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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Number: 2016-MED-04-0533
Between	:	
	:	
CUYAHOGA COUNTY, OHIO	:	
	:	
Employer	:	
	:	Date of Fact-Finding Hearing:
and	:	June 24, 2016
	:	
LOCAL 18,	:	
INTERNATIONAL UNION OF	:	
OPERATING ENGINEERS	:	
3515 PROSPECT AVENUE	:	
CLEVELAND, OHIO 44115	:	Howard D. Silver, Esquire
	:	Fact Finder
Union	:	

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Cuyahoga County, Ohio, Employer

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PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on June 24, 2016 in a conference room at the Cuyahoga County Department of Public Works located at 6100 West Canal Road, Valley View, Ohio 44125. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments the fact-finding hearing concluded at 11:00 a.m. on June 24, 2016.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on the sole remaining unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend to the parties language to be included in the parties' successor collective bargaining agreement.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, Cuyahoga County, Ohio, hereinafter the Employer, and the International Union of Operating Engineers, Local 18, hereinafter the Union, have engaged in bargaining a successor collective bargaining agreement for a bargaining unit comprised of employees within the Cuyahoga County, Ohio Department of Public Works who hold the job classifications HMO Heavy and Construction Backhoe Operator.

2. At the time of the fact-finding hearing the bargaining unit was comprised of nine positions, with each position filled by an HMO Heavy and Construction Backhoe Operator.

3. The most recent collective bargaining agreement between the parties for the bargaining unit comprised of HMO Heavy and Construction Backhoe Operators was in effect from January 1, 2013 through December 31, 2015.

UNOPENED ARTICLES

The parties did not open the following Articles to bargaining. The fact finder recommends that all of the unopened Articles enumerated below be included, unchanged, in the parties' successor Agreement.

Preamble

Article 1 – Union Recognition

Article 2 – Management Rights

Article 3 – Union Security

Article 4 – Stewards and Alternates

Article 5 – Personnel Files

Article 6 – Access to Premises

Article 7 – Bulletin Board

Article 8 – Vacancies and Job Openings

Article 9 – Appointments and Promotions

Article 11 – Break in Service

Article 12 – Separation of Employment

Article 13 – Corrective Action

Article 14 – Grievance Procedure

Article 15 – Arbitration

- Article 16 – Application of State Civil Service Laws
- Article 18 – Labor/Management Meetings
- Article 19 – Examinations
- Article 20 – Probationary Period
- Article 22 – Holidays
- Article 23 – Reporting Pay/Minimum Call-In
- Article 24 – Wash Up Time
- Article 27 – Tax Deferral; Employee Contribution to P.E.R.S.
- Article 29 – Non-Discrimination
- Article 30 – No Strike/No Lockout
- Article 31 – Separability Clause
- Article 32 – Work Rules

TENTATIVELY AGREED ARTICLES

The following Articles have been tentatively agreed by the parties. The fact finder recommends that the Articles enumerated below, as tentatively agreed by the parties, be included in the parties' successor Agreement.

- Article 10 - Seniority
- Article 17 – Other Leaves of Absence
- Article 21 – Leaves of Absence with Pay
- Article 25 – Shift Differential
- Article 26 – Hospitalization
- Article 28 – Wages (Section 1 tentatively agreed in part)

UNRESOLVED ARTICLE

The following Article, in part, remained unresolved between the parties:

- Article 28 – Wages, Section 1

DISCUSSION OF UNRESOLVED ARTICLE AND RECOMMENDED LANGUAGE

Article 28 – Wages

The Employer has proposed adding language to the final paragraph of section 1 of Article 28 – Wages. The agreed language in Article 28, section 1's last paragraph as presented in the parties' most recent collective bargaining agreement reads:

All hours worked on Saturday and Sunday shall be paid at one and one-half (1½) times the regular hourly rate or any rate that includes a shift premium. However, nothing in this provision limits or alters the standard workweek as defined in Article 25 Hours of Work/Overtime, of this Agreement.

The Employer proposes inserting language between the first sentence in the last paragraph of Article 28, section 1 and the last sentence in the last paragraph of Article 28, section 1 that would produce the following (the language proposed to be inserted is presented in italics):

All hours worked on Saturday and Sunday shall be paid at one and one-half (1½) times the regular hourly rate or any rate that includes a shift premium. *Sick time hours used during the workweek will be deducted from the premium time hours resulting in straight time pay equal to the hours of sick time used, unless an employee brings a doctor's or hospital statement as to the nature of the illness of such absence. In all cases, all hours worked on Sunday will be paid at the premium rate of pay regardless of sick time use for the week.* However, nothing in this provision limits or alters the standard workweek as defined in Article 25 Hours of Work/Overtime, of this Agreement.

The Employer does not characterize its proposal as a new limitation on premium pay for Saturday work; the Employer argues that the sentiment underlying the language proposed by the Employer to be inserted in the last paragraph of Article 28, section 1

merely reflects the intention of the parties underlying the language that already appears in the parties' most recent collective bargaining agreement. The Employer argues that its proposal simply makes clearer what the parties have always intended about the effect of sick leave usage during the workweek upon premium pay for hours of work performed on the Saturday of that workweek. The Employer denies that its proposal changes any aspect of the parties' working relationship or alters any aspect of how Saturday premium pay is to be handled already in effect.

The Union strongly opposes the language proposed by the Employer to be inserted into the last paragraph of Article 28, section 1. The Union's objections to the Employer's proposal are three-fold: 1) the language proposed by the Employer to be inserted in the last paragraph of Article 28, section 1 does not reflect any underlying agreement between the parties as it exists in the agreed language of the parties' most recent collective bargaining agreement; 2) the language proposed by the Employer for insertion into the last paragraph of Article 28, section 1 proposes a significant change to how Saturday work is treated for purposes of premium pay, calling for sick leave usage during the workweek to affect Saturday premium pay, with the Union emphasizing that such a limitation on the rate of pay for Saturday work has never been agreed by the Union; and 3) the Union argues that far from a simple restatement of what the parties had already agreed, the Employer's proposal for the last paragraph of Article 28, section 1 is an attempt to reverse the outcome of an adverse (to the Employer) arbitrator's decision that rejected the Employer's claim about what the parties had agreed in their most recent collective bargaining agreement as to the effect of sick leave usage on Saturday premium pay. The Union argues that far from simply seeking an interpretation from the fact finder

of language already appearing in the parties' most recent collective bargaining agreement, the Employer through its proposal is asking the fact finder to order a significant change to the parties' relationship, a change emphatically opposed by the Union and contradictory of a recent arbitrator's decision.

The fact finder understands the language proposed by the Employer to be inserted in the last paragraph of Article 28, section 1 relating to the effect of sick leave usage during the workweek on the premium pay to be paid for work on that workweek's Saturday changes the language that was earlier agreed by the parties in their most recent Agreement in two ways. First, the language to be inserted into Article 28, section 1 under the Employer's proposal would make a distinction between Saturday work and Sunday work. The parties' most recent Agreement in the language of Article 28, section 1 makes no distinction between Saturday work and Sunday work in determining premium pay.

Second, the fact finder understands the language proposed by the Employer to be inserted in the last paragraph of Article 28, section 1 would distinguish between Saturday work when sick leave had been used during that workweek and Saturday work when sick leave had not been used during that workweek, and distinguishes between sick leave usage with a doctor's or hospital's statement and sick leave usage where no medical documentation about the absence is provided. The fact finder understands that the parties' most recent agreed language presents Saturday as the only criterion for qualifying for premium pay for work performed on a Saturday. The fact finder understands the language proposed by the Employer for insertion into the last paragraph of Article 28, section 1 would add a limiting criterion, namely sick leave usage during the workweek of the Saturday worked without providing medical documentation. Whether this is a good idea

or a bad idea it remains, in the opinion of the fact finder, a change to the language agreed by the parties in their most recent collective bargaining agreement. The change as understood by the fact finder to result from the language proposed to be inserted under the Employer's proposal is opposed by the Union in the strongest terms.

The fact finder is of the opinion that if there is to be a change as to the treatment of Saturday work for purposes of paying premium pay, such an alteration should be fully bargained by the parties. In an optimal outcome the parties would reach an agreement as to any change to be made in this regard. This fact finder does not find sufficient grounds within the hearing record to recommend to the parties that the Employer's proposal as to the last paragraph of Article 28, section 1 be included in the parties' successor Agreement. The fact finder does not find the proposed language to have a neutral effect on the prior language in this Article. This language was raised for the first time late in the bargaining process, at a time when the Union had believed that all substantive changes intended by the parties for their successor Agreement had been agreed and only ministerial and grammatical issues remained. The fact finder favors bargaining on issues that propose to change the parties' relationship and encourages a full and fair consideration by both parties of any proposed modification to their contractual relationship.

The fact finder recommends to the parties that all of the unopened and tentatively agreed Articles be included in the parties' successor Agreement; that that part of Article 28, section 1 that was tentatively agreed by the parties be included in the parties' successor agreement; and that that part of Article 28, section 1 that was not tentatively

agreed to be changed by both parties, specifically the last paragraph of Article 28, section 1, be included in the parties' successor Agreement unchanged.

RECOMMENDED LANGUAGE – Article 28 – Wages

Section 1. Include tentatively agreed language.

Section 1. Include the last paragraph unchanged.

As to the duration of the parties' successor Agreement, the fact finder recommends a three-year contract from January 1, 2016 through December 31, 2018. The fact finder believes this duration is implied in tentatively agreed Articles, in particular that part of Article 28, section 1 that was tentatively agreed by the parties.

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder
500 City Park Avenue
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Columbus, Ohio
August 2, 2016

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between Cuyahoga County, Ohio, the Employer, and the International Union of Operating Engineers, Local 18, the Union, SERB case number 2016-MED-04-0533, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 2nd day of August, 2016:

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Fact Finder

Columbus, Ohio
August 2, 2016