the prerogatives of management, except to the extent modified by this Agreement, including but not limited to the following:

A. To manage and direct its employees, including the right to select, hire, promote, transfer, demote, assign, evaluate, layoff, recall, discipline or discharge for just cause, and to maintain discipline among employees.

B. To manage and determine the location, type and number of physical facilities, equipment, programs and the work to be performed and utilization of technology.

C. To determine the County's goals, objectives, programs and services; and to utilize personnel in a manner designed to effectively meet these programs.

D. To determine the size and composition of the work force and the County's organizational structure.

E. To determine the hours of work and work schedules.

F. To determine when a job vacancy exists, the duties to be included in all job classifications, and the standard of quality and performance to be maintained.

G. To determine the necessity to schedule overtime and the amount required thereof.

H. To determine the County budget and uses thereof.

I. To maintain the security of records and other pertinent information.

J. The Employer may declare an emergency in the event of civil insurrection or acts of God and take any and all actions as may be necessary to carry out the mission of the Employer in those emergency situations.

K. To effectively manage the work force.

L. To take actions to carry out the mission of the public employer as a governmental unit.

SECTION 2.2 Not to be used to Discriminate. The Employer agrees not to use these rights to discriminate against an employee or group of employees.

SECTION 2.3 Subcontracting. During the term of this Agreement, the Employer will not contract or subcontract work normally performed by employees covered by this Agreement if any employees covered by the Agreement are on layoff or would be placed on layoff, unless the affected employees are unable to perform the work in question due to lack of skills, equipment, schedule requirements or work volume.

ARTICLE 5
UNION SECURITY

Union's Position

The Union has proposed that a fair share fee be incorporated into the Union Security provisions of the new contract. Arguing that the secret ballot election should have some meaning, it introduced into evidence the certification of the results of the representation election conducted by SERB (Union Exhibit 1). Those results indicate that of the fourteen (14) valid votes cast, twelve (12) were for the Teamsters Local 957, or 86% of the employees in the bargaining unit. Also, the Union argued that since the law imposes upon it the duty, and the liability, to represent all employees in the bargaining unit, it is logical that it have the resources to effectively carry out its responsibility as imposed by law. A fair share fee would enable it to do so to the full extent required by law, and avoid so the called "free riders", which results in a reduction in resources to effectively perform its duty of fair representation.

The Union did indicate in its Position Statement that after the last negotiation session on March 16, 2015, the parties discussed their respective proposals on Union security. Based upon those discussions, the Union was, and is willing, to accept the March 16, 2015 proposal except for the language contained in Section 5.13 dealing with the right of a member of the Union to withdraw from membership. The Union proposed that instead of being able to withdraw during

the last twenty (20) days before the expiration of the contract that a member would have the right to withdraw from membership in accordance with applicable law and in accordance with the voluntarily signed application for membership.

Employer's Position

It is the Employer's position that fair share should not be imposed on employees. If employees desire to join the Union and pay dues, they can do so. Employees who do not want to join the Union should not be required to pay dues or a fair share fee.

Also, the Employer argued that except for the Sheriff's Office no other bargaining unit in the Greene County Government has a fair share provision in its collective bargaining agreements. To support this position, it submitted the agreements of the other bargaining units in the county. (Employer's Exhibits 2, 3, and 4; Union Exhibits 4, 5, 6 and 7) The Employer did establish that the fair share provision in the Sheriff's Office agreement was the result of a Conciliation Award.

Finding and Opinion

The positions set forth by the parties are not new. Certainly, employers have over the years expressed a concern for employees being forced to pay union dues, agencies shop or fair share fees. Some may even have an actual concern. However, a more compelling and logical reason for opposing this form of union security is providing a union with the economic resources to represent its employees effectively at the bargaining table, which is often viewed as being contrary to the employers' interests. Employers have not been inclined to state this as their reason for opposing a union or agency (fair share) shop provision.

Of course, unions express concern for the unfairness of employees not paying any dues or fees, but benefiting from the representation provided by a union. It may not be a great concern where most or all the employees in the bargaining unit are members of the union. However, it is a concern of a union that there be a guaranteed revenue source to carry out its duty of fair representation.

While the argument set forth by the Union may be compelling, there are other factors to be considered. First, the internal comparables do not support granting a fair share provision in this case. Except for the Sheriff's Office the agreements which Greene County has with the other bargaining units do not have a fair share provision in their agreements. Those agreements,

however, do have a maintenance of membership clause. Such has been proposed by the parties in this matter.

Second, the Union in its position statement indicated a willingness to accept the Employer's March 16, 2015 proposal except for the language contained in Section 5.13 dealing with the right of a member of the union to withdraw from membership. The Union proposed that instead of being able to withdraw during the last twenty (20) days before the expiration of the Agreement, a member would have the right to withdraw from membership in accordance with applicable law and in accordance with the voluntary signed application for membership.

In summary it is the Fact Finder's Finding and Opinion that the Union Security provisions of the proposed Article 5 not provide for fair share, but contain a maintenance of membership clause similar to other County collective bargaining agreements, and that the language change proposed by the Union on withdrawal from union membership be incorporated into Article 5 in place of the Employer's proposed language.

Recommendation

Therefore, it is recommended that Article 5 Union Security of the Collective Bargaining Agreement read as follows:

ARTICLE 5

UNION SECURITY

SECTION 5.1 Member Availability. The Employer and the Union agree that membership in the Union is available to all employees as has been determined by this Agreement appropriately within the bargaining unit upon completion of thirty (30) days of employment.

SECTION 5.2 Dues "Check-Off". The Employer agrees to deduct regular membership dues, initiation fees, and assessments once a month from the pay of any employee eligible for membership in the bargaining unit upon receiving written authorization signed individually and voluntarily by the employee. The Employer shall make the deductions for dues and assessment fees from the pay on the first pay date in each calendar month. Deductions for initiations fees and/or arrearages shall be made from the pay on the second pay date in each calendar month. The signed payroll deduction form must be presented to the Employer by the Union. Upon receipt of the proper authorization, the Employer will deduct union dues from the payroll check for the next pay period in which Union dues are regularly deducted.

SECTION 5.3 Disclaimer of Responsibility – Re: "Check-off". It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article, and the Union hereby agrees that it will indemnify and hold the Employer harmless from

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any claims, actions or proceedings by any employee arising from deductions made by the Employer hereunder. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

SECTION 5.4 Termination of "Check-Off". The Employer shall be relieved from making such "check-off" deduction upon (a) termination of employment, or (b) transfer to a job other than one covered by the bargaining unit, or (c) revocation of the check-off authorization in accordance with the terms of the check-off authorization or with applicable law.

SECTION 5.5 Limitation of "Check-off". The Employer shall not be obligated to make dues deductions or fair share fee deductions of any kind from any employee who, during any dues month involved, shall have failed to receive sufficient wages to equal the dues or fair share fee deductions.

SECTION 5.6 Errors in "Check-Off". It is agreed that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions unless a claim of error is made to the Employer in writing within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that the Union dues or fair share fee will normally be made. Payroll collection of dues or fair share fees shall be authorized for the exclusive bargaining agent only, and no other organization attempting to represent the employees within the bargaining unit as herein determined.

SECTION 5.7 Annual Certification by Union Treasurer. The names of employees and the rate at which dues or fair share fees are to be deducted shall be certified to the payroll clerk by the Union. One (1) month advance notice must be given the payroll clerk prior to making any changes in an individual's dues or fair share fees deductions. The Employer agrees to request the Greene County Auditor to furnish the Union a warrant in the aggregate amount of the deduction. At any time when there is a change in status of an employee (promotion, demotion, unpaid leave, or other event), the payroll clerk shall indicate so on the dues billing (which is forwarded to the Personnel Department for submission to the Auditor) and provide a copy to the Union.

SECTION 5.8 Correction of Deduction. Deductions provided for in the Article shall be made during one (1) pay period each month. In the event a deduction is not made for any Union member during any particular month, the Employer upon written verification of the Union, will make the appropriate deduction from the following pay period in which Union dues or fair share fees are regularly deducted if the total deduction does not exceed the total of two (2) month's regular dues or fair share fees from the pay of any Union member, nor will the employer deduct more than one (1) month's regular dues or fair share fees for more than one (1) consecutive month.

SECTION 5.9 Duration of Authorization. Each eligible employee's written authorization for dues shall be honored by the Employer for the duration of this Agreement, unless an eligible employee certifies in writing that the dues check-off authorization has been revoked in accordance with this agreement, at which point the dues deduction will cease effective the pay period following the pay period in which the written dues deduction revocation was received by the Employer and a copy of the written revocation shall be forwarded to the Union.

SECTION 5.10 Maintenance of Membership. Although it is agreed that Union membership is not a mandatory condition of employment for any employee covered by this Agreement, any employee covered by this Agreement and employed before its effective date who has become a Union member prior to that date shall, as a condition of continued employment, continue to pay to the Union those dues charged members of the union in good standing for the life of this Agreement (except as otherwise provided herein). The failure of an employee, who has become a member or who does not withdraw membership in accordance with this Agreement to continue to pay such dues shall obligate the Employer, upon written notice from the Union to such effect, to discharge the employee if payment of such membership dues was available to the employee on the same terms and conditions generally available to all other employees.

SECTION 5.11 New Hires. An employee hired after the effective date of this Agreement and covered by this Agreement who, after completing thirty (30) days of employment voluntarily joins the Union, shall be subject to the same terms of continued membership as employees in Section 5.10 above.

SECTION 5.12 Withdrawal of Membership. Every employee who is a member of the Union shall have the right to withdraw from membership in accordance with applicable law and in accordance with the voluntarily signed application for membership.

ARTICLE 11

HOURS OF WORK AND OVERTIME

SECTION 11.1
NORMAL SCHEDULE

Union's Position

Local 957 has proposed a normal schedule of hours of eight hours per day 7:00 A.M. - 3:00 P.M. which includes one- half hour for lunch and a fifteen minute mid-morning and mid-afternoon break subject to work load. Currently, first shift employees work a 7:00 A.M. to 3:30 P.M. with a half hour unpaid lunch. The reason given by the Union for its proposal is to have a stable work schedule without an arbitrary change by the employer, and because employees lunch time is frequently interrupted for work they should be paid during the lunch break.

Employer's Position

The Employer has proposed language, consisted with its management rights that permits it to set the hours. It has proposed that the normal schedule of hours shall consist of eight (8) consecutive hours per day (not including either one (1) or one-half hour for lunch to be determined by the Employer).

Finding and Opinion

Based upon the job descriptions and postings, the work performed by employees in this unit requires that the Employer have a degree of flexibility in determining hours of work and work schedules. If an employee is unable because of work to have a half hour lunch break, he/she should be paid for the half hour.

The Employer's proposed language on Section 11.1 is confusing. It proposes a day of eight (8) consecutive hours, but excludes the lunch break, which is to be determined by the Employer. It is not clear whether the Employer intends to pay for the employees' for lunch time or reduce the work day and the hours paid to seven and one half (7 ½) hours.

Recommendation

Therefore it is recommended that Section 11.1 of Article 11 read as follows:

SECTION 11.1 Normal Schedule. The normal schedule of hours shall consist of eight and one-half (8 ½) consecutive hours per day (including one-half hour unpaid lunch, and a fifteen minute mid-morning and mid-afternoon break subject to work load), five (5) days a week, Monday through Friday. Breaks and lunch periods can be adjusted with supervisor approval during the work day. The Employer shall establish the start time and duration of working hours as required by work load, client service needs, and the efficient management of personnel resources. If an employee unable to take a lunch break due to work requirements, he/she shall be paid for the lunch period.

SECTION 11.2

OVERTIME COMPENSATION

Union Position

The Union is proposing that all paid time off be considered as time worked for purposes of calculating overtime. To support its position it cites the overtime provisions of the other Greene County bargaining units. All those units consider more paid time off for purposes of calculating overtime than does the Employer in this case. As an example, under the Sanitary Engineer's collective bargaining agreement, vacation leave, compensatory time, holiday paid hours, and administrative leave hours are considered as hours worked for purposed of overtime pay.

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Employer's Position

For purposes of computing overtime, the Employer proposes to include hours actually worked, vacation leave and holidays. It would exclude all other paid time from the calculation of overtime. This according to the Employer is how the bargaining unit employees are currently employed. Also, it claims that it is the same standard set forth in the County Personnel manual as applied to other County employees as well as the standard used in the DJFS and Sanitary Engineer agreements.

Finding and Opinion

The Union's position on this issue is more persuasive. Other bargaining units in the County consider more paid time off for the purpose of calculating over time than does the Employer. A review of the bargaining agreements submitted into evidence by the parties clearly establishes this fact. Under the Greene County Engineer's agreement all time paid is considered for purposes of calculating overtime. The Sanitary Engineer's agreement provides: "Employees shall receive time and one-half their regular rate of pay for all authorized hours actually worked, vacation, compensatory or holiday hours paid and paid administrative leave, in excess of forty (40) hours per week." (Union Exhibit 4, p. 21)

It is the opinion of the Fact Finder that the aforementioned provisions of the Sanitary Engineer's collective bargaining agreement should be adopted and incorporated into the parties proposed agreement.

Recommendation

Therefore, it is recommended that Section 11.2 of Article 11 read as follows:

SECTION 11.2 Overtime Compensation. Management has the sole and exclusive right to determine the need for overtime. Subject to Section 11.3, all employees shall be paid one and one-half (1 ½) times the regular hourly rate of pay for over time worked. For the purpose of computing overtime, employees shall receive time and one-half their regular rate of pay for all authorized hours actually worked including vacation leave, holidays, compensatory time and paid administrative leave in excess of forty (40) hours per week.

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SECTION 11.3
COMPENSATORY TIME

Union' Position

Compensatory time is time off granted to an employee at his/her option in lieu overtime pay. The amount of compensatory time to which an employee would be entitled is calculated at rate of one and half (1 ½) hours for each hour worked in excess of forty (40) hours in a work week. The Union had originally proposed a maximum accumulation of two hundred (200) hours of compensatory time annually and a pay out of a maximum of two hundred (200) hours upon termination of employment for any reason. Under the Union's original proposal an employee in an emergency situation could use compensatory time with just one (1) hour notice.

Employer Position

Apparently the Employer rejected the Union's original position and countered with a proposal of eighty (80) hours maximum accumulation and pay out at termination. It also rejected the one (1) hour emergency notice to use compensatory time.

Finding and Opinion

Since there appears to be no current objection to the language proposed by the Employer on March 16, 2015, it is the opinion of the Fact Finder that language should be incorporated into the bargaining agreement.

Recommendation

Therefore, it is recommended that Section 11.3 of Article 11 should read as follows:

SECTION 11.3 Compensatory Time. Eligible employees shall receive compensatory time off at the rate of one and one-half hours for each hour worked in excess of forty (40) hours, but may not accumulate in excess of eighty (80) hours. Earned compensatory time must be taken at a time mutually convenient to the employee and the Employer with a reasonable advance notice. All earned but unused compensatory time, up to a maximum of eighty (80) hours, shall be paid to the employee as overtime compensation upon termination of employment for any reason.

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SECTION 11.4
PYRAMIDING PROHIBITED
AND
SECTION 11.5
HOURS OF WORK CALCULATIONS

Union's and Employer's Position

Both parties appear to be in agreement on the language for these sections.

Recommendation

Therefore it is recommended that Sections 11.4 and 11.5 of Article 11 read as follows:

SECTION 11.4 Pyramiding Prohibited. There shall be no pyramiding or duplication of any overtime pay for the same hours worked.

SECTION 11.5 Hours of Work Calculations. All hours of work and overtime will be calculated by rounding to the nearest one-tenth of an hour.

SECTION 11.6
OVERTIME DISTRIBUTION
(A) DUTY PHONE

Employer's Position

The Employer has proposed to continue the current practice of requiring bargaining unit employees to carry a duty phone on a rotating basis. The purpose is to allow an employee to be reached after hours in the event of an emergency. An employee carrying the duty phone is not required to come to a County facility whenever he receives a call. Rather it is that employee's duty to make sure the problem is addressed. The response depends upon the circumstances. The employee can decide the problem can wait until the next work day or he can find someone else willing to go in if necessary. Generally, an employee's activities while carrying the duty phone are not restricted. Employees can trade the duty phone with another employee on a daily or weekly basis.

Currently, bargaining unit employees are not paid for "merely" having the duty phone. Employees are paid a minimum of four (4) hours pay whenever they actually have to go out after work hours. This pay will continue under the new collective bargaining agreement.

According to the Employer, under the FLSA an employee who is required to leave word where he can be reached is not considered to be working. Also, under the Code of Federal Regulations, existing case law, and based upon the relevant facts in this case, the FLSA does not require that employees be compensated for carrying the duty phone unless they actually go into work. There are no physical restrictions placed upon the employees in this case; they do not have to remain on or near the premises; they are not required to report in within a set time after receiving a call; they can find someone else to take the duty phone or go into work. Also, the frequency of calls is reasonable and no disciplinary action has been taken against employees for failing to return a call.

Union's Position

The Union submits that its proposal concerning the "on-call" duty phone assignment should be adopted in its entirety. Its proposal, set forth as Section 11.09 of Article 11, provides for a detailed process in assigning and regulating the "on-call" phone duty and a payment of $240.00 per week to perform the phone duty. The Union argues that the current practice and the Employer's proposal is unacceptable. The Employer's proposal does not provide for any compensation for the employee being place "on-call" even though the employee is required to be available and respond within a reasonable time to the problem area or to contact another employee who might agree to respond, or contact the employee's supervisor. In addition, the employee is subject to discipline if he does not respond or notify a supervisor of the employee's inability to respond to the "on-call" responsibility. Nor does the Employer's proposal make any provision for a situation where the employee is unable to contact another employee or contact the supervisor because of lateness of the call or a call on a weekend when all other employees and the supervisor are away from the area.

Finding and Opinion

The case law and the Code of Federal Regulations support the Employer's position that "on-call" phone duty, in this case, is not considered as time worked for purposes of the obligation of paying overtime under the FLSA. [See *Adair v. Charter County of Wayne*, 452 F.3d 482 (6th Cir. 2006) and CFR 29 CFR 785.17- Employer's Exhibit 8] However, such does not support the proposition that there should be no compensation for such duty. To impose an obligation upon an employee to respond to emergencies for the purpose of protecting the Employer's assets during unscheduled worktime without any compensation is unreasonable.

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While the amount of the compensation for the "on-call" phone duty proposed by the Union of $240.00 may be high, it should not be zero. It is the opinion of the Fact Finder that an amount of $120.00 as a stipend would be reasonable.

The Union's proposed language providing for a detailed procedure in assigning "on-call phone duty should be rejected and the Employer's proposed language adopted with the provision for the payment of a $ 120.00 per week stipend to those employees assigned to phone duty. Since the parties have been operating under a policy and procedures for the assigning of on- call phone duty, the Union's detailed proposal would add unnecessary requirements to the Employer's assigning the phone duty.

Recommendation

Therefore it is recommended that Sections 11.6 Overtime Distribution (A) Duty Phone Assignment of Article 11 read as follows:

SECTION 11.6 (A) Duty Phone. All employees assigned to the classifications of Trades Crew Leader and Trades Specialist shall be assigned to a rotation to respond to after hour situations. The "Duty Phone" will be assigned on a weekly basis on a rotational schedule. An employee assigned to carry the "Duty Phone" is expected to be available to answer and either report within a reasonable time to the problem area or contact another employee in the rotation who agrees to respond or the supervisor. Employees may trade assigned weeks with supervisory approval. Employees who respond to a "Duty Phone" situation shall be compensated at the applicable rate for the hours actually worked. All overtime hours worked in response to a "Duty Phone" contact will not be included on the overtime roster. "Duty Phone" assignment does not exclude an employee from other overtime assignments. Failure to respond or notify a supervisor of the inability to respond to a "Duty Phone" call may be subject to disciplinary action.

An employee assigned to the "Duty Phone" will be paid a stipend of $120.00 per the week (7 days) he is assigned. If he does not complete a full week on the "Duty Phone" assignment, the stipend will be prorated.

SECTION 11.6

OVERTIME DISTRIBUTION

(B) SCHEDULED

Union's Position

The Union proposes that overtime will be distributed among all employees in each classification on an equal basis according to seniority, except in case of emergency, or when a

particular employee or group of employees with special skills, knowledge or qualifications is needed. As to when an employee is charged with overtime usage, the Union proposes that an employee who is unable to work or does not respond to an overtime call will not be charged with the overtime which is offered to him, or would have been offered to him. Likewise, the Union proposes that an employee returning from a leave of absence will not be charged with any overtime opportunities that would have been offered to him during the leave of absence.

Employer's Position

The Employer proposes to make every reasonable effort to distribute authorized scheduled overtime among all employees in each classification on an equal basis. All scheduled overtime opportunities offered shall be rotated among all employees within the appropriate unit and classification, except in the following situations: in in case of emergency; when a particular employee or group of employees with special skills, knowledge or qualifications is needed; when scheduled overtime work is specific to a particular employee's classification and/or position description or specialized work assignment; or when the incumbent is required to finish a work assignment.

In contrast to the Union's proposal as to when an employee is charged with overtime usage, the Employer proposes that when an employee is unable to work the scheduled overtime which is offered to him, he shall be charged with the opportunity offered, and will not be offered overtime opportunities again until his name rotates to the top of the list. Also, an employee returning from a leave of absence will be charged with any scheduled overtime opportunities that would have been offered to him during his leave of absence. Upon the employee's return to work he would be offered overtime assignments in the classification for which he is qualified when his name rotates to the top of the list.

Finding and Opinion

The parties proposals seek a fair, and to the extend practical, equal distribution of overtime among employees within the various classifications. The major difference between the proposals is that the Union seeks a guarantee of an equal or equitable distribution of all available overtime, whereas the Employer proposes an equal or equitable distribution of overtime opportunities. While there are other differences in the parties proposals, they are not significant.

It is the opinion of the Fact Finder that employees who are offered the opportunity to work overtime, but do not, or cannot, or are unavailable because of being on a leave of absence,

should be charged with the scheduled overtime opportunity. This appears to be the standard in both the public and private sectors. Overtime is required because there exists work that must be completed, and that cannot be done during normal working hours. To complete the overtime work requires that employees agree and are able and available to do the work. If an employee is not available or refuses the overtime, he should be charged and someone else given the opportunity.

The Fact Finder finds that the Employer's proposed language should be adopted and incorporated into the agreement of the parties.

Recommendation

Therefore it is recommended that Sections 11.6 Overtime Distribution (B) Scheduled of Article 11 read as follows:

(B) The Employer will make every reasonable effort to distribute authorized scheduled overtime among all employees in each classification on an equal basis. The Employer will maintain overtime distributions rosters by job classification.

Insofar as practicable, scheduled overtime opportunity hours shall be equitably distributed on a rotating basis by seniority among those who normally perform the work as defined in the classification specification and/or position description. Scheduled overtime work which contains duties that are common to a classification shall be equitably distributed among those employees within the appropriate classification. All scheduled overtime opportunities offered shall be rotated among all employees within the appropriate unit and classification, except in the following situations: in case of emergency; when a particular employee or group of employees with special skills, knowledge or qualifications is needed; when scheduled overtime work is specific to a particular employee's classification and/or position description or specialized work assignment; or when the incumbent is required to finish a work assignment.

The Department agrees to post overtime rosters which shall be provided to the designated Steward, within a reasonable time, if so requested. The rosters shall be updated as soon as feasible after each scheduled overtime event, no later than each pay period in which any affected employee had overtime offered. The overtime distribution list shall begin with the most senior person in the job classification. When an employee is unable to work the scheduled overtime which is offered to him, the employee shall be charged with the opportunity offered, and will not be offered overtime opportunities again until his name rotates to the top of the list.

An employee returning from a leave of absence will be charged with any scheduled overtime opportunities that would have been offered to him during the leave of absence. Upon return to work, the employee will be offered overtime assignments in the classification in which the employee is qualified when his name rotates to the top of the list.

An employee who is entering a new classification will be charged with the average number of hours worked in the classification.

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SECTION 11.7

REQUIRED OVERTIME

Union's and Employer's Position

Both parties appear to be in agreement on the language for this section.

Recommendation

Therefore it is recommended that Sections 11.7 of Article 11 read as follows:

SECTION 11.7 Required Overtime. The Employer reserves the right to require employees to work overtime. Should it be necessary to require overtime, the Employer will require the least senior qualified employee(s) in the job classification to accept the overtime assignment. Employees are not permitted to work overtime without prior approval of their supervisor.

SECTION 11.8

OMISSION OF OVERTIME

Employer's Position

The Employer proposes to remedy a mistake in the overtime rotation by giving the employee who was inadvertently skipped the next overtime opportunity. This approach, according to the Employer, makes the employee whole but does not require payment for hours he did not work.

Union's Position

The Union rejects the foregoing position of the Employer for the failure to offer overtime. According to the Union the offer to an employee to perform the next overtime opportunity for the failure to properly assign overtime is no remedy. The Union is requesting that the employee be paid for the lost overtime.

Finding and Opinion

While payment for a mistake in the assignment of overtime can be an appropriate remedy in some situations, such is not necessarily the case here. Apparently, in this case, where there is an equalization of overtime among employees in a given classification an error in the assignment

of overtime can be remedied, as suggested by the Employer, by granting the employee the next or a later opportunity for overtime. This would not be true where the overtime would not be available at a later date because it was performed by someone outside the classification or unit, or the employee because of retirement, promotion would not have the opportunity to perform the make-up overtime work at a later date.

It is the opinion of the Fact Finder that the Employer's proposed language be adopted with the provision that the improperly assigned overtime was performed by someone in the same classification and that the employee has an opportunity to make up the lost overtime.

Recommendation:

Therefore it is recommended that Sections 11.8 of Article 11 read as follows:

SECTION 11.8 Omission of Overtime. The remedy for failure to offer overtime shall be that the employee who was entitled to the overtime shall be offered the next opportunity, provided that the improperly assigned overtime was performed by an employee in the same classification and the employee entitled to the overtime has an opportunity make up the lost overtime. If such is not the case, the employee shall be paid for the lost overtime.

SECTION 11.9

CALL-IN PAY

Union's Position

The Union has proposed the following language regarding call in pay.

> "Call – in pay is defined as payment for work assigned by the Employer and performed by an employee at a time disconnected from the employee's normal and pre-scheduled hours of work. In any case, an employee assigned work prior to one hour before the employee's normal and pre-scheduled hours of work shall receive a minimum of four (4) hours or pay. Employees who are called in to work and report to work as requested shall receive a minimum of four (4) hours of pay at the rate of time and one-half (1 ½) of the employee's regular rate of pay or the number of hours worked at the rate of time and one-half the employee's regular rate of pay for all hours worked, whichever is greater."

The Union submits that receiving straight time pay for a call-in for hours that are not contiguous with their normal shift deserves and should be paid at the overtime rate at the minimum of four (4) hours.

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Employer's Position

The Employer has proposed the following language regarding call in pay.

"Employees who are called back to work and do report outside of their regularly scheduled shift for a time period that does not abut their shift, who work two and one-half (2 ½) hours or less will be paid four (4) hours at the straight time rate. When called back to work if actual hours worked at the overtime rate, if eligible, is greater than four (4) hours at the straight time rate, the employee will receive the greater payment. "

Finding and Opinion

While the Fact Finder concurs with the Union's position that hours worked on a call- in should be at the overtime rate that does not mean that all hours paid should be paid at that rate. In most situations, under either proposal, the employees would receive overtime pay for hours worked on a call-in. The real issue is the minimum amount of pay for the call-in. The Employer is suggesting four (4) hours at straight time, and the Union is proposing four (4) hours at the overtime rate of time and one-half (1 ½) or six (6) hours at straight time.

It is the opinion of the Fact Finder that minimum pay proposed by the Employer is reasonable and should be incorporated into the parties collective bargaining agreement.

Recommendation

Therefore it is recommended that Sections 11.9 of Article 11 read as follows:

SECTION 11.9 Call-in Pay. Employees who are called back to work and do report outside of their regularly scheduled shift for a time period that does not abut their shift will be paid the overtime rate of time and one-half (1 ½) for actual hours worked or a minimum of four (4) hours at the straight time rate whichever is greater.

ARTICLE 12

JOB POSTING AND TRANSFER

SECTION 12.1
ALL VACANCIES TO BE POSTED

SECTION 12.2
EMPLOYEE APPLICATION

SECTION 12.3
EMPLOYER DECLARES EXISTENCE

Union's and Employer's Position

Both parties appear to be in agreement on the language for these sections.

Recommendation

Therefore it is recommended that Sections 12.1 and 12.2 and 12.3 of Article 12 read as follows:

SECTION 12.1 All Vacancies to be Posted. When a permanent vacancy occurs, the Employer shall post for five (5) days a notice of the opening stating the job classification and rate of pay. Job postings may be used for sixty (60) days from the start date of the successful applicant for subsequent vacancies.

SECTION 12.2 Employee Application. Employees who wish to be considered for the posted job must file an application with the Employer utilizing the Employer's established application by the end of the posting period.

SECTION 12.3 Employer Declares Existence. The Employer will decide when a permanent vacancy exists. The biding procedure as described shall only apply to bargaining unit permanent vacancies. The Employer will solicit and consider bargaining unit employees before considering applicants outside of the bargaining unit.

SECTION 12.4
SENIORITY AS APPLIED TO
FILLING VACANCIES

Employer's Position

The employer proposes to fill job postings with the best qualified applicant. The Employer claims that its proposal is the most logical and responsible approach. Under the Employer's proposal it would be required to post vacancies with relevant information, including the necessary qualifications. The Employer would then select the most qualified candidate based on the applicable criteria. If two or more candidates are equally qualified, the most senior applicant will get the position. According to the Employer it is crucial for the Employer to be able to select the most qualified applicant. It would be irresponsible to tax payers to use a different approach.

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Union's Position

The Union has proposed that seniority be the basis for being awarded a vacancy as long as the employee is qualified. The proposal of the Employer suggests a subjective determination of skill, experience and ability to perform the work.

Finding and Opinion

If the bargaining unit vacancies being posted were executive or policy making positions, the Employer's argument would be more convincing. Certainly, the Employer can establish objective requirements for the posted vacancies in the bargaining unit. In its job descriptions and postings, it can set forth the education, skill, experience, work and attendance record, and other qualifications required for the position. If the requirements for a position are clearly stated, there should be no problem in determining whether an employee is qualified. Appointing a qualified senior employee to a vacant position in the bargaining unit would not pose a threat to the welfare of the citizens of Greene County.

Recommendation

Therefore it is recommended that Sections 12.4 of Article 12 read as follows:

SECTION 12.4 Seniority as Applied to. The applications timely filed will be reviewed by the Employer. Selection for bargaining unit positions will be made on the basis of seniority as long as the employee is qualified. Employee's failure to be chosen shall be subject to the grievance procedure and may be filed directly to Step 4.

SECTION 12.5
TEMPORARY VACANCIES

Employer's Position

The Employer proposes to incorporate the current policy on pay for employees who work in a higher classification on a temporary basis. Under the language proposed by the Employer for this section, employees transferred to a position that pays a higher rate of pay shall receive the higher rate of pay retroactive to the first date of the assignment if assigned to the position for fifteen (15) or more days.

Union's Position

Under the proposal submitted by the Union, the employee transferred to a position that pays a higher rate of pay shall receive the higher rate of pay immediately. Other collective bargaining agreements in the County have provisions relating to temporary transfers. Some of those agreements provide for less than fifteen (15) days before receiving the higher rate of pay. Others have a similar provision to the fifteen (15) days and a percentage increase.

The Union argues that the Employer could avoid ever paying the higher rate of pay by simply ensuring that the temporary transfers do not exceed fourteen (14) days. It uses as an example someone who is on vacation.

Finding and Opinion

In the opinion of the Fact Finder there should be no change in current policy. Other bargaining units have similar provisions.

Recommendation

Therefore it is recommended that Sections 12.5 of Article 12 read as follows:

SECTION 12.5 Temporary Vacancies. Due to the nature of a position and in order to prevent interruption of service, the Employer shall have the right to fill a position and make transfers on a temporary basis until such time as the selection of a permanent employee is made to fill the position. The Employer shall limit such temporary assignments to sixty (60) calendar days, except in cases of vacancies resulting from approved leave. Employees transferred to a position that pays a higher rate of pay shall receive the higher rate of pay retroactive to the first date of the assignment if assigned to the position for fifteen (15) or more days. If an employee was transferred to a position that pays a rate of pay less than the rate of pay the employee was receiving before the transfer, the employee shall continue to receive his/her rate of pay before the transfer.

SECTION 12.6

PROMOTIONAL PROBATIONARY PERIOD

Employer's Position

The Employer proposes that employees who are promoted to another bargaining unit position and demoted during the probationary period can appeal through Step 4 of the grievance procedure; arbitration would not be available. According to the Employer, this proposal is consistent with Ohio Civil Service law which does not five an employee in this situation the right to appeal.

Union's Position

The Union's proposal on Section 12.6 has no limitation on the processing of a grievance over the removal of an employee from an awarded vacancy. According to the Union there is no justification for not permitting an employee to have any grievance filed over an alleged violation of the collective bargaining agreement to proceed to arbitration.

Finding and Opinion

The Union's position on this issue is more persuasive. Although an Employer has considerable discretion during a probationary period, an employee should have the right to grieve any question of mistake, unequal or discriminatory treatment through the contractual grievance procedure, including arbitration.

Recommendation

Therefore it is recommended that Sections 12.6 of Article 12 read as follows:

SECTION 12.6 Promotional Probationary Period, An employee selected for a vacant position under this Article shall be given the necessary time and training to become accustomed to the job or to learn the normal operations of the position during a ninety (90) calendar day probationary period. If the employee does not satisfactory complete the probationary period, the employee shall be returned to the employee's former position/classification. Removal from the job by the Employer during the probationary period shall be subject to the grievance procedure. During the probationary period, an employee may voluntarily leave the job and return to the employee's former position/classification. A person in a probationary period is not eligible for promotion.

SECTION 12.7
LOWER OR LATERAL CLASSIFICATION

SECTION 12.8
JOB DESCRIPTIONS

Union's and Employer's Position

Both parties appear to be in agreement on the language for these sections.

Recommendation

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Therefore it is recommended that Sections 12.7 and 12.8 read as follows:

SECTION 12.7 Lower Lateral Classification. Successful applicants for lower or lateral classifications may not make more than one application for any lower or lateral position in a two (2) year period. An employee accepting a lower rated position shall be awarded an hourly rate that provides no increase and does not exceed the highest rate for the position whichever is less.

SECTION 12.8 Job Descriptions. Employees shall be provided a copy of their position description upon initial hire, at the annual evaluation and when changes are made to the position description. The Union will be provided a copy of the employee position descriptions annually upon request and when a position description is updated.

ARTICLE 18

VACATION

Union's Position

The Union has proposed that the minimum allowable time vacation may be taken is an increment of one half hour (1/2). It submits that its proposal is not unreasonable. Other bargaining agreements in the County allow for a half hour (1/2) increment as the minimum allowable time vacation may be taken.

Employer's Position

The Employer has not specifically commented on this issue in its position statement. Nor has it submitted contract language for this Article. Apparently, the Employer's current policy and last proposal during negotiations provided for a one (1) hour increment as the minimum allowable time vacation may be taken.

Finding and Opinion

Since other bargaining units in the County have a half (1/2) hour increment as the minimum allowable time vacation may be taken, and the Employer has not offered argument or evidence in its position statement or at the hearing in opposition, the Union's position on this issue should be sustained.

Recommendation

Therefore it is recommended that Article 18 read as follows:

ARTICLE 18

VACATION

SECTION 18.1 Entitlement. Full- time employees are entitled to vacation with pay after one year of continuous service with the Employer. The amount of vacation leave to which an employee is entitled is based upon length of service as follows:

1. Less than one year of service completed – No Vacation
2. One year of service but less than eight years of service competed – 80 hours
3. Eight years of service but less than fifteen years of service completed -120 hours
4. Fifteen years of service but less than twenty-five years of service completed – 160 hours
5. Twenty-five years or more service completed – 200 hours

SECTION 18.2 Prior Service Credit. New employees of the Employer will not be entitled to vacation service credit earned in other State or Local government agencies in Ohio during previous periods of employment.

SECTION 18.3 Accumulation. Vacation is credited each bi-weekly pay period at the following rates:

1. For those entitled to 80 hours annual vacation – 3.1 hours per pay period.
2. For those entitled to 120 hours annual vacation – 4.6 hours per pay period.
3. For those entitled to 160 hours annual vacation - 6.2 hours per pay period.
4. For those entitled to 200 hours annual vacation - 7.7 hours per pay period.

SECTION 18.4

A. First Year Exclusion. No employee will be entitled to vacation leave nor payment for accumulated vacation under any circumstances until he or she has completed one year of employment with the County.

B. Scheduling. Vacations are scheduled in accordance with the workload requirements of the Greene County Services Department and according to the order in which employees requested his/her vacation. If there is a conflict among bargaining unit employees who have chosen the same vacation time, at the same time, the employee with the greater seniority will be given his/her preference. Vacation leave requests must be acted upon by the supervisor at least twenty-four (24) hours in advance of the leave subject to coverage and workload.

C. Accumulation. Generally, vacation leave shall be taken by an employee between the year in which it was accrued and the next anniversary date of employment. The Employer may, in a special circumstances, permit an employee to accumulate vacation from year to

year. This accumulation of vacation time must be approved in advance and must be in response to special circumstances.

D. Accumulation Limit. Employees shall forfeit their right to take or to be paid for any vacation leave to their credit which is in excess of the accrual for three years. Such leave shall be eliminated from the employee's leave balance.

E. Payment of Separation. Upon separation from the Employer's payroll an employee shall be entitled to compensation at this current rate of pay for all lawfully accrued and unused vacation leave to his credit at the time of separation up to three years. In case of death of an employee such unused vacation leave shall be paid to the employee's survivor or his estate.

F. Definition of When Earned. Vacation leave is earned while on vacation, sick leave, or any other paid/compensated time but not earned while performing overtime.

G. Minimum Allowable. Vacation may be taken in not less than one half (1/2) hour increments.

H. Part-time employees shall accrue paid vacation leave on a pro-rated basis based on hours worked.

ARTICLE 19

PAID PERSONAL LEAVE DAYS

Union's Position

The Union has proposed that each bargaining unit employee receive three (3) paid personal leave days per year. This would be an increase of two (2) days of personal leave.

Employer's Position

The Employer proposes to retain the current policy of one (1) paid personal day. The Employer argues that the provisions of the collective bargaining agreements in the other units, including the DJFS/Teamsters agreement provide for only one (1) day or eight (8) hours of pay for personal leave.

Finding and Opinion

Based upon a review of the bargaining agreements submitted into evidence, no other unit in Greene County receives three (3) days personal leave. The Children Services Board grants two (2) personal days, all the other units provide for one (1) day or eight hours. For this reason,

it is the opinion of the Fact Finder that the Union's proposal for three (3) personal days should be rejected and the current policy of one (1) personal day should be implemented.

Recommendation

Therefore it is recommended that Article 19 read as follows:

ARTICLE 19

PAID PERSONAL LEAVE

SECTION 19.1 each employee covered under this Agreement shall be entitled to one (1) paid personal leave day during each calendar year. Such personal day shall not begin until the employee has completed six (6) months of employment. Such personal day may not be taken with less than twenty-four (24) hours' notice. If the day is not used during the calendar year, it shall be lost and no compensation shall be paid in lieu thereof. Personal days may be taken in no less than four (4) hour increments.

ARTICLE 21

INSURANCE

Union's Position

The Union has proposed a four tier plan from the Michigan Conference of Teamsters Welfare Plan using a Blue Cross Shield PPO network with a total family cost of $366.00 per week or $1,500.86 per month and $122.05 per week or $528.88 per month for single coverage. According to the Union, just comparing the single coverage and the family coverage, the plan offered by the Union is less expensive than the Employer's plan and, as a result, would be less expensive to the bargaining unit employees. In addition, when dental coverage is included in the Employer's plan, the costs are even higher than the plan proposed by the Union. Dental Coverage is included in the health care numbers provided. The Union further states that when the cost for the dental coverage and medical coverage are included, and considering that the plan proposed by the Union also includes vision coverage, even if the Employer would pay 100% of the premiums, its cost under the Union proposal would be less than the Employer currently pays.

Thus, the Union concludes that with the benefit levels being substantially similar, Local 957 submits that the insurance proposal submitted by Local 957 should be adopted on a benefit coverage basis and on a cost basis and that the employees should not be required to pay any amount of the premium based on the significantly lower costs for the Employer.

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Employer's Position

The Employer proposes to maintain the status quo for health insurance. This proposal requires the Employer to pay 80% of the monthly premium with employees paying 20% of the premium. Its proposal also includes dental coverage with the Employer paying 31% of the premium and employees responsible for 69%. The Employer also proposes a provision that will treat bargaining unit employees the same as other County employees for purposes of the actual coverage.

The Employer is opposed to the Union's proposal for the following reasons. First, it is questionable whether a Fact Finder can impose this plan on the Greene County Board of Commissioners. Ohio Revised Code Section 305.171 gives the board of county commissioners the authority to purchase health insurance for County employees. A plan such as the one proposed by Union, the Employer claims, cannot be imposed on the Employer.

Second, it is the Employer that is responsible for ensuring all aspects of its health insurance coverage comply with the Patient Protection Affordable Care Act (ACA). Currently, the Employer has the necessary control because it decides on the type of coverage and the carrier. Under the Union's proposal, claims the Employer, this control will be taken away from the employer and it will be left with the obligations but no remedy if there are problems with ACA compliance.

Third, the Employer needs to maintain control over the content of the plan because beginning in 2018, the ACA will impose an excise tax on plans exceeding a certain annual cost. Requiring a specific plan operated by the Teamsters is inconsistent with this need.

Fourth, the Employer argues, that although the bargaining unit is small, the Employer gets better buying power with a larger group. Also, there is no reason to treat bargaining unit employees differently than all other county employees. If one group leaves others will follow.

Fifth, the benefits offered by the Teamsters plan are not as good as the benefits offered under the County plan. The deductible and maximum out of pocket costs are higher under the Teamsters plan. The co-pays for urgent care and office visits are also greater than the County plan and surgery and maternity related costs are more as well.

The benefits, according to the Employer, under the County's plan compare favorably to benefits offered to employees in other jurisdictions. In support of this, the Employer presented comparisons to other plans in the area and the State of Ohio.

The Employer maintains that one of the best ways to gain some control over health insurance is for employers to treat all its employees the same for purposes of coverage and premium contributions. The County has made every effort to meet this goal.

In recent years the County has been able to protect benefits with little to no increase in premium costs. In 2011, the premiums actually went down by 2% while benefits were enhanced to comply with the ACA. In 2012, the premium only increased by 1.8% with no benefit changes and in 2014 there again were no benefit changes.

Finding and Opinion

The Employer's first objection to the Union's proposal is without merit. The control over the health benefits with the insurance carriers is as a legal and practical matter in the hands of the County Commissioners. However, as the Employer, the Commissioners have control with contracting with health insurance providers. Thus, the Fact Finder can make a recommendation that the Board of county Commissioners as a party to the negotiations adopt the Teamster Plan. (See *Licking County Sheriff's Office v. Teamsters Local No. 637,* Case No. 08CV 01461 (November 17, 2008) and *State ex rel. Ohio Patrolmen's Benevolent Assn. v. State Employment Relations Board*, 10th District No. 5 AP 526, 2006 Ohio 3263.)

Likewise, the second and third objections to the Union' proposal are without merit. There should be no difference in retaining control for the purposes of complying with the Affordable Care Act under the Teamster Plan than there would be with United Health Care or any other provider or insurance company.

The Employer's fourth objection has merit. There are, according to the Employer, 1,171 employees in Greene County and only 22 in this bargaining unit. The Employer has to be concerned with providing benefits for the larger group. Allowing small bargaining units to split off and purchase insurance on their own dilutes the size of the larger group, and its buying power. In addition, administrating several different plans creates administrative issues as to benefits and portability among county employees.

Also, there is merit to the Employer's fifth and final objection. The benefits offered by the Teamsters plan are not as good as the benefits offered under the County plan. The deductible and maximum out of pocket costs are higher under the Teamsters plan. The co-pays for urgent care and office visits are also greater than the County plan and surgery and maternity related costs are more as well.

For the foregoing reasons, the Union's proposal to replace the current health care plans with the Michigan Conference Welfare Plan should be rejected at this time.

Recommendation

Therefore it is recommended that Article 21 Insurance read as follows:

ARTICLE 21

INSURANCE

SECTION 21.1 Life Insurance. The Employer will provide $25,000.00 life insurance with Accidental Death and Dismemberment coverage for each full-time employee at no cost to the employee.

SECTION 21.2 Health Insurance. All full-time employees (except part-time, seasonal and intermittent employees) shall be entitled to participate in the County's group Health Insurance Program. In the event the County decides to make material changes in the Program, the County will give the Union advance notification and an opportunity to discuss such changes upon request.

SECTION 21.3 Payment of Premiums of County's Group health Insurance Program. The County shall pay 80% of the cost of the monthly premium. The participating bargaining unit employees shall pay 20% of the cost of the monthly premium.

SECTION 21.4 Group Dental Plan. The County shall pay 39% of the cost of the monthly premium. The participating bargaining unit employees shall pay 61% of the cost of the monthly premium.

SECTION 21.5 Insurance Continuation. Continuation of group insurance coverage in the event coverage is terminated will be provided in accordance with state and federal laws.

ARTICLE 25

WAGES

Union's Position

The Union proposes an across the board increase for all bargaining unit employees of $1.25 per hour retroactive to January 1, 2015 and increases of three percent (3%) in 2016 and 2017. The rationale presented for this proposal is that the bargaining unit in the County Services Department has fallen far behind the wage rates of the other bargaining unit employees. Since 2010 other bargaining unit employees have received wage increases from one percent (1%) to

three percent (3%) while non-union County service Department employees received zero percent (0%) to partial year two percent (2%) wage increases for all non-bargaining unit employees, an increase that was not made available to the County Service Department employees even though the County Service Department budgeted over one million dollars ($1,000,000.00) in salaries for its on-bargaining unit employees.

The Union argues that while other newly negotiated collective bargaining agreements provided for wage increases of two percent (2%) per year the Employer only offered one percent (1%) increases per year for each year of the three year agreement to the bargaining unit employees in the Greene County Services Department. As the exhibits submitted by the Union demonstrate, the employees of the Greene County Service Department are being paid significantly less when compared to their peers employed by Greene County and when compared to the comparable counties throughout the State of Ohio.

Furthermore, the Union argues that from 2009 to 2015 the Greene County Engineer employees received fifteen percent (15%) increases in pay, the Greene County Sanitary Engineer employees receive nine percent (9%) increases in pay and the Greene County Services Department employees only received 6.5% increases in pay, and two of the increases in 2011 and 2012 were for only partial years.

Thus, the Union concludes that based on the failure to provide the bargaining unit employees in the County Service Department wage increases consistent with what other County employees received, Local 957 submits that the wage increases as proposed by Local 957 should be granted.

Employer Position

The Employer proposes a two percent (2%) wage increase effective upon execution of the collective bargaining agreement with a wage reopener for the second and third years of the agreement. This same wage increase, according to the employer, was received by other non-bargaining unit employees of the County. The Employer states that the Union's proposal for the first year of the agreement would cost the equivalent of an eight (8%) across the board increase.

The Employer submits that between 2000 and 2015, bargaining unit employees have received pay raises totaling 33%. These increases average 2.2 % per year, and they are the same as the CRI-U for this period, the same as the PGO employees received and higher than bargaining unit employees in the Sanitary Engineer Department.

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Finding and Opinion

Both parties have submitted data and comments on the financial status of the County. In its Position Statement, the Employer made the following comments.

> "In reviewing the economic issues, the Fact-finder must be mindful of the significant pressure on the County's revenue sources. All bargaining unit employees are paid from the County general fund. This fund has experienced numerous cuts in revenue from the State of Ohio, including the local government fund and personal property taxes. The County's investment income also has decreased over the past several years. Historically the Board of Commissioners has taken a conservative approach in budgeting and expenditures. This practice has become even more important since the economic collapse in 2008.
>
> The County anticipates several significant expenditures from the general fund in the next several years. Some of these expenditures are due to normal needs and some are the result of the County deferring upgrades and repairs to its infrastructure due to revenue issues over the last several years. The County will be spending $6 million on HVAC for its downtown buildings, $500,000 for a parking lot, and $50,000 to replace curbs. For purposes of economic development, the County will spend $1 million on upgrades for the Greene County airport. Due to economic limitations, the County jail has been operating with only two of the four pods available for inmates since 2009. The County Sheriff has indicated a need to open other pods which will cost approximately $4 million per year."

The Union set forth the following comments in its Position Statement.

> "For the year ended December 31, 2013 the assets of Greene County exceeded its liabilities by $357,845,103.00. As of December 31, 2013, Greene County's Governmental Funds reported combined ending fund balances of $89.7 million, an increase of $.6 million in comparison with the prior year. Of the ending fund balance, $26.1 million is available for spending at the County's discretion. In the General fund as of December 31, 2013, the actual revenues came in 2.6% higher than they were budgeted and expenditures were 90.8% of the amounts budgeted."

Based upon the foregoing comments and a review of the financial data submitted by the parties into evidence at the hearing, the Employer would have the ability to pay the increase proposed by the Union. However, the $1.25 per hour increased proposed by the Union, retroactive to January 1, 2015 cannot be justified by either internal or external comparables. This so called "catch up" is excessive and should be rejected.

Although the Union has established that the wages of its members have fallen behind other bargaining units, it cannot expect to make up the differences in one year, nor should it. Greene County Service Department Employees fell behind the Sanitary Engineer's employees by 2.5% and behind the Greene County Engineer's Employees by 8.5%. Since, the Sanitary

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Engineer's employees perform work similar to that of employees in the Service Department, the gap in wage increases for comparison purposes should be 2.5%.

It is the opinion of the Fact Finder that the wages should be increased 2.5% effective January 1, 2015, 3% effective January 1, 2016 and 3% effective January 1, 2017.

Recommendation

Therefore it is recommended that Article 25 Wages read as follows:

ARTICLE 25

WAGES

SECTION 25.1 Rate of Pay. Each current employee's rate of pay on the effect date of this Agreement shall be the only rate used to determine the wage increases contained in the Agreement.

SECTION 25.2 Wages Increases.

A. Effective the first day of the first pay period after date of ratification of this Agreement, but not later than the first pay period after January 1, 2015, each employee covered by this Agreement will receive a 2.5% wage increase, or the Job rate as addressed in Appendix A, whichever is greater.

B. Effective the first pay period after January 1, 2016 each employee covered by this Agreement shall receive a 3% wage increase and effective the first pay period after January 1, 2017 each employee covered by this Agreement shall receive a 3% wage increase.

SECTION 25.3 Promotion. When an employee is promoted to a higher rated classification, the employee's rate of pay will be the job rate of that classification as addressed in Appendix A, or a three percent (3%) increase, whichever is greater.

SECTION 25.4 New Hires. New employees hired after the effective date of this Agreement will receive the job hurly rate of pay specified in the attached Appendix A. Thereafter, they will receive the percentage increase specified above.

SECTION 25.5 Temporary Transfer (See Article 12, Section 12.5)

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ARTICLE 26
LONGEVITY PAY

Union's Position

The Union has proposed longevity pay consistent with longevity pay or step provisions contained in other collective bargaining agreements. It submits that its proposal for longevity pay based on the consistency of longevity pay, and in some contracts step increases, should be adopted.

Employer's Position

The Employer does not make any language proposal for longevity pay. It claims that currently those non- bargaining unit employees do not receive longevity pay. Also, that bargaining unit employees do not receive longevity pay. Moreover, the County has made efforts to eliminate longevity pay from other collective bargaining agreements. The recently negotiated agreement between the Greene County Division of Children Services and the Professionals Guild of Ohio resulted in the elimination of longevity pay.

In addition, the Employer argues that the cost of the Union's proposal is equivalent of a 1% across the board increase in each year of the agreement. Since 2008, local governments have been looking for ways to reduce or slow the growth of the cost for providing services. The longevity pay contained in existing agreements developed over many years. In this case, the Union is seeking to get this benefit in the first year of the agreement. Under these circumstances it would be inappropriate to include this new benefit in the agreement.

Finding and Recommendation

A review of the collective bargaining agreements of Greene County's other bargaining units, submitted into evidence by the parties, indicates that longevity pay or pay steps are common in most of the agreements. The Greene county Engineer contract (Article 20, Section 1) provides for longevity payments of $25.00 per year of service; the Sanitary Engineer's contract (Article 32, Section 32.6) provides longevity pay of $20.00 per year of service after employees have completed five (5) years of service; the Greene County Children Services Board contract (Article 26, Section 26.5) provides for longevity service to employees with five or more years of service on a per hour basis. The Deputy Sheriff's contract (Article 33, Section 33.5) provides for longevity pay for employees with three years of service in the amount of $25.00 per year of service. The Deputy Sheriffs' contract also provides step increases for the bargaining unit employees.

Considering that most of the bargaining units in the county have longevity pay or some recognition of service, it would not be unreasonable to provide such to employees in the Service Department. Nor would such impose an undue financial burden on the Counties resources.

Recommendation

Therefore it is recommended that Article 26 Longevity Pay read as follows:

ARTICLE 26

LONGEVITY PAY

SECTION 26.1 Eligibility. For payment due in 2015, all full-time bargaining unit employees on the payroll as of the signing of this Agreement shall receive longevity pay to be paid the first pay period after the ratification of this Agreement. Thereafter, longevity pay shall be paid in the regular pay check the first pay period in December. All new full-time bargaining unit employees hired after the signing of this Agreement will not be eligible for longevity pay until they have completed one (1) full year of service. The date on which years of service for longevity purposes is determined shall be November 1 of each year. As longevity pay, full-time bargaining unit employees on the payroll on November 1 of each year who are eligible for longevity pay shall receive longevity pay as follows:

In 2015, $20.00
In 2016, $20.00
In 2017, $20.00

ARTICLE 28

UNIFORMS

SECTION 28. 1
UNIFORMS PROVIDED

SECTION 28.2
REPLACEMENT POLICY

SECTION 28.3
CLEANING AND MAINTENANCE

SECTION 28.4
FOUL WEATHER GEAR

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Union's and Employer's Position

Both parties appear to be in agreement on the language for these sections.

Recommendation

Therefore it is recommended that Sections 28.1, 28.2, 28.3 and 28.4 read as follows:

SECTION 28.1 Uniforms Provided. The Employer will continue to provide the current number (11) of uniforms, consisting of pants and shirts. Insulated clothing will be provided for those employees assigned by the Employer to perform duties in inclement weather. Uniform styles will be determined by the Employer.

SECTION 28.2 Replacement Policy. Uniforms, insulated clothing and safety glass styles and replacement policies will be determined by the Employer. Uniforms, insulated clothing and safety glasses which become damaged and/or worn in the course of employment will be replaced upon reasonable request by the employee.

SECTION 28.3 Cleaning and maintenance. The Employer will be responsible for the cleaning and maintenance of uniform pants and shirts.

SECTION 28.4 Foul Weather Gear. Foul Weather Gear which may include boots, gloves, hats, rain coats, and/coveralls, will be furnished by the Employer to employees when their duty must be performed outside in inclement weather.

SECTION 28.5
T – SHIRTS

Union Position

The Union proposes that the Employer provide T-Shirts for the bargaining unit employees to wear outside in warm weather. Even though the employees are provided short sleeve shirts, the fabric of the short sleeve buttoned up shirts are extremely uncomfortable in the hot summer weather and it for this reason the bargaining unit employees have requested that tee shirts be provided to the bargaining unit employees.

Employer's Position

The Employer rejected the Union's proposal for T-Shirts.

Finding and Opinion

In the absence of any reliable and probative evidence that short sleeve button down shirts are more uncomfortable in hot summer weather than T-Shirts, the Fact Finder concurs with the Employer's position on this issue.

Recommendation

Therefore, the Union's proposal that a provision for the Employer to provide T- Shirts for bargaining unit employees to wear in warm weather is rejected and is not to be included in the Agreement.

SECTION 28.6 (5)
SAFETY SHOES

Union's Position

The Union proposes that bargaining unit employees be able to purchase safety shoes at locations where they can obtain the specific brand of shoe that provides a comfortable fit.

Employer's Position

The Employer rejects the Union's proposal. With respect to the purchasing of shoes, the Employer wants the funds it is spending to remain in Greene County. There are two locations in the County where employees can purchase safety shoes. The employer allows the employees to go to these locations in downtown Xenia during working hours.

Finding and Opinion

In the absence of any evidence that bargaining unit employees cannot purchase or order comfortable shoes, the Fact Finder concurs with Employer's position on this issue.

Recommendation

Therefore, the Union's proposal that employees be allowed to purchase safety shoes at locations other than those designated by the Employer is rejected and Section 28.5 of Article 28 shall read as follows:

SECTION 28.5 Safety Shoes. All employees who perform tasks for which steel-toe safety shoes are required by state or federal regulations shall be permitted to obtain shoes on an annual basis for regular shoes between February 1 and February 28 at a cost of $200.00 per pair at a minimum of two local area stores during work time. Shoes must meet OSHA standards. Employees may chose insulated shoes in place of regular shoes annually. In lieu of regular shoes employees may, once every three years purchase insulated shoes under this section.

SECTION 28.6

SAFETY GLASSES

Union's Position

The Union has proposed that the safety side shields on the required safety glasses not be attached. The reason given by the Union is that the safety side shields do not have to be attached to accommodate the different working environments of the bargaining unit employees. The Union submits that because comfort is an important factor when wearing any type of safety equipment, the requirement of having permanently attached side shields affects the comfort of the bargaining employees performing certain duties and should not be required.

Employer's Position

The Employer rejects the Union's proposal. The Employer states that it pays for prescription glasses with safety shields and does not want the glasses used for non-work related purposes.

Finding and Opinion

The Fact Finder concurs with the Employer's position on this issue.

Recommendation

Therefore it is recommended that Section 28.6 of Article 28 read as follows:

SECTION 28.6 Safety Glasses. All employees whose vision requires them to wear prescription glasses and who are assigned to tasks for which safety glasses are required by state or federal safety regulations will be allowed to select one pair of safety glasses from a selection made available by the Employer. Employees must provide the Employer with a prescription for the lens. All safety glasses must have permanently attached side shields.

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SECTION 28.7

PERMISSIBLE USE

SECTION 28.8

ACCOUNTING OF UNIFORMS AND OTHER PROVIDED

PERSONALPROTECTIVE EQUIPMENT

SECTION 28.9

TERMINATION OF EMPLOYMENT

Union's and Employer's Position

Both parties appear to be in agreement on the language for these sections.

Recommendation

Therefore it is recommended that Sections 28.7 28.8, and 28.9 read as follows:

SECTION 28.7 Permissible Use. Uniforms, safety glasses and safety shoes may be worn in the course of employment.

SECTION 28.8 Accounting of Uniforms and other provided Personal Protective Equipment. The Employer will provide to the employee an accounting of each of the employee's uniforms, shoes, eye glasses and other personal protective equipment purchased by the Employer and assigned to an employee that are taxed as an IRS benefit. This accounting shall be provided to the employee within a reasonable time after the Employer composes the figures and information. The information shall consist of an itemized breakdown of all personal protective equipment provided to the employee and the cost of those items so provided.

SECTION 29.9 Termination of Employment. These uniform items will remain County property. Employees must return all uniforms when they terminate their employment. Any uniform items that are not returned to the Employer within five (5) calendar days after termination of employment will be charged to the employee and the actual cost of these items will be deducted from the employee's final pay check. For purpose of this Section, uniforms are considered any item or property issued for official use by the Employer, with the exception of boots and items purchased more than twelve months prior to separation.

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ARTICLE 31
DURATION

Union's Position

The Union is proposing a three year agreement to be effective January 21, 2015 through December 31, 2017 with wage rates to be retroactive to January 1, 2015. The Union submits that its proposal should be adopted since a two percent (2%) increase for 2015 has already been budgeted by the employer for the bargaining unit employees, which has not been provided.

Employer Position

The Employer proposes a three year agreement effective upon execution.

Finding and Opinion

The Fact Finder finds that the wage rates proposed for 2015 should be effective and retroactive to January 1, 2015 and that the other provisions of the Agreement should effective upon ratification.

Recommendation

Therefore it is recommended that Article 31 Duration read as follows:

ARTICLE 31

DURATION

SECTION 31.1 Duration. This Agreement shall remain in full force and effect form the date of ratification until midnight December 31, 2017. Wages rates for 2015 shall be effective and retroactive January 1, 2015. Either party may file a notice in the period sixty (60) to ninety (90) days prior to the expiration of the agreement to commence negotiations for a successor agreement.

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IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted June 15, 2015. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan____
John F. Lenehan
Fact Finder

July 22, 2015

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PROOF OF SERVICE

This fact-finding report was electronically transmitted this 30th of April, 2014 to the persons named below.

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