

**IN THE MATTER OF
FACT FINDING
BETWEEN**

R
STATE EMPLOYMENT
RELATIONS BOARD

MAR 3 10 32 AM '97

**AFSCME, OHIO COUNCIL 8
LOCALS 2937 & 3449, AFL-CIO**

AND

**CITY OF CANTON
Case No.: 96-MED-08-0669
Case No.: 96-MED-08-0670**

Before: Robert G. Stein

Advocate(s) for AFSCME:

**Robert L. Thompson
Staff Representative
AFSCME Ohio Council 8
1145 Massillon Road
Akron, Ohio 44306-4161
and
Stevan P. Pickard, President
Local 2937
Mike Cirelli, President
Local 3449
Negotiating Team**

Advocate(s) for the City:

**Joseph Martuccio, Esq.
Assistant Law Director
and
Rick Gatien
Director of Management and Budget
Michael Miller
Director of Public Service
Paul W. Bair, Jr.
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P.O. Box 24218
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CRITERIA FOR RECOMMENDATIONS

The following recommendations are made in consideration of all reliable information relevant to the issues before the fact finder and in accordance with the following criteria listed in ORC 4117-9-06(J):

1. Past Collectively bargained agreements, if any between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and

Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

It should be noted that the above criteria are limited in utility because a lack of statutory direction as to the assignment of weight given to each of them. Nevertheless, they were adhered to in rendering this report.

BARGAINING UNIT

There are two (2) bargaining units represented by AFSCME:

1. AFSCME Local 2937 (hereinafter referred to as "AFSCME" or "Local 2937"), consists of approximately three hundred (300) full-time service workers holding dozens of classifications employed in several departments of the City.

2. AFSCME Local 3449 (hereinafter referred to as "AFSCME" or "Local 3449"), consists of approximately one hundred sixty (160) full-time and six (6) "regular part-time" clerical and technical workers holding dozens of classifications in several departments of the City.

Both are certified units which have engaged in multi-unit bargaining with the City of Canton. Local 2937 was certified as a bargaining unit in 1985 and Local 3449 was certified as a unit in 1988.

BACKGROUND

The City of Canton is a statutory municipality with a population of approximately 84,000 residents. It employs approximately 1,200 people, several hundred of whom are members of six (6) bargaining units.

The City's CEO is an elected Mayor. The Mayor has appointed a Service Director, Safety Director and Director of Management and Budget to assist him in administering the City. The Safety Director oversees the safety forces and a few departments with members in both AFSCME Locals. The Budget and Management Director oversees a portion of the employees of Local 3449, and the Service Director is charged with overseeing most of the employees of Local 2937, which include street, maintenance, utility and sanitation employees, among others.

The City and Locals 2937 and 3449 have agreed to a joint extension of the statutory fact-finding period to February 28, 1997, pursuant to O.A.C. Rule 4117-9-05(G).

The City of Canton and these bargaining units have conducted twelve (12) joint negotiating sessions between October 29, 1996 and January 22, 1997, along with numerous separate "sidebar" sessions.

Each of the parties made proposed service proposals to change the current agreement, including numerous wage adjustment proposals that were sought by the Union.

The parties agreed that new amendments are retroactive to January 1, 1997.

Prior to fact-finding, the parties reached tentative agreement on several provisions of the Agreement.

The parties reached impasse on approximately eight (8) items. A fact-finding hearing was held on February 3, 1997. The following represents the parties' positions and the recommendations of the Fact-Finder:

1. PROMOTIONS/TRANSFERS/TEMPORARY TRANSFERS

ARTICLE 18 (LOCAL 2937) ARTICLE 21 (LOCAL 3449)

City Position:

The City initially proposed new language in which the City could exercise more flexibility and discretion in choosing who was more qualified to fill a vacancy in the event of a transfer or promotion. New language that had been negotiated three (3) years ago provided more opportunities for intra and inter unit bidding and transferring, often with a domino-like effect occurring when a person chose not to stay with the position during a trial period or was returned to the his/her original position due to an inability to meet the skill and ability requirement during a probationary period. The City proposes that new language become effective July 1, 1997.

Union Position:

The Union recognizes that there have been some problems with the new transfers and the

promotion language; however, the Union proposes implementation of any new changes should not be made until January 1, 1998.

A difference of opinion also exists as to the minimum percentage wage increase necessary for each promotional step advancement; the City is proposing 3% and the Union, 4%.

DISCUSSION

Promotion and Transfer language in any collective bargaining language must be readily understandable and practical. If the procedures contained in such provisions are cumbersome and obscure, the employees and the supervisors both suffer. Promotions and transfers are critical to the successful operation of an organization, and to employees they can represent an improved work environment, better hours and more pay. With so much at stake, changes in language that bring about clarity and procedural workability are desirable.

The minimum wage percentage increase necessary for each promotional step is a more difficult issue to determine, given the facts. In using public sector standards an argument could be made for the popularity of 3% minimums versus 4% minimums. However, an equally persuasive argument could be made for a 4% minimum increase given the existing steps in the salary schedules of both bargaining units. Promotions are not all alike; movement from one classification to a high classification can be an outcome of time in grade or may be a combination of experience and additional education.

Therefore, minimum percentage increases should be viewed as pure minimums that clearly distinguish the movement of an employee to a higher classification and not necessarily what the employee should be paid for moving to the position in absolute terms. Proper compensation is reflected in the salary schedule for each classification and is determined by such factors as education,

the content of the work and market demand. Salary schedules can be adjusted through equity increases when warranted.

The changes being proposed by the City are significant enough that they require some lead time to be properly communicated. Old habits die hard, and it would not be reasonable to quickly implement procedure and timeline changes without sufficient notice as requested by the Union.

RECOMMENDATION

See Appendix A and B for changes to go into effect January 1, 1998. All language not addressed shall remain the same as current language. The current language shall remain in effect through December 31, 1997.

2. OVERTIME (LOCAL 2937 & 3449) ARTICLE 22

City Position:

The City is concerned that an employee could be off up to three (3) days on sick leave without having to procure a doctor's certificate, and then appear for work on the sixth and seventh day and be paid at overtime rates which are in excess of the overtime rates prescribed under the Fair Labor Standards Act (FLSA). The City has proposed that one must work three (3) of the preceding five days in order to be eligible for the sixth and seventh day overtime bonus rates. The City also agrees that it needs to streamline call-ins for overtime for people on vacation and sick leave.

Union Position:

The Union argues that this existing overtime benefit was negotiated with the City several years ago, but indicates a willingness to make a change in the language for someone who reports off from work on the fifth day of work.

DISCUSSION

It is clear from the facts that the overtime provision has been in place in both contracts for

several years. However, what is also clear is that over this lengthy period of time there has been some problems with some employees taking advantage of the system. This benefit was designed to compensate an employee for the inconvenience of having to work six and seven days in a row. What may not have been anticipated was the possibility of someone being off sick for several days during the week and then working overtime on day six and seven. In such a situation it is assumed most employees have a legitimate reason to take sick leave; however, such an arrangement does leave open the possibility of abuse.

It is noted that the parties have agreed to further modify their attendance policy which indicates sick leave use remains at a level that requires some additional attention. The changes being sought by the City have merit, given the overall context of the Agreement and comparisons that exist in other public sector bargaining units. It is not unusual for sick leave to be excluded or at least limited as a foundation for overtime eligibility. On the other hand, someone who has a legitimate illness should not be unreasonably penalized. A recommendation in this matter should be characterized by a measured response based upon what the parties have already agreed is chargeable sick leave under Article 12.

The City also raised the issue of offering overtime to employees on vacation or sick leave. Operationally, the City has a need to streamline its decision making as much as possible; however, there needs to be consideration of the unique circumstances in each work area.

RECOMMENDATION

It is recommended that the following language be added to Article 22 Section 4 (Local 2937) and Article 22 Section 3 (Local 3449):

An employee who has been suspended during the current work week or an employee who is charged with a sick leave incident the day before the sixth day of the work week, shall not be offered work on the sixth or the seventh day of their work week. However, any employee forced by the City to work either of these days, shall not forfeit his/her right to these days.

If an employee who is on vacation accepts an offer of overtime, that employee shall be credited for their unused vacation (vacation hours not used after report-in) employees shall not be able to use vacation concurrently while they are working (on the clock).

Employees who are off due to a chargeable sick leave incident shall not be offered overtime until after they report back to work on one of their regularly scheduled shifts.

3. HEALTH AND LIFE INSURANCE COVERAGE - ARTICLE 29

Union Position:

The Union has proposed that several employees who are "regular part-time" employees be included in the City's health insurance coverage. The Union argues that many of the employees work four days a week and should be entitled to the generous package. Similar to what is provided to City Council members and part-time lawyers employed by the City. The Union also proposes that the term life insurance carried for its members be increased from \$10,000.00 to \$50,000.00.

City Position:

The City was prepared to offer \$20,000.00 in term life insurance, which is the amount the police officers were awarded, but not the foregoing health care coverage for part-time employees.

With regard to coverage for part-time employees, the City argues that while the number of people, approximately five or six, is not a great number, the potential for spending a great deal of money is very high. The City is not insured for most claims, i.e. the City is self-insured and pays all medical claims out of its self-insurance fund. The City has in the recent past reached its "stop loss" of \$150,000.00 when paying for organ transplants and premature babies, for example. The City has estimated for COBRA related requirements that it budgets an average of over \$4,000.00 per employee, per year, in health related costs.

While it is true that a few City employees including elected council members and part-time lawyers in the Law Department are covered by health care benefits, there are no Union members who

are entitled to such a benefit. Council members can be dis-elected at the will of the people who elect them, and the Law Department has found it to be a good recruiting tool to hire highly experienced "at-will" part-time lawyers at comparatively low salaries in exchange for health care benefits.

DISCUSSION

The Union's demand for an increase in life insurance is reasonable and appropriate. The amount of that increase should be consistent with the pattern already established in the City by other bargaining units.

The issue of part-timers receiving health benefits is without adequate comparables. The comparison of part-time lawyers and members of Council is not persuasive in this matter. The lawyers are at will employees and the Council members are in an even more precarious position. In contrast, part-time employees in the bargaining unit have far greater employment stability and protection from the political vagaries of public opinion.

RECOMMENDATION

The following change is recommended:

Local 2937: Article 29 Health and Life Insurance Coverage

A. The City shall maintain present health care and life insurance coverage currently in effect at the date of execution of this Contract for all.....incurred in any one (1) calendar year. "Life" insurance coverage provides a minimum of "twenty thousand dollars (\$20,000)" term life insurance for all employees.

Local 3449: Article 22 Health and Life Insurance Coverage

A. The City shall maintain present health care and life insurance coverage currently in effect at the date of execution of this Contract for all "full-time bargaining unit" employees. Current health care.....incurred in any one (1) calendar year. "Life" insurance coverage provides a minimum of "twenty thousand dollars (\$20,000)" term life insurance for all employees.

4. SHIFT DIFFERENTIAL ARTICLE 36 (LOCAL 3449) ARTICLE 44 (LOCAL 2937)

Union Position:

The Union has proposed to increase its shift differential rate of pay for the afternoon and midnight shift from 20 cents and 27 cents per hour, respectively in Local 2937 to 30 cents per hour and 45 cents per hour, respectively, citing concerns about having to work outside of a normal shift.

Local 3449 proposes respective increases from 15 cents and 22 cents per hour to 30 cents and 45 cents per hour.

City Position:

The City has counter proposed that it pay "the market rate," i.e. the rates which on average are paid to similar units in similar positions. The City's survey has concluded that a "market rate" would be 22 cents and 27 cents which results in an additional two cents per hour for afternoon shift and no additional cents per hour for midnight shift in Local 2937, and an additional seven cents per hour on afternoon shift and five cents more per hour on midnight shift in Local 3449.

DISCUSSION

During the fact-finding hearing the parties reached compromised and reached agreement on this issue. This agreement represents a fair and reasonable settlement given comparables in the public and private sector.

RECOMMENDATION

Local 3449

Article 36 - Shift Differential

Section 1. Employees who are scheduled to work the second or afternoon shift shall receive a shift differential of "thirty cents (\$**.30**)" per hour, and employees who are scheduled to work the third shift or midnights, shall receive a shift differential of "forty cents (\$**.40**)" per hour. The shift differential shall be paid at the applicable rate of pay in addition to the employee's hourly rate.

Local 2937

Article 44 - Shift Differential

Current language except change amounts as follows:

1st. or midnight shift, "\$.40" per hour

2nd. or afternoon shift, "\$.30" per hour

5. DURATION - ARTICLE 68

Both parties have proposed a three (3) year agreement which is consistent with the bargaining history of the parties and with other units in the City. This is an appropriate contract length for mature bargaining mature units.

RECOMMENDATION

Locals 2937 and 3449

Both Agreements shall be effective from January 1, 1997 through December 31, 1999.

6. NEW: AFSCME (P.E.O.P.L.E.) Deductions

Union Position:

Add a voluntary payroll deductible contribution to the AFSCME PEOPLE fund.

City Position:

The City counter proposed tying the new deduction to a modified less ambiguous version of current language which allows conditional political activity via Article 59 (2937) and Article 53 (3449).

DISCUSSION

The Union's proposal is reasonable and is supported by comparables in the City and the public sector. However, such a provision does have an administrative cost which should be shouldered by

the Union and not the City. Additionally, reasonable limitations placed upon political activity are appropriate.

RECOMMENDATION

Local 3449 and 2937

Add the following to the Agreement:

New Article - AFSCME (P.E.O.P.L.E.) Deductions

The Employer agrees to deduct voluntary contributions to Public Employees Organized for Political Legislative Equality (P.E.O.P.L.E.). Deductions shall be submitted to the Union pursuant to the authorization card, no later than the tenth (10th) day following deductions. The Union shall be furnished an alphabetical listing of employees having political deductions made at the time the contributions are submitted to the Union. The Union agrees to cover the City's reasonable and customary administrative costs for establishing said deductions.

Add the following to Article 53 (3449) and Article 59 (2937):

- A. Bargaining unit employees shall not engage in any political activity while on duty, wearing a uniform, or while in a City vehicle.**
- B. Bargaining unit employees shall not run for any partisan City of Canton political office.**
- C. No bargaining unit employee shall be required to participate in any political activity.**

7. MISCELLANEOUS ARTICLE

It is recommended that the parties establish a Miscellaneous Article in both Agreements to incorporate the various Letters of Agreement that exist.

8. WAGES - ARTICLE 59 (Local 3449), ARTICLE 66 (Local 2937)

Union Position:

The Union proposes a 5% increase in each of the next three (3) years and a "Me-Too" clause.

The Union argues the City has the ability to pay and make a comparison to the recent settlement with the police unit of 5% - 4% - 4% over three (3) years. The Union argues it should get no less than what the police unit received. Furthermore, the Union argues it took a 2% increase when the City was experiencing difficulty financial times. Now that the City is financially stable, the Union contends its wages need to remain competitive with other comparable municipalities.

ARTICLE 59 (LOCAL 3449) - ARTICLE 56 (LOCAL 2937)

WAGES

City Position:

The City had initially offered the Union a three percent (3%) annual wage increase for the next three (3) years. The City maintains that the figure is consistent with the average wage increases being negotiated in similar service-type units in the surrounding area and throughout the state. The City also notes that the figure of three percent (3%) is very close to the consumer price index average, although the consumer price index average has come under fire by many reputable sources as being overinflated.

The City has recently awarded five percent (5%), four percent (4%) and four percent (4%) to the Police Department for 1997, 1998, and 1999, by way of fact-finding and conciliation. The City is in better financial condition than it was three (3) years ago when the most recent contract with the AFSCME's was negotiated, and while the revenue stream vacillates greatly from year to year, the City is prepared to offer four percent (4%)/four percent (4%)/four percent (4%) for the next three (3) years to the AFSCME's. The City believes these amounts are more than generous for several reasons. These amounts, as in the case of the police officers, do not include additional monies for additional shift differential, life insurance and terminal pay or longevity. More significantly, the City has made many equity related upward adjustments to the wages of approximately twenty (20) people in Local 2937 and over thirty (30) people in Local 3449.

The City further proposes that, for Local 3449 where six (6) wage steps currently exist in each classification, only the top (6th) step will be increased in 1997, steps four through six will be increased in 1998, and all steps will increase in 1999.

For Local 2937, where five (5) wage steps currently exist, the City proposes only to add a new step 6 in 1997, and then, as in Local 3449, to increase steps four through six in 1998, and all steps in 1999.

This will give the bargaining units equal numbers of steps. Also, it acknowledges that the lower steps are competitive within the market for attracting new employees.

DISCUSSION

Nineteen-ninety six second quarter data published by the State Employment Relations Board establishes a pattern of public sector wage fact-finding settlements that average 4.07%. Averages, although helpful, do not provide the specific conditions that led to these settlements. It can be safely assumed that in some cases settlements were both substantially above and below this average.

The City's position regarding the accuracy of the Consumer Price Index is currently a subject of considerable controversy. The arguments against and in favor of continuing to use the CPI as a benchmark are far from sorted at this point in time and it would be premature to base a settlement on the polemics of this ongoing debate. What is more relevant is the comparable data within the City itself.

The police bargaining unit received a 5%, 4%, and 4% increase over three (3) years. This Fact-Finder is very familiar with the arguments and data in support of this settlement. The Union's arguments in favor of using this as a benchmark are persuasive, especially when considering the importance of pattern settlements in bargaining. However, pattern settlements must take into consideration all economic outcomes. The AFSCME bargaining units are complex units made up of various classifications and skill levels. There are over one-hundred (100) classifications in both

bargaining units. In contrast, the police unit is far more homogeneous and primarily is comprised of a single classification. Additionally, the police unit is not comparable when one considers the amount of time it takes to get to the top salary step in comparison to the AFSCME units. The complexity of the AFSCME units requires the Union to pay more attention to the issue of classification equity.

From the evidence provided by the parties, it is clear that a considerable number of classifications received inequity increases during this round of bargaining. These inequity increases impact the budget like general wage increases and must be accounted for in the budget process. Relative equity among bargaining units needs to be maintained, but must be defined as an aggregate of all salary increases, including inequity adjustments.

The Union's request for the inclusion of "Me Too" language is understandable, but there is no significant basis to support such a permanent contractual condition. The parties need to agree to this type of clause rather than having it imposed by a Fact-Finder. The evidence indicates that the AFSCME bargaining units have lead the way in many areas of bargaining over the years. One only has to compare the Agreements of Local 2937 and 3449 to other City agreements to arrive at this conclusion. The necessity and appropriateness of a "Me Too" clause cannot be supported by the current facts.

The City's arguments in favor of establishing a similar wage step schedule for both bargaining units is supported by the similarity of other provisions in both Agreements. In addition, the concept of providing different steps with wage increases at different times is a practice established in the Current Agreement.

RECOMMENDATIONS

It is recommended that the bargaining units receive the following wage increases over the next three (3) years:

<u>Local 2937:</u>	1st yr.	4.5% x weighted avg. salary = 53 cents per hour.*
	2nd yr.	4% x weighted avg. salary = 50 cents per hour.*
	3rd yr.	4% x weighted avg. salary = 52 cents per hour.*
<u>Local 3449:</u>	1st yr.	4.5% increase *
	2nd yr.	4% increase *
	3rd yr.	4% increase *

* As proposed by the City regarding specific increases applicable to different steps in different years and the addition of steps to equalize them in both units.

TENTATIVE AGREEMENTS

Any tentative agreements previously reached by the parties during these negotiations shall be part of this report and shall be considered recommended to the parties.

The Fact-Finder respectfully submits the above recommendations to the parties this 27th day of February, 1997.



Robert G. Stein, Fact-Finder

APPENDIX A

LOCAL 2937

ARTICLE 18.

PROMOTIONS/TRANSFERS/TEMPORARY TRANSFERS

Section 1. Job Posting. When there is a vacancy in an existing job, or a new job within AFSCME Local 2937 or 3449 bargaining units, and the City determines to fill the position, employees desiring to bid on such job may do so as follows:

A. Notice of a vacancy or new job shall be posted on all City or Union bulletin boards for five (5) working days from the date the job opening has been posted.

B. During this five (5) day period, employees, including Cross-bidders, who wish to apply for the posted opening may do so by submitting a bid application, provided however, that no employee shall be eligible to bid who is in the trial period of their current position or is within the first year of a reclassification, inclusive of the trial period, gained through the bidding process except as may be mutually agreed to by the City and the Union. (See also Section 2. A. of this Article). An employee who has been suspended for any reason within the preceding six (6) months shall not be eligible for a reclassification through the job bidding procedure except as may be mutually agreed to by the City and the Union. The bid application must be in writing, signed by the employee, dated and be submitted to the Office of Human Resources.

C. Open vacancies or new jobs being posted shall indicate the job description, classification, rate of pay, shift, department and duties of said position. This notice shall be distributed to the Union President and Departmental Stewards on the initial day of posting.

D. Cross Bidding

1. Vacancies in the Bargaining Unit shall be offered to employees in the AFSCME Local 3449 Bargaining Unit at the same time that the job vacancy is posted according to Section 1(A) of this Article.
2. Employees in the AFSCME Local 3449 Bargaining Unit shall be considered if there is no qualified bidder from the AFSCME Local 2937 Bargaining Unit to fill the position.
3. Cross bidding shall not constitute a break in service. **There shall be no loss in seniority for Longevity, Retirement, Sick/Continued Disability and Vacation accrual, except as defined in Article 16, Sections 4 and 5 (Seniority).**
4. For purposes of lay-offs governed by Article 17 (Lay-Off and Recall) employees **cross-bidding** from Local 3449 to this unit shall be considered as new hires for seniority accrual.
5. **Pay shall be at the lowest step which provides the employee an increase in the rate of pay of at least three percent (3%), not to exceed the highest step in the new classifications. The employee will advance automatically through any remaining steps every six (6) months from the effective date of the promotion until the top step is obtained.**

E. The City will provide each employee who bids on the posted position and was not selected, a written notification within ten (10) working days subsequent to the selection, listing the reasons why such employee was not selected for the posted position.

Section 2. A. The City shall fill the opening, within ten (10) working days, by selecting the employee the City determines to be the most qualified after taking into consideration the relative skills and abilities of all bidders with respect to the requirements of the open position.

A less senior employee may be selected if his/her qualifications are: (1) demonstrably superior to those of more senior employees, and; (2) the difference in qualifications is *material, meaningful and relevant*. The City may, at its discretion, reject the bid of any employee who, in the preceding twelve (12) months, has participated in two (2) trial periods pursuant to Section 3 of this Article and voluntarily reverted to their original job.

B. The City will provide a notice to the Union showing the name of the employee, seniority date and classification, selected to fill the position, or that no employee was selected to fill the position. This notice shall be provided to the Union within five (5) working days subsequent to the decision to select or not to select an employee.

C. If the City determines there is no qualified bidder, the City may fill the vacancy from other sources.

Section 3. The employee shall have a trial period of up to forty (40) actual working days. During this trial period, the employee shall have reasonable training and supervision. The City may disqualify the successful bidder during this forty (40) actual working days or the employee may disqualify him/herself during the first ten (10) working days and he/she shall revert to his/her former job and this right shall in turn apply to others who changed jobs as the result of filling the posted position. The City may extend an employee's trial period in this new position for up to ten (10) working days to familiarize his/her replacement, or longer if mutually agreed to by the City and Union.

Upon an employee's reclassification through the bid process, the employee will be paid at the lowest step which provides the employee an increase in the rate of pay of at least three percent (3%), not to exceed the highest step in the new classification. The employee will advance automatically through any remaining steps every six (6) months from the effective date of the promotion until the top step is obtained.

Section 4. Lateral Transfer Requests

A. Employees desiring to transfer laterally to openings in other departments or locations within the City, within classifications, may submit a request in writing to the Office of Human Resources during the posting period. The employee and Union shall receive a copy of the lateral transfer request.

B. A lateral transfer would include: a transfer within the same classification; or a transfer to a lower classification within the same classification series at a lower rate of pay.

C. Requests made for lateral transfers must be made by the employee(s) during the first three (3) working days of the posting period.

Section 5. Lateral Transfer Selection

A. The City shall transfer applicants with the most seniority to fill the openings, provided the applicant has the skill and ability to perform the job, prior to the job being filled through a bid. In the event there are no lateral transfer requests made during the posting period, such job shall be filled in accordance with Section 2(a) of this Article.

Section 6. Temporary Transfers

A. In connection with the efficient operation of the City, the employer has the right to temporarily transfer an employee to a different classification to fill in for vacations, to fill in for sick leave, to fill a classification during the time it takes to go through the job posting and bidding process, to fill in after death, voluntary or involuntary termination, unexpected retirement, leave of absence, union time, filling a high skilled position until replacement can be hired (providing that the City makes a concerted effort in seeking a replacement) or emergencies. A Temporary Transfer to a higher classification shall be offered by seniority provided the employee has the necessary skill and ability to perform the job. Such transfers shall not exceed ninety (90) days unless mutually agreed to between the Union and City.

B. An employee transferred to a lower paying classification shall receive his regular rate of pay for the duration of the temporary transfer.

C. An employee transferred to a higher paying classification shall be paid at the higher rate of pay, at the same step as he was paid in the previous classification for the duration of the transfer.

D. Temporary transfers shall not be used to avoid the employer's obligations to employees under this Agreement. A position that is filled by temporary transfer for a ninety (90) day period may then be filled as pursuant to Section 1 of this Article.

Section 7. Shift Transfer - Each six (6) months, employees shall be permitted to designate a shift preference. The employee shall submit an application to the Office of Human Resources on a form supplied by the City. The employee shall list his first, second and third preference of the shift desired. When a vacancy occurs in the employee's department and/or classification, the employee(s) with the most seniority shall be permitted to select the shift desired.

Section 8. An employee within the Bargaining Unit has the right to grieve any determination made under this Article by the City pursuant to the Grievance procedure in this agreement.

Section 9. Definition for Article 18

"Classification Series" - Means two (2) or more positions that, when taken as a group, constitute a career progression among and between each other. The series is a logical progression of positions sufficiently similar in respect to higher levels of duties, responsibilities, authority, and qualifications or proficiency in required knowledge, skills and abilities. Series may be indicated by subtitles or numerical designations, e.g., "Class A" or "B"; "1", "2", etc. Differences in pay ranges do not, per se, qualify two (2) or more positions as being in a "series."

The amendments to this article shall take effect on January 1, 1998. Current Agreement shall remain in effect through December 31, 1997.

APPENDIX B

LOCAL 3449

ARTICLE 21.

PROMOTIONS/TRANSFERS/TEMPORARY TRANSFERS

Section 1. Job Postings. When the City determines there is a vacancy in an existing job, or a new job within AFSCME Local 3449 or 2937 bargaining units, and the City determines to fill the position, employees desiring to bid on such job may do so as follows:

- A. Notice of a vacancy or new job shall be posted on all City or Union bulletin boards for **five (5)** working days from the date the job opening has been posted.
- B. During this **five (5)** day period, employees, **including Cross-bidders**, who wish to apply for the posted opening may do so by submitting a bid application, **provided however, that no employee shall be eligible to bid who is in the trial period of their current position or is within the first year of a reclassification gained through the bidding process. (See also Section 3 of this Article.) An employee who has been suspended for any reason within the preceding six (6) months shall not be eligible for a reclassification through the job bidding procedure except as may be mutually agreed to by the City and the Union.** The bid application must be in writing, signed by the employee, dated and be submitted to the Office of Human Resources.
- C. Open vacancies or new jobs being posted shall indicate the job description, classification, rate of pay, shift, department and duties of said position. The City will provide the Union with a copy of the posting.
- D. Cross Bidding
 - i. Vacancies in the Bargaining Unit shall be offered to employees in the AFSCME Local 2937 Bargaining Unit at the same time that the job vacancy is posted according to Section 1(A) of this Article.
 - ii. Employees in the AFSCME Local 2937 Bargaining Unit shall be considered if there is not qualified bidder from the AFSCME Local 3449 Bargaining Unit to fill the position.
 - iii. Cross bidding shall not constitute a break in service. There shall be no loss in seniority for Longevity, Retirement, Sick/Continued Disability and Vacation accrual, except as defined in Article 18, Sections 4 and 5 (Seniority).
 - iv. For purposes of lay-offs governed by Article 19 (Lay-Off and Recall) employees **cross-bidding** from Local 2937 to this unit shall be considered as new hires for seniority accrual.

- v. **Pay shall be at the lowest step which provides the employee an increase in the rate of pay of at least three percent (3%), not to exceed the highest step in the new classification. The employee will advance automatically through any remaining steps every six (6) months from the effective date of the promotion until the top step is obtained.**

- E. **The City will provide each employee who bids on the posted position and was not selected, a written notification within ten (10) working days subsequent to the selection, listing the reasons why such employee was not selected for the posted position. Subject to the requirements of Section 2 of this Article, vacancies shall be first filled from within the department where the vacancy occurs. If there are no qualified bidders from within the department, then the vacancy shall be filled from bids submitted from outside the department.**

Section 2.

- A. **The City shall fill the opening, within ten (10) working days, by selecting the employee the City determines to be the most qualified after taking into consideration the relative skills and abilities of all bidders with respect to the requirements of the open position. A less senior employee may be selected if his/her qualifications are: (1) demonstrably superior to those of more senior employees, and; (2) the difference in qualifications is *material, meaningful* and *relevant*. The City may, at it's discretion, reject the bid of any employee who, in the preceding twelve (12) months, has participated in two (2) trial periods pursuant to Section 3 of this Article and voluntarily reverted to their original job.**

- B. **The City will provide a notice to the Union showing the name of the employee, seniority date and classification, selected to fill the position, or that no employee was selected to fill the position. This notice shall be provided to the Union within five (5) working days subsequent to the decision to select or not to select an employee.**

- C. **If the City determines that there is no qualified bidder, the City may fill the vacancy from other sources.**

Section 3. **The employee shall have a trial period of forty (40) actual working days. During this trial period, the employee shall have reasonable training and supervision. The City may disqualify the successful bidder during the forty (40) actual working days or the employee may disqualify himself during the first ten (10) working days and he shall have the right to revert to his former job and this right shall in turn apply to others who changed jobs as the result of filling the posted position. The City may extend an employee's trial period in this new position for up to ten (10) working days to familiarize their replacement, or longer if mutually agreed to by the City and Union.**

An employee shall not be awarded another classification during the twelve (12) month period, inclusive of the trial period, immediately following a promotion or any other type of reclassification gained through the bidding process except as may be mutually agreed to by the Union and the City.

Upon an employee's reclassification through the bid process, the employee will be paid at the lowest step which provides the employee an increase in the rate of pay of at least three percent

(3%), not to exceed the highest step in the new classification. The employee will advance automatically through any remaining steps every six (6) months from the effective date of the promotion until the top step is obtained.

Section 4. Temporary Transfers.

- A. In connection with the efficient operation of the City, the employer has the right to temporarily transfer an employee to a different classification to fill in for vacations, to fill in for sick leave, or for emergencies. Such transfers shall not exceed ninety (90) days unless mutually agreed to between the Union and City. The employer has the right to temporarily transfer an employee for a period of up to two (2) weeks without regard to seniority. After two (2) weeks have elapsed, the temporary vacancy will be filled on a seniority basis; the job must be first offered to the most senior person and, if such senior person is not awarded the job, then to other qualified employees in descending order of seniority.
- B. An employee transferred to a lower paying classification shall receive his regular rate of pay for the duration of the temporary transfer.
- C. An employee transferred to a higher paying classification shall be paid, at the higher rate of pay, at the same step as he was paid in the previous classification for the duration of the transfer.
- D. Temporary transfers shall not be used to avoid the employer's obligations to employees under this Agreement. A position that is filled by temporary transfer for a ninety (90) day period shall then be filled as pursuant to Section 1 of this Article.

Section 5. Shift Transfer. When a vacancy occurs, employees within the department and classification where such vacancy exists will be permitted to submit a bid to the department on a form supplied by the City to transfer to the shift made available by such vacancy. The most senior employee bidding on the vacancy shall be permitted to select the available shift.

Section 6. An employee within the Bargaining Unit has the right to grieve any determination made under this article by the City pursuant to the Grievance Procedure under this Agreement.

The amendments to this Article shall take effect on January 1, 1998. Current Agreement shall remain in effect through December 31, 1997.