STATE EMPLOYMENT RELATIONS BOARD

FACT FINDER'S REPORT AND RECOMMENDATION

IN THE MATTER OF:

MAHONING COUNTY ENGINEER

AND

INTERNATIONAL BROTHERHOD OF TEAMSTERS
LOCAL NO. 377

Case Number 2017-MED-02-0138
Various classifications in the Road Department

Before Fact Finder: Thomas J. Nowel, NAA

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the case as captioned on the cover page by the State Employment Relations Board on September 27, 2017 in accordance with Ohio Revised Code Section 4117.14 (C) (3). Hearing in the above matter was held on three days, November 30, 2017, December 19, 2017 and January 26, 2018 at the offices of the Mahoning County Engineer.

This matter involves a bargaining unit comprised of the following classifications: Laborer, Equipment Operator 2, 3 and 4, Auto Mechanic 2 and 3, Master Mechanic, Foreman, Construction Foreman, Route Marker 1, 2, 3 and 4, Fabricator, Sign Painter, Extended Arm Ditcher/Mower, and Sewer Jet/Vac Truck Operator. Certain classifications may not be filled at this time. There are approximately 44 employees in the bargaining unit. The expiration date of the current collective bargaining agreement was April 30, 2017. The parties have a long history of collective bargaining going back to the 1970s. The parties resolved a number of issues during negotiations and then attempted to resolve a number of the outstanding proposals with the Fact Finder during the first scheduled fact finding session on November 30, 2017.

OUTSTANDING ISSUES:

1. Article 10, Seniority
2. Article 11, Layoff and Recall
3. Article 12, Discipline and Appendices
4. Article 13, Grievance and Arbitration Procedure
5. Article 15, Job Classifications/Descriptions
6. Article 16, Work Assignments
7. Article 17, Temporary and Substitute Job Postings
8. Article 18, Promotional Vacancies
9. Article 21, Hours of Work/Scheduling

10. Article 22, Overtime/Call-Out
11. Article 23, Compensation
12. Article 24, Insurance
13. Article 25, Longevity
14. Article 26, CDL Bonus
15. Article 27, Hazardous Duty Pay
16. Article 28, Clothing Allowance
17. Article 29, Holidays
18. Article 30, Vacation
19. Article 31, Sick Leave
20. Article 32, Personal Leave
21. Article 33, Injury on Duty Leave
22. Article 36, Unpaid Leave and FMLA
23. Article 38, Duration
24. Side Letter # 1.
25. New Article, Mid-Term Bargaining Obligation
26. New MOU, Retirement Incentive Program

Those participation at hearing for the Employer:
Michael D. Esposito, Esq., Employer Advocate
Michael J. Zhelesnik, Employer Advocate
Edward Janczewski, Opertions Deputy
Richard Clautti, Office Manager

Those participating at hearing for the Union:
John R. Doll, Esq., Union Advocate
Richard Sandberg, President, Teamsters Local No. 377
Michael Galterio, Union Committee
John Brajer, Union Committee
Michael Barone, Union Committee
Bob Mingo, Union Committee
Todd Creed, Union Committee
Ken Sabo, Union Committee
Ralph Sam Cook, Union Committee

BACKGROUND

In analyzing the positions of the parties regarding each issue at impasse and then developing a recommendation, the Fact Finder is guided by the principles which are outlined in Ohio Revised Code Section 4117.14 (G) (7) (a-f) as follows.

1. Past collectively bargained agreements, if any, between the parties.

2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service.

4. The lawful authority of the public employer.

5. The stipulations of the parties.

6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or private employment.

ANALYSIS AND RECOMMENDATIONS

During the first day of hearing, the parties engaged in mediation of outstanding issues. Resolution of issues at impasse did not occur on the first day. Evidentiary hearing was conducted over two days and the parties reached tentative agreement on a number of issues. During the evidentiary hearing, the parties presented their proposals and positions on each

issue at impasse chronologically beginning with Article 10, Seniority, and concluding with the Employer's proposal for a "Retirement Incentive Program." For purposes of this Report and Recommendation, discussion and recommendation regarding Article 23, Compensation of Employees, Article 38, Duration, and New Article, Retirement Incentive Program will be considered first. Recommendations regarding these issues are inter-connected. Following these issues, recommendations will be in chronological article order.

Article 23, Compensation of Employees

The Union proposes three 5% across the board wage increases during the term of the new collective bargaining agreement, effective May 1, 2017, 2018 and 2019. In addition, the proposal includes an accelerated progression of movement in the wage schedule from four to three years to receive 85% of the full rate and after five years rather than seven years for the full rate of pay. The Union has proposed that, in the case of promotion, an employee would move to the top rate for the position. In addition, if an employee is placed on a job with a higher rate of pay, the top rate for the position will be paid. Finally, the Union proposes to substitute the word "operator" with "anyone who operates a dump or tandem body truck will receive Operator IV rate when hauling . . . ."

The Employer proposes no general wage increase during the term of the new Agreement. Instead, bargaining unit employees will receive three lump sum payments of 1%, the first following the execution of the new Agreement, and two additional payments on the anniversary dates of the Agreement. The Employer proposes a new 16 step wage schedule. In addition, the Employer proposes language which would restrict movement within the wage

schedule following the expiration of the collective bargaining agreement. The Employer proposes a minimum of two hours call-out pay for all callouts. The Employer proposes to modify the Pension Contribution section to reflect that all employees contribute the statutory pension contribution.

UNION POSITION: The Union states that no bargaining occurred regarding the respective compensation proposals of the parties. The Union states further that there was an agreement between the parties to wage freezes in the past. The Union believes that this is the time to make up for past economic losses. The Union argues that the Employer is in a position to fund the Union's across the board wage proposal and an acceleration of movement in the wage schedule. The Union states that, during the recession, it was willing to work with the Employer to control wages and reduce costs. During the past years, the bargaining unit has been reduced from over 70 employees to 44 currently. This equates to more work for a reduced workforce. The Union states that the 11.2% wage increase, which was granted to end pension payment by the Employer, covered taxes and other pay issues. The Union argues that the language should not be modified. The Union argues equity regarding its proposal that employees who promote or are assigned to a higher classification receive pay corresponding to the high rate of the wage schedule for the classification. The Union states that, based on a review of wages being paid employees in similar positions in county jurisdictions surrounding Mahoning County, its compensation proposal is justified and should be included in the recommendation.

EMPLOYER POSITION: The Employer rejects the wage proposal submitted by the Union. The Employer first cites the county's general fund budget which was approved using revenue from the state in order to balance department budgets, and, while the County Engineer utilizes other sources of revenue, the overall economics within the County and surrounding areas are very tight. The Employer illustrates revenue sources and expenditures regarding Motor Vehicle Gas Tax Revenue and Engineer Permissive License Tax, the history of each which reflects tight budgetary restrictions. The Employer emphasizes that wage and benefit surveys from surrounding County Engineer Departments clearly illustrate that the Mahoning County Engineer wage schedule exceeds all other comparable jurisdictions in almost every bargaining unit classification. The combination of the wage and the economic benefit package, taken together, exceeds what is paid to employees in a comparison to seven regional County Engineer Offices. The Mahoning County Engineer package includes Longevity, Uniform Allowance, CDL stipend and other benefits. The Employer states that bargaining unit wages far exceed what is being paid for similar work in both the public and private sectors in the Youngstown area. Median family income in Mahoning County is the lowest of the comparable counties illustrated by the Employer, Stark, Lorain, Lake, Trumbull, Medina, Portage and Columbiana. The Employer states that its 1% lump sum proposal is in line when compared to regional and state-wide trends. The Employer states that it has analyzed the cost of the Union's proposal. The Employer argues that it is excessive and cannot be justified as the cost over three years is approximately $684,000. The Employer states that its proposal to freeze step increases when the collective bargaining agreement expires is reasonable and will aid in the achievement of timely

finalization of negotiations. The Employer argues for its expanded wage schedule and asks that its proposal for Article 23 be recommended by the Fact Finder.

RECOMMENDATION: The Union argues that no bargaining occurred over the compensation article as the parties submitted their economic proposals on the last date of bargaining prior to the commencement of the fact finding process. Evidence indicates that this is an accurate assessment. This is unfortunate as the fact finder must make a recommendation not knowing what may have been possible had the parties engaged each other in bargaining over economic issues, exchanged counter proposals and so forth. Both sides have proposed a number of intriguing possibilities. It is true that bargaining unit wages at the top step of the pay schedule are some of the highest among regional county engineer departments. It is also true, as the Union states, that the bargaining unit has been reduced from over 70 employees to 44 over the past ten years. There is no evidence that the service requirements of the Engineer's Office have declined. The Employer argues that the Union's wage proposal is excessive, and it is. But the Employer does not claim an inability to afford a reasonable increase in bargaining unit wages and may have modified its wage proposal had the parties engaged in comprehensive negotiations over the economic package and other items which were on the table. Based on regional and state-wide trends, consideration of other recommendations contained in this Report, and the fact that the Employer possesses the resources, the following is the recommendation of the fact finder.

1.5% lump sum payment to all bargaining unit employees to be paid no later than two pay periods following execution of the new Agreement.
2% wage increase to be applied to all steps of the wage schedule effective May 1, 2018.

3% wage increase to be applied to all steps of the wage schedule effective May 1, 2019.

The Union's proposal to accelerate movement within the step progression is not recommended. A significant number of bargaining unit employees are at the top step of the schedule. In addition, the Employer's proposed wage schedule, which appears in Tab K of its fact finding position statement (new Appendix A Wage Schedule), is recommended only for employees hired on or after May 1, 2018. Informal comments from both sides of the table indicated possible acceptance if applicable to new employees only. This wage schedule will be Appendix B in the new Agreement. Across the board wage increases which are recommended herein will be applied to all steps of the schedule. The recommendation for a three percent wage increase in the final year of the Agreement reflects potential savings derived from the new wage schedule for new employees, and for the reinstatement of the one-half hour unpaid lunch effective May 1, 2019. (See recommendation for Article 21, Hours of Work/Scheduling.) The wage schedule for new employees shall be outlined in new Appendix B. All other proposals submitted by the Employer and Union in relation to Article 23 of the Agreement are not recommended as there is no evidence of conflict between the parties regarding the subject matter of each section including the Employer's proposals regarding the freezing of steps following the expiration date of the Agreement and deletion of the pension contribution section and the Union's proposals for Operator IV Rate and top pay step in the case of promotion or higher classification assignment.

Article 23, Compensation of Employees

Section 1. The wage and salary schedules attached hereto shall constitute the hourly rates of pay for each employee in the listed job classification for the duration of the Agreement. For purposes of the 2017 to 2020 Agreement, the rates for 2017 shall remain unchanged from the

2016 rates. Each employee in the bargaining unit shall receive a one-time lump sum payment of 1.5% of their base hourly wage effective no later than two pay periods from the execution of this Agreement. A two percent (2%) wage increase shall be applied to all rates of pay effective May 1, 2018 which shall be reflected in the salary schedule. A three percent (3%) wage increase shall be applied to all rates of pay effective May 1, 2019 which shall be reflected in the salary schedule. All employees hired on or after May 1, 2018 will be placed on the wage schedule outlined in Appendix B of this Agreement. Across the board wage increases, as noted above for 2018 and 2019, will be applied to all steps in the Appendix B wage schedule. For all persons hired into bargaining unit classifications after May 1, 2008 and prior to May 1, 2018, the rate of pay shall be seventy-five percent (75%) of the rate as reflected in the wage schedule as illustrated in Appendix A. After the employee reaches their four (4) year anniversary, the employee will receive eighty-five percent (85%) of full rate as applicable in Appendix A. After the employee reaches their seven (7) year anniversary, the employee will reach the one hundred percent (100%) of the full time rate as applicable in Appendix A.

Article 38, Duration

The Duration provision of the Agreement is considered next as it is directly related to the Compensation of Employees provision. The Employer proposes effective date upon execution through April 30, 2020. The Union proposes effective date of May 1, 2017 through April 30, 2020. The recommendation regarding compensation includes a lump sum payment as opposed to an across the board wage increase retroactive to May 1, 2017. Additionally, health insurance provisions are not impacted by the starting date of the new Agreement. The Employer argues that there are no issues impacted by potential retroactivity, and the recommendations contained in this report reflect that proposition. The recommendation therefore incorporates the Employer's proposal.

Article 38, Duration
Section 1. Unless otherwise extended with the mutual consent of both parties, the terms and conditions of this Agreement shall remain in full force and effect upon execution through April 30, 2020.

Section 2. Renegotiations for terms and conditions beyond the date of April 30, 2020, shall seek to begin no later than January 10, 2020.

New Article, Retirement Incentive Program

The Employer has proposed a retirement incentive program in which participation is voluntary and requires the participation of a minimum five employees in order to be cost effective. It allows the for the replacement of the most highly paid employees with lower paid, entry level workers.

The Union generally had limited reaction to the proposal.

EMPLOYER POSITION: The Employer wishes to reduce its costs. It states that there is no reason for the Union to reject the proposal since participation is voluntary. The proposal includes one year of pay for each employee who enrolls and payment for accumulated leave is made over a period of five years. The Employer states that the program is unworkable without the new wage schedule proposed for new employees.

UNION POSITION: The Union argues that there was no bargaining regarding this issue. Although it suggests possible interest in the proposal, it would require agreement to the extended 16 step wage schedule. The Union indicates that this may be problematic, and there was no time to give this issue sufficient consideration as the Employer moved the negotiations to fact finding.

RECOMMENDATION: The Union has expressed interest in a provision which may benefit long term employees in the bargaining unit, and it is unfortunate that serious bargaining did not occur. This fact finding Report includes the recommendation for the 16 step wage schedule for new employees only, and the Employer had commented that this might have been acceptable. It would be unfortunate if the parties arrived at agreement regarding wage increases and the new employee wage schedule but did not include the retirement incentive in the package for qualified members of the Union. The Employer's proposal is therefore recommended with the inclusion of possible meetings between the parties regarding implementation and a three month start date, as opposed to two, in order that interested employees have sufficient time to consider the incentive and parties have opportunity to meet regarding details of the plan.

Memorandum of Understanding, Retirement Incentive Program
Section 1. Three months from the date of execution of this Agreement, the Employer may offer bargaining unit members an early retirement incentive program. It is understood that participation is voluntary. If offered, the program shall consist of a participating employee being offered one (1) year's base salary, at his existing rate of pay, in exchange for his agreement to voluntarily leave his employment with the Mahoning County Engineer's Office by a date determined by the Employer. Participating employees, within three months of the execution of this agreement, must elect a date of retirement within the retirement window established by the Employer. The Employer may elect to make additional offerings during the term of the Agreement.

Section 2. The employee shall be required to execute an agreement that permits the incentive payment and all monetary severance payments (including sick leave, vacation leave, etc.) to be paid over five (5) years, and contains all other terms and conditions of the program that the Employer determines to be necessary for legal compliance and liability waiver purposes. Additionally, in order for the program to be offered, at least five (5) employees must elect participation, submit all necessary documentation, and execute the requisite paperwork by a date established by the Employer, unless waived by the Employer.

Section 3. The parties to the Agreement may meet periodically, as may be determined necessary, to discuss and assist in the implementation of the retirement incentive program prior to its start date and during start-up.

Article 10, Seniority

The Employer proposes a recall based on length of service or two years whichever is greater for current employees and two years for employees hired after January 1, 2018. In addition, the Employer proposes to delete the prohibition of subcontracting during layoffs.

The Union proposes current contract language.

EMPLOYER POSITION: The Employer argues that unlimited recall rights, as contained in the expired Agreement, are unreasonable and unworkable. Comparables indicate that two or three years are generally the standard with an average of 2.25 years among all other Mahoning County collective bargaining agreements. Additionally, the prohibition against subcontracting is unworkable and does not act to the benefit of the community.

UNION POSITION: The Union states that the recall provision as well as the subcontracting section were just bargained during the last round of negotiations. The Union states further that the bargaining history regarding the subcontracting prohibition was traded for pension pick-up language. The Union argues current contract language.

RECOMMENDATION: Both parties make compelling arguments regarding this article. Exhibits presented by the Employer regarding length of recall rights are compelling, and the Union, at

some point during negotiations, considered a sixty (60) month recall period as opposed to an unlimited right. A maximum of sixty (60) months is recommended for new employees along with language which includes sixty (60) months or total seniority for current employees. Previous bargaining regarding the subcontracting language should not be undone during these negotiations. Current contract language is recommended for Section 3.

Article 10, Seniority
Section 2. Seniority is interrupted through voluntary resignation, termination of employment. Recall shall be sixty (60) months or the length of the bargaining unit member's total seniority, whichever is greater for those bargaining unit members hired prior to May 1, 2018, and failure to work without prior notice to the Employer for a minimum of three (3) consecutive workdays, unless for good cause, such reporting should be delayed. For bargaining unit members hired on or after May 1, 2018, seniority shall be interrupted through layoff in excess of sixty (60) months or the length of the bargaining unit member's total seniority whichever is lesser.

Article 11, Layoff and Recall

The Employer has proposed a number of modifications to this provision. First, the Employer proposes that layoff be by classification as opposed to bargaining unit wide. The Employer submits its proposal regarding a twenty-four month recall period in Section 5. The Employer proposes new Section 7 which allows the Employer to reduce the workweek in the event such is determined to be necessary.

The Union proposes current contract language.

EMPLOYER POSITION: The Employer states that layoff by classification is critical in assuring that the work of the Engineer's Office continues with qualified employees. In addition, the Employer cites many collective bargaining agreements in which layoff by classification seniority

is the norm including other Local 377 Agreements. The Employer argues that a reduction in the workweek may be necessary in order that the function of the Office may continue without resorting to additional layoffs.

UNION POSITION: The Union states that the current language has not been modified in decades and that the Employer has failed to cite specific incidents of conflict or disagreement regarding current contract language which is its position regarding the proposals of the Employer.

RECOMMENDATION: The Union's argument is compelling in that the long standing language has served the parties without conflict or grievances. The Employer's arguments are well taken but lack specific citations of what might be unworkable. The Engineer's Office is small enough that classification seniority may not have been an issue during previous layoffs. The recommendation includes the sixty month recall as found in the Seniority recommendation. The Union informally expressed interest in the Employer's proposal regarding workweek reduction. The recommendation includes voluntary workweek reductions only.

Article 11, Layoff and Recall
Section 2. Current contract language.
Section 3. Current contract language.

Section 5. Recall. A bargaining unit member that is reduced under this article shall remain on the recall list for a period of sixty (60) months or the length of the bargaining unit member's seniority, whichever is greater, for those bargaining unit members hired prior to May 1, 2018. For bargaining unit members hired on or after May 1, 2018, seniority shall be interrupted through layoff in excess of sixty (60) months or the length of the bargaining unit member's seniority, whichever is lesser. The County will not be permitted any subcontracting on work

currently being performed by bargaining unit members while a member of the bargaining unit is letter of layoff.

Section 7. Notice/Procedure for Workweek Reductions. In the event the Employer determines that a workweek reduction may be necessary, the Employer agrees to provide the Union with as much notice as possible, but not less than fourteen (14) days, of the potential reduction. The Employer agrees to offer employees the option to voluntarily take workweek reductions. Employees who take workweek reductions shall not have their vacation service time reduced, their seniority reduced, nor shall they lose eligibility for Employer sponsored insurance offered under the parties' agreement. Applicable conditions as found in Section 5 of this article will apply.

Article 12, Discipline and Appendices

The Employer has submitted multiple proposals to essentially re-write Article 12. In addition, the Employer has submitted modifications to the companion Appendices related to discipline which are made a part of the collective bargaining agreement. The current Agreement includes Sections 1 and 2. Employer proposals include a list of disciplinary penalties; working suspensions; provisions for progressive discipline and reasons to not apply this principle; the addition of demotion as potential disciplinary penalty; the investigatory interview process; disciplinary appeals through the Grievance and Arbitration procedure including limitations to arbitration appeals; removal of disciplinary records from personnel files and exclusions in the case of violations of the Employer's drug and alcohol policies; the use of last chance agreements. The Employer proposes further to modify the disciplinary grid, as found in the Appendices, to allow for deviation from the grid in "exceptional cases" and to increase penalties for texting while driving a county vehicle. The Employer has proposed multiple modifications to the disciplinary categories as found in Appendix B.

The Union proposes current contract language although it submitted a counter proposal on the last day of negotiations which included language regarding just cause, the right of the Employer to demote, language regarding investigatory interviews and last chance agreements.

EMPLOYER POSITION: The Employer argues for the need to update the disciplinary provision of the Agreement. The proposals are standard disciplinary policy and language as found in most collective bargaining agreements including other Mahoning County agreements. The proposed modifications to the offense schedule are reflective of what would be appropriate for the violations. The Employer emphasizes the importance of moving the texting while driving violation from a Category One to a Category Two offense and moving insubordination from Category Two to Three. The Employer believes the changes to these provisions are crucial to a well defined disciplinary procedure.

UNION POSITION: The Union states that it has attempted to address a number of concerns found within the Employer's proposals, but then argues for current contract language. The Union states that texting was added to the Appendix in the last negotiations and states that no bargaining unit employee has ever been disciplined for texting. The Union states that current contract language has existed for many years without conflict. There have historically been few if any disciplinary issues in the bargaining unit. There have been few grievances filed regarding discipline. The Union states that there is little justification to re-write the discipline procedure.

RECOMMENDATION: The Employer's approach is a complete re-write of Article 12 with significant modifications to the Appendices rather than a focus on identified areas of specific concern. There was no evidence that the current approach to discipline is unworkable. Many of the Employer's proposals are standard in many collective bargaining agreements because the parties carefully negotiated. It is incumbent on the parties in the instant matter to carefully consider and negotiate over those changes which may be necessary. It is difficult for a neutral to recommend significant modifications which overturn long standing history of bargaining. The Union's counter proposal, which was submitted just prior to fact finding, attempts to address a number of the Employer's proposals. This counterproposal of September 22, 2017 is the basis then of the recommendation which otherwise includes current contract language in Article 12 and the Appendices.

Article 12,Discipline
Section 1. No non-probationary employee covered by this Agreement shall be disciplined, suspended, demoted or discharged except for just cause. The parties agree that discipline shall be applied in a progressive and uniform manner in accordance with the terms set forth in the parties' disciplinary and attendance polices attached and incorporated as Appendices B and C.

Section 2. Pre-disciplinary Conference.
Add the word "demoted" after suspended in the second line.

Section 3. Investigatory Interviews. In any investigatory interview between a bargaining unit employee and a member of the administration where it is reasonably expected that discipline of the employee being interviewed may result, the affected employee will be notified of his right to have Union representation present. If the employee declines such opportunity, he shall indicate that he has waived such representation in writing.

Section 4. Last Chance Agreements. The parties explicitly acknowledge the use and validity of last chance agreements. Such agreements, when entered into by the Employer and the Union, shall not require the ratification of the bargaining unit as a whole, nor the legislative body of the County, in order to be enforceable.

Article 13, Grievance and Arbitration Procedure

The Employer has submitted multiple proposals regarding many sections of the Grievance and Arbitration Procedure. Some of the modifications include time limit calculations; definitions of group grievances; a re-write of the arbitrator selection process; a legal reference to an arbitrator's award; a detailed outline of the limitations placed upon an arbitrator; and other clarifications.

The Union proposed an expansion of the number of days a written grievance may be submitted to the Engineer from five to fourteen calendar days. Otherwise, the Union proposes current contract language.

EMPLOYER POSITION: The Employer argues for the enhanced organization that its comprehensive proposals bring to the procedure. The Employer states that there should be no objection to the proposals, and grievance and arbitration procedures in comparable and surrounding counties reflect language similar to the modifications found in its proposal in the instant matter. This includes other Local 377 collective bargaining agreements in the area. The Employer states that no comparable contracts fail to clearly outline the authority of an arbitrator.

UNION POSITION: Although the Union proposed an extension of the time required to submit an initial written grievance, it argues that there has been no problems or conflict regarding the procedure as written. The Union emphasizes that there have been very few grievances filed in the past and states that it cannot remember when a grievance was processed to arbitration.

RECOMMENDATION: A number of modifications to the article proposed by the Employer are standard language in many public sector collective bargaining agreements. Nevertheless, a number of the proposals are over-burdensome in light of the infrequency of written grievances. There is no evidence of conflict or issues between the parties regarding the grievance process. Neither party cited any one grievance or arbitration case which would justify making significant changes to a process which has served the parties for a number of decades. The recommendation is current contract language.

Article 15, Job Classifications/Job Descriptions

The Employer proposes to delete the provision which requires mutual agreement between the parties to make changes to job descriptions.

The Union opposes the change and wishes to maintain current contract language.

EMPLOYER POSITION: The Employer states that it is unreasonable that changes in job descriptions may only be modified by mutual agreement, and this requirement is in conflict with the Ohio Revised Code, Section 4117.08. Comparables illustrate that this provision is an outlier.

UNION POSITION: The Union states that changes in job descriptions and classifications are a mandatory subject of bargaining. Any such changes effect the terms and conditions of employment. This would especially be true in the case of combining classifications and wage

rates. The Union states that there have been no grievances regarding the language contained in this article.

RECOMMENDATION: Comparable contract language presented by the Employer is compelling in that changes in job description are generally a management right. And the Union's concern regarding the merging of job descriptions and wage rates is legitimate. While the modification of job descriptions may be a permissive subject of bargaining, changes, which effect wages, are subject to bargaining between the parties. The recommendation for Section 2 is as follows.

Article 15, Job Classifications/Job Descriptions
Section 2. Job Descriptions. The County Engineer's Office will provide job descriptions for every existing position within those classifications represented by the Union. If the County Engineer's Office wishes to change a job description, it agrees to meet with the Union to discuss the change prior to making the revision. Any changes in wage rates due to job description modifications will be subject to negotiations by the parties.

Article 16, Work Assignments/Locations/Departments

The Employer proposes to delete the sentence in Section 1 which places restrictions on supervisors performing bargaining unit work. In addition, the Employer proposes additional language giving management additional discretion regarding assignments to various districts and locations including involuntary transfer if necessary.

The Union states that the Employer has never cited a problem regarding existing contract language and that Article 16, in its current format, has remained unchanged for many collective bargaining agreements. The Union argues for maintaining current contract language.

The parties agreed to delete the last paragraph in Section 5 regarding Bridge Crew.

EMPLOYER POSITION: The Employer states that it cannot adequately serve the public with the limitation placed on supervisors' ability to perform bargaining unit work. The Employer states further that it respects seniority rights but must possess the ability to make assignments based on needed classifications and at specific locations including involuntary assignments.

UNION POSITION: The Union argues that there has been no conflict between the parties regarding current contract language. The Union states that it made a request to the Employer to cite one specific area of conflict or problem area, and it failed to do so. Except for the restructuring of the new Laborer language and agreement to delete the last provision of Section 5, the Union argues for current contract language.

RECOMMENDATION: When a SERB neutral is faced with modifications to long standing contract language which one party to the negotiations opposes, it is incumbent upon the party advocating for change to cite examples of unworkable language. This is what the statute anticipates. Current provisions of the article address concerns suggested by the Employer in its per-hearing statement and discussion at hearing. Except for the re-structuring of Section 4 regarding new Laborer positions and the deletion of the last provision in Section 5, as agreed by the parties, current contract language is recommended.

Article 17, Temporary and Substitute Job Postings

The Employer proposes multiple modifications and additions to this Article. In Section 1, the Employer added "Mower Operator is a temporary job." The Employer then proposes to separate provisions related to temporary postings and positions from those which would be substitute with companion language regarding the Employer's right to determine starting and ending time of the assignment and the right to make work assignments outside the scope of the bid position. The Employer should determine the most senior and qualified employees who have bid on a temporary assignment.

The Union prefers current contract language but submitted evidence which illustrated a number of counter proposals in response to Employer concerns.

EMPLOYER POSITION: The Employer argues that it should retain its management right to determine the most senior employee who meets the bid qualifications. The Employer's goal is to assert its right to assign temporary bids and to end such assignments as they are temporary in nature. The Employer emphasizes that Union counter proposals, submitted during negotiations, fail to address the concerns, that there is excessive co-mingling of issues in Article 17.

UNION POSITION: The Union states that current language has remained unchanged for a number of years. The Union states further that it attempted to meet a number of the Employer's concerns when it submitted counter proposals during negotiations, but these were rejected out of hand.

RECOMMENDATION: When confronted with significant modification to long standing contract language, it is important to illustrate how the provision has become obsolete or unworkable. In the instant matter, there was no evidence, provided by either party, to illustrated how the language had become obsolete. Were there multiple grievances? Was the issue a topic at labor management meetings? There is no evidence to indicate that the various processes outlined in Article 17 have inhibited the operation of the Employer outside of theoretical or philosophical positions; no evidence of grievances; and no evidence of conflicts or disputes between the parties over long standing language. The parties agreed to insert the following statement in Section 1. "Mower operator is a temporary job." This statement along with current contract language is recommended.

Article 18, Promotional Vacancies

At the commencement of the Fact Finding hearing, Article 18 was an open issue. The parties resolved the issue and signed a tentative agreement for Article 18.

Article 21, Hours of Work/Scheduling

The Employer proposes significant modifications to Article 21. The proposal includes the ability to create ten hour work days as opposed to the standard eight hour shifts as contained in the current Agreement. The Employer proposes to eliminate the requirement of five consecutive work days. Work schedules will be determined by the Employer over a forty hour, seven work day schedule. Summer work hours are removed from the Agreement. With these modifications, schedules are posted by the 15th of each month for the following month.

Supervisors will determine when breaks are to be taken on a daily basis. The proposal eliminates the one-half hour paid lunch break.

The Union rejects the Employer's modifications and proposes current contract language.

EMPLOYER POSITION: The Employer emphasizes the size of the bargaining unit which is approximately 44 employees compared to over 70 employees in the recent past. Due to limited staff and level of services to be provided to the community, the proposed changes are necessary to return to accountability and efficiency. The Employer illustrates comparable regional County Engineer Departments, none of which provide for a paid lunch period.

UNION POSITION: The Union opposes the multiple changes to Article 21. It states that the Employer has never brought issues or problems to its attention, that the current work schedule was unworkable or that change was necessary in order to provide services. Most of the language in the current Article has been in the Agreement for many years although the paid lunch period was acceptable to the Engineer when it was negotiated during the last negotiations. The Union states further that the County Engineer has never indicated lost productivity due to the current work schedule. The Union argues that current contract language is reasonable, and issues regarding productivity may be addressed based on provisions of the current Agreement.

RECOMMENDATION: The Employer's proposals change Article 21 substantially while these provisions have been contained in many previous collective bargaining agreements over many

years. The Union's argument, that current contract language should be maintained since the Employer has never suggested that there were concerns regarding Article 21, is compelling. The Employer agreed to paid lunch just three or four years ago. During informal comments during the fact finding hearing, the Employer stated that the reinstatement of unpaid lunch was a top bargaining priority. In light of this, the recommendation includes the reinstatement of the unpaid lunch period effective May 1, 2019 along with current contract language for all other provisions of Article 21. It should be noted that this recommendation is made along with the wage proposal recommendation for the third year of the Agreement (see Compensation recommendation).

Article 21, Hours of Work Scheduling
Section 1. Normal Work Day. The normal work day shall consist of eight (8) consecutive hours of work inclusive of a one-half (1/2) hour paid lunch break. Effective May 1, 2019, it is agreed that the lunch break shall be unpaid.

Article 22, Overtime/Call-Out

The Employer proposes significant modifications to Article 22. The proposal includes elimination of daily overtime compensation (after 8 hours). Paid leave will not be included as time worked for overtime purposes. Call out for snow and ice control will be the same as the two hour guarantee for regular call outs. The Employer proposes to modify the use of compensatory time, that it will be granted at times mutually convenient. An employee must provide a 30 day notice in order to use compensatory time off. If it is denied, the employee may select an alternate day or receive the requested compensatory time as a cash payment. In addition, the Employer has proposed a new Memorandum of Understand, Winter Emergency Services Call Outs. This provision outlines a grid of discipline for failure to respond to winter call

out including loss of Hazardous Bonus, suspension, monetary fines and termination of employment.

The Union proposes to increase regular, non-snow removal, call out guarantee from two to four hours.

EMPLOYER POSITION: The Employer states that its proposal for limiting overtime compensation to after 40 hours is consistent with external comparables and conforms to FLSA requirements. The Employer states that paying overtime following eight hours in a day encourages leave abuse during the work week. The Employer states further that having one call out guarantee is reasonable (2 hours). The Employer's position on scheduling compensatory time off is reasonable and conforms with its right to manage effectively. The Employer argues that its disciplinary proposal is reasonable as the bargaining unit is responsible for clearing roads which is an essential function of the County Engineer's Office. The Employer cites its list of Mahoning County agencies in which many provide overtime compensation only following 40 hours in a regular work week.

UNION POSITION: The Union rejects the proposals of the Employer stating that the eight hour overtime provision has existed for decades. The Union believes that the eight hour standard is followed in both the public and private sectors in the Youngstown region. The Union states further that, during the terms of previous collective bargaining agreements, there have been few complaints or problems raised by the Employer, and, therefore, there is a lack of rationale for the reorganization of Article 22. The Union states that the Employer's proposal for a

disciplinary grid specifically designed for call out issues is "over the top." The Union argues that its proposal to increase all call out occurrences to 4 hours is reasonable in light of the 4 hour guarantee for snow and ice removal call out.

RECOMMENDATION: A fact finder must consider the history of bargaining between parties in a fact finding or conciliation proceeding. In the instant matter, the overtime provision has been carried from one collective bargaining agreement to the next for many years. The Employer has not provided sufficient rationale to modify this provision. The same holds true for issues surrounding the use of compensatory time and other issues raised by the Employer. The Union argues that the disciplinary proposal is over the top. This fact finder agrees. The collective bargaining agreement includes the just cause provision and an extensive disciplinary grid and outline for any violation of policy and other offense. The Employer's proposal in this matter would be viewed as an outlier in any public sector collective bargaining agreement in the state and is therefore not recommended. Article 7 of the Agreement permits the Employer to promulgate work rules. This is the approach the Employer may take regarding these issues, and this provision includes discussion with the Union. Concerns regarding snow removal call out issues may well be addressed pursuant to this provision of the Agreement. The recommendation for Article 22 of the collective bargaining agreement is current contract language.

Article 24, Insurance

The Employer initially submitted a number of modifications for the Insurance provision of the Agreement. Mahoning County has established a county-wide health insurance committee which includes participation of all Unions representing employees in the various agencies and departments with collective bargaining agreements. The Union in this matter is a participant. Benefit levels and other issues are generally decided at this committee. This is a model which is found across the state and especially in county jurisdictions. The parties are therefore in agreement with provisions contained in Article 24 with one exception. Currently employees may opt out of the hospitalization plan provided by the County. In lieu of coverage, an employee receives an opt-out bonus of $100.00 each month. The Employer proposes that, if married couples are both employed by the County, and one agrees to opt out of the insurance plan, the employee who has opted out will not receive the bonus payments. The Union argues that the individual employee, who has opted out in this circumstance, should continue to receive the bonus. This is the sole issue before the fact finder.

RECOMMENDATION: The parties have agreed, in new Section 7 of the Article, that if both spouses are employed by Mahoning County, family coverage is offered to only one of the employees. In light of this provision, the Employer's proposal to exclude the bonus provision to the spouse, who is employed by Mahoning County and who opts out, is recommended. There was no evidence that this limitation would affect any bargaining unit employees in the instant matter.

Article 24, Insurance
Section 5. Insurance Opt-Out. Bargaining unit members shall be able to opt out from the hospitalization plan, meaning that he or she is not covered by a hospitalization plan offered by the Mahoning County Board of Commissioners, at a rate of one hundred dollars ($100.00) per month, minus taxes paid on twenty-six (26) pay periods. Eligibility for this payment is contingent upon the employee providing documentation to the Employer that they are covered elsewhere.
If the employee is married to another employee in the county, and either spouse chooses to be the "primary" carrier of health insurance, then the "non-primary" spouse will not be eligible for the insurance waiver payment.

Article 25, Longevity

The Union proposes an increase in the longevity rate from $.05 per hour to $.07 per hour for each year of service as reflected in the provision. In addition, the proposal includes the elimination of the 30 year cap.

The Employer rejects the Union's proposal and wishes to add language regarding employees with 30 or more years of service, that longevity is based on the amount received as of May 1, 2011.

RECOMMENDATION: There was no evidence at hearing regarding the financial impact of the Union's proposal and how the elimination of the cap would impact current bargaining unit employees. Current contract language is recommended.

Article 26, CDL Bonus

The Union proposes an increase in the CDL bonus, from $700.00 to $900.00 for a Class A license and from $600.00 to $800.00 for a Class B license.

The Employer opposes the increase.

RECOMMENDATION: The Union states that the Employer refused to bargain over this proposal while the Employer cites comparable rates which it argues justifies its position to maintain status quo. In light of recommended pay increases over the life of the new Agreement, the recommendation is current contract language.

Article 27, Hazardous Duty Pay

The Union proposes two increases in hazardous duty pay, an increase in the hourly supplement from $.50 per hour to $1.00 per hour and an increase in the annual lump sum payment from $725.00 to $1450.00.

The Employer proposes status quo.

RECOMMENDATION: The Union argues that the Employer refused to bargain over this issue. But at the fact finding hearing, there was no evidence to support an increase in the payment. The Employer submitted comparable data which was compelling. The recommendation is current contract language.

Article 28, Clothing Allowance

The Union proposes an increase in clothing allowance from $500 to $700. In addition, the proposal includes an increase in the boot allowance from $150.00 to $250.00 per year.

The Employer proposes status quo.

RECOMMENDATION: As in other benefit/bonus issues on the table, the Union states that the Employer refused to bargain over this issue. At fact finding, proposals of this nature require evidence indicating current cost of the items which are required for safe employment and which would then justify an increase in the benefit. There was no evidence or documentation to support the Union's proposal. The recommendation is current contract language.

Article 29, Holidays

At fact finding, this was an open issue. During the proceedings, the parties signed a tentative agreement resolving the matter.

Article 30, Vacation

The Employer proposes a significant modification to Section 7. Vacation requests must be submitted by January 30 of each year. Requests are approved based on seniority but are subject to operational needs. Subsequent requests are approved on a first come basis. The proposals also include an increase of minimal vacation intervals of from ¼ hour to 4 hours. Vacation requests must be submitted in no less than 72 hours and 30 days for vacation requests in excess of 24 hours.

The Union proposes new Section 7 which allows sell back of 240 hours of vacation leave in a calendar year.

EMPLOYER POSITION: The Employer argues that it must have control over vacation requests. The Agreement is essentially silent regarding this issue and there is a lack of process. The Employer states that most county departments provide some form of vacation scheduling including a date for submission of regular annual vacation. The Employer cites its lists of comparables which includes county agencies and Local 377 bargaining units. The Employer states that many bargaining unit employees have accrued large amounts of vacation which require a systematic scheduling system.

UNION POSITION: The Union states that the scheduling of vacation has not been an issue during the last two negotiations. There never has been a problem. The Union states that the Employer should work with the one or two employees who have presented issues involving vacation scheduling as opposed to mandating a system which involves all bargaining unit employees. The Union states further that the Employer refused to bargain over its proposal to sell back accrued vacation.

RECOMMENDATION: The Employer's assertion, that most county departments have some form of annual scheduling process, is compelling. Comparables support the Employer's proposition. The Employer's proposal does not preclude the taking of vacation at any time during the year, but it allows the Employer to schedule work assignments knowing employee approved vacation requests and service requirements. The Employer proposes an increase from ¼ hour to 4 hours for minimal vacation units. The recommendation is 2 hours. The Employer proposes a 72 hour notification for vacation requests of 24 hours or less and a 30 day notice for requests of more

than 24 hours. Both notification request proposals may cause an unnecessary hardship on an employee, and the recommendation is, therefore, 24 hours and 2 weeks notice. The Employer always has the ability to deny a request based on legitimate operational need. The Union's proposal regarding sell back is not recommended as there was no evidence regarding financial impact and the legality of said amount applying to PERS pension credits. The recommendation for Section 6 is as follows.

Article 30, Vacation
Section 6. Usage/Scheduling. Vacations may be scheduled any time of the year so long as such time is agreed upon by the Employer and the employee. The Employer reserves the right to deny, limit, or otherwise restrict vacation requests if workload requirements so mandate. Requests shall not be unreasonably or arbitrarily denied. Vacation requests for the year shall be submitted to the Employer by January 30 of the year which scheduling requests are being taken. Those requests submitted during this prescheduling period shall be evaluated and approved on the basis of bargaining unit seniority, but subject to the operational needs of the Employer. Vacation requests for full weeks take precedence over single day requests during the prescheduling period. Once the vacation schedule is posted, subsequent vacation requests shall be submitted on a first-come, first- serve basis, subject to the operational needs of the Employer and the notice provisions of this Article. All vacation shall be taken in minimum intervals of two (2) hours. Employees must submit vacation requests to the Employer/designee no less than twenty-four (24) hours prior to the requested vacation. Two weeks notice and approval of an employee's supervisor are required for vacation leave in excess of twenty-four (24) hours.

Article 31, Sick Leave

The Employer submits multiple proposals regarding Article 31. The proposals include a 30 minute notice of sick leave use; a reduction in the maximum allowed payout of sick leave upon retirement from 120 days (960 hours) to 25% of accumulated sick leave up to 480 hours; an increase in the balance of accumulated sick leave required to convert up to 120 hours to cash, from 480 to 1500 hours; the deletion of an employee's right to use up to three vacation

days in lieu of sick leave; and a new provision outlining patterns of sick leave which may lead to discipline.

The Union proposes an increase of accumulated sick leave in Section 1 from 120 hours per year to 240 hours. In addition, the Union proposes that pensionable sick leave will be subtracted from an employee's final payout of 960 hours at time of retirement.

EMPLOYER POSITION: The Employer states that, due to the reduction of employees in the Engineer's Office, the use of sick leave by bargaining unit employees negatively impacts the delivery of services to the community. The Employer states that Article 31 does not contain an enforceable call-in period, and 30 minutes is reasonable. It is important that the Employer's right to impose discipline for abuse of sick leave be codified in Article 31. The Employer cites its detailed exhibit which illustrates the use of sick leave by the bargaining unit in years 2015, 2016 and 2017. The average of productive work hours is in the mid 90% range during this period. The Employer believes it must gain control of the use of sick leave by the bargaining unit. The Employer states that its proposal is consistent with sick leave provisions contained in Section 124.38 of the Ohio Revised Code.

UNION POSITION: The Union states that Article 31, in its present iteration, has existed for many years, at least the past three collective bargaining agreements. The proposal to increase the maximum hours of sick leave is reasonable. The Union argues that the history of bargaining is important in that a "sea change" is not reasonable. And the Union argues that non-bargaining

unit employees in the Office are not restricted by the Employer's proposals for the bargaining unit.

RECOMMENDATION: Reduction of sick leave accumulation benefits are not recommended in light of other recommendations of the fact finder. This is also true of the Union's proposals regarding this provision of the Agreement. Neither party could expect significant modifications in one set of negotiations, and this is especially true in the case of a collective bargaining agreement which has been in place for decades. At first blush, the Employer's proposal for a 30 minute notification of sick leave use appears to be more than reasonable. But evidence at hearing indicates that there are no management employees to take such calls prior to the early start of the shift. The bargaining unit's work day starts between 6:00 am and 6:30 am. There was no discussion of a voice mail system, and the parties may wish to discuss this in a labor management meeting in the future. Evidence indicates there was very little bargaining over Article 31. The recommendation is current contract language.

Article 32, Personal Leave

The Employer proposes to require the use of personal leave in four hour increments as opposed to ¼ hour. Additionally, the proposal includes the use of personal leave based on operational needs and with 72 hour notice.

The Union proposes status quo.

EMPLOYER POSITION: The Employer states that its proposal of 4 hour increments is necessary as employees are assigned to crews which require a specific number of employees. The 72 hour proposal regarding scheduling is also important for the same reason. The number of bargaining unit employees has been reduced, and it is critical that employees are available for their assignments.

UNION POSITION: The Union states that taking personal leave in four hour increments would force employees to take more leave than what might be necessary. There have been no issues in the past regarding the use of personal leave, and the Employer's proposals are unreasonable.

RECOMMENDATION: The parties acknowledge that a fifth personal day was added during the last negotiations in lieu of the Good Friday holiday. Personal leave does not accumulate and must be used during each contract year. With this in mind, modifications to the benefit may have a negative impact on an employee's ability to use personal leave. Although the Employer presents reasonable arguments, there obviously is a policy or practice in place which regulates the use of personal leave, and, if not, it is an issue that would be appropriate for a labor management meeting. The recommendation is current contract language.

Article 33, Injured on Duty Leave

The Employer proposes a number of administrative modifications to Article 33. The Union proposes an increase in injury pay from 90 days to 120 days. Although the parties had been in negotiations since April 2017, evidence indicates that the Employer's proposals were

placed on the table on the second last day of negotiations in September, and the Union's proposal to increase paid leave was submitted on the last day of negotiations. This is not a serious approach to the bargaining process over an issue of this importance. The Employer stated at hearing that many of its proposals were recommended by the County Risk Manager. He/she did not appear at the hearing, and there was limited discussion regarding the proposed changes. Recommendation is current contract language.

Article 36, Unpaid Leave and FMLA

The current Agreement allows for the use of nearly all paid leave prior to an employee's right to use 12 weeks of FMLA leave. The Employer proposes that approved FMLA must run concurrently with paid leave such as vacation, sick leave and personal leave. The Union rejects the proposal. The Employer argues that the FMLA allows for concurrent application. The law also allows the application of FMLA which is contained in Article 36. Many collective bargaining agreements contain the process advocated here by the Employer. Nevertheless, it appears very little time was spent discussing this issue during negotiations. Although the Employer argues that its proposal is reasonable, there was no evidence at hearing that there had been issues or concerns regarding current practices during the term of the last collective bargaining agreement. The number of employees who applied for FMLA leave during the terms of previous collective bargaining agreements is an unknown. There was no submission of evidence or data. The recommendation is current contract language.

Side Letter # 1, Engineering/Inspection Personnel Transfer

The Employer proposed to delete this Side Letter from the Agreement. After the parties discussed the issue addressed by the Side Letter, a tentative agreement was reached to delete Side Letter # 1.

New Article, Mid-Term Bargaining

The Employer proposes a new provision of the Agreement which would declare all previous collective bargaining agreements, practices, whether oral or written, addendums, side letters and any other agreements as cancelled upon the execution of the new Agreement. In addition, the Employer proposes to notify the Union of any modification to policies, which may be a mandatory subject of bargaining, and will discuss such with the Union. The Employer may unilaterally implement such changes after discussion with the Union.

The Union rejects the proposal.

EMPLOYER POSITION: The Employer argues that its proposal provides for clear language that the new collective bargaining agreement supersedes previous agreements and provides for a reasonable approach to mid term bargaining which is limited to new issues which are mandatory subjects of bargaining. The Employer cites SERB Case No. 2000-ULP-05-0274 as the foundation for its argument in the instant case.

UNION POSITION: The Union emphatically objected to the proposal believing it was unnecessary and infringed on its right to bargain.

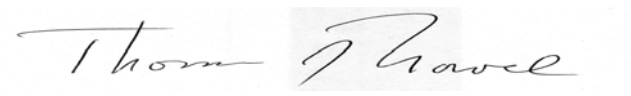
RECOMMENDATION: The fact finder reviewed the cited SERB case, Toledo City School District Board of Education. The Employer's argument that this ULP case supports its proposal in these negotiations is not convincing. The Employer's proposal is restrictive and is not consistent with the long history of bargaining between the parties. This proposal is not recommended.

CONCLUSION

The Fact Finder has reviewed the pre-hearing statements of the parties and all facts presented during two days of evidentiary hearing including many exhibits submitted in support of the positions of the parties. In addition, the Fact Finder has considered the arguments raised by each party in support of their positions on each issue at impasse and the criteria enumerated in Ohio Revised Code Section 4117.14 (G) (7) (a-f).

In addition to the recommendations contained in this Report, all tentative agreements reached by the parties during negotiations; those reached during the fact finding hearing; and all unopened articles of the Agreement are hereby incorporated in this Report by reference.

Respectfully submitted and issued at Cleveland, Ohio this 15th Day of March 2018.



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Thomas J. Nowel, NAA
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th Day of March 2018, a copy of the foregoing Report and Recommendation of the Fact Finder was served by electronic mail upon Michael D. Esposito, Esq., Vice President Clemans, Nelson & Associates, for the Mahoning County Engineer; John R. Doll, Esq., Doll, Jansen & Ford, for Teamsters Union Local No. 377; and Donald M. Collins, Esq., General Counsel, State Employment Relations Board.

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Thomas J. Nowel, NAA
Fact Finder