COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF THE FACT FINDING BETWEEN

TEAMSTERS LOCAL UNION NO. 764	:	
	:	
-AND-	:	CASE NO. PERA-F-14-375-E
	:	
MILTON REGIONAL SEWER AUTHORITY	:	

FACT FINDING REPORT AND RECOMMENDATIONS

APPOINTED: December 16, 2014

FACT FINDER: John C. Alfano, Arbitrator & Mediator

FOR THE EMPLOYER: Ryan M. Tira, Esq.
McMerney, Page, Vanderalin & Hall
433 Market Street
Williamsport, PA 17701

FOR THE UNION: Ty C. Sees, Secretary/Treasurer
Teamsters Local No. 764
450 Beaver Street
Milton, PA 17847

PRELIMINARY STATEMENT

The **UNDERSIGNED**, appointed by the Pennsylvania Labor Relations Board (PLRB), pursuant to Act 88 of 1992, conducted a fact finding on January 12, 2015, 9:30 a.m. for Teamsters Local 764 ("Union") and Milton Regional Sewer Authority ("Authority"), at the Authority's office at 5585 State Route 405, Milton.

The following people were in attendance (in alphabetical order):

1. Chuck Beck, Board Member
2. Neil Bogaczyk, Operator
3. Ronda Bogle, Office Manager (testified)
4. Thomas Fawess, Steward
5. William Michaels, Board Member
6. George Myers, Superintendent
7. Phyllis Reiner, Board Chairwoman

BACKGROUND

The Authority is a municipally owned, non-profit public corporation serving the Borough of Milton, West Chillisquaque Township, East Chillisquaque Township, Turbot Township, Borough of Watsontown and Delaware Township. It operates one large treatment and two smaller facilities, in addition to the infrastructure and a Pennsylvania Department of Environment Protection (DEP) accredited laboratory that serves the Authority and outside customers. The bulk of its in-fluent comes from food processor Con Agra. Currently, the facility is undergoing an almost completed upgrade, called the 'Wastewater to Energy' (Ww2E) project, which will produce methane gas by the anaerobic degradation. The Authority is governed by eleven Board members, appointed to a five year term by their member municipalities, three of whom attended the fact finding.

The parties met to negotiate for approximately three meetings, and six times with Mediator Jack Yanchulis, before the Union submitted the following remaining issues to the Pennsylvania Labor Relations Board ("PELRB") for fact finding. As result of that submission, the Undersigned was appointed to hear testimony and make recommendations on the issues:

1. Section 2.2 — Regular - Full Time Employee
2. Section 7.1 — Representation

3. Section 8.3	Sick Leave - Hours Worked
4. Section 8.8	Call In
5. Section 9.3	Removing Discipline from Personnel File
6. Section 12.4.d	Termination - Non Work Absence
7. Section 13.1	Holiday Pay
8. Section 13.2	Scheduled Work on Holidays
9. Section 19.2	Compensation
10. Section 20.8 (New)	Trash Disposal
11. Section 21.1	Pension
12. Section 22.0 -	Foul Weather Gear
13. Section 27.0	Term of the Agreement
14. New Section	Return to Work
15. Section 20.1	Health Insurance
16. Schedule A	Wages

The parties presented data, testimony and argument to support their positions on each issue. Based on those presentations, the Fact Finder makes the following recommendations:

Issue No.1: Section 2.2 - Regular Full-Time Employee

Position of the Authority: The minium number of hours employees work that qualify them for full-time status should be changed from a minimum of 1400 to 1560 straight time hours annually to qualify them for full contract benefits, and to be consistent with the Affordable Care Act ("ACA"). No current employee will see a reduction in health care benefits, because the new proposed health program will cover current employees now receiving full health benefits.

Position of the Union: The Union objects to the change, because the proposal will reduce health insurance benefits according to Section 20.0, which requires 35 scheduled work hours to qualify. In addition, other benefits provided to full-time employees, including paid vacation and sick leave will be reduced or eliminated.

Analysis and Opinion: The Authority did not provide convincing evidence for the change. The ACA, which is in flux for many reasons out of the control of the parties, may be undergoing changes, especially to the definition of a full-time employee in order to qualify for health insurance benefits required under the ACA. However, the Agreement determines the conditions by which employees shall be provided benefits.

Recommendation: No change from the current contract provision.

Issue No.2: Section 7.1 – Representation

Position of the Authority: Although there may have been a tentative agreement, the language appears to provide more time off for union business that intended.

Position of the Union: The tentative agreement provides not more than 60 minutes during work time for the Union to present employees' grievances. The 60 minutes is the maximum time available whether there is one or more grievances.

Analysis and Opinion: The parties have agreed to clarify the language so that the maximum time available to present grievances shall be not more than 60 minutes.

Recommendation: The parties will clarify the language so that the time available to present one or more grievances will not be more than a total of 60 minutes per day. The remainder of the tentative agreement shall remain as tentatively agreed.

Issue No. 3: Section 8.3 - Sick Leave, Hours Worked

Position of the Authority: Change the Agreement so that sick leave time off will not qualify as hours worked toward calculating overtime. Absences due to sick time taken by employees has made it increasingly difficult to schedule training and has delayed or cancelled work that needs to be done. The total number of short-staffed days due to sick time hours has increased by more than 75% with the total number of sick hours increasing from a low of 328 to 616 during the period of 2010 to 2014. (see Authority exhibit 1) The proposed change is intended to reduce the number of sick leave hours and reduce overtime costs.

Position of the Union: Historically, sick time has been in the overtime calculation as recognition and reward for their being available at all times when needed by the Authority, because the employees work nights, weekends and holidays. This change will not reduce sick leave more that it will punish employees who are sick, only to be required to work during at odd hours at anytime for straight time wages. Moreover, the workforce is aging and vulnerable to more onerous illnesses of longer duration that have contributed to the historical use of sick leave. The Authority will be better served if the current sick leave provisions were modified to permit more unused sick time to be carried over into the next year as an incentive against employees being tempted to use them rather than lose them.

Analysis and Opinion: Although the data does not expressly correlate absences to overtime, there has been increases in the use of sick leave during the 2010 - 2014 period. And while it is not clear from the exhibit and testimony that the sick leave was taken during, before and after employees have worked overtime, we can assume that may have happened often enough to be of concern. The Union is not persuasive arguing that the increased sick leave is a product of the aging workforce, because, ironically, one of the most senior employees, who may be among the oldest employees, has used the least amount of time, while there has been a collective increase in the use of sick time by most employees, whether high or low on the seniority list, suggesting that age is not the only or major factor.[1] Additionally, the Union is not persuasive arguing for increased sick leave carry-over as an incentive for employees to not use sick time they will otherwise lose. The Authority should be permitted to reduce the number of incidences when the use of sick time unduly interrupts the scheduling and flow of work. My recommendation may help reduce those incidents by making employees evaluate their use of sick leave for each specific incident, but not eliminate sick time as hours worked altogether.

Recommendation: Section 8.3 should be modified to provide that sick time taken will not be counted as hours worked for computing overtime in a pay period: (a) when the additional hours worked over 8 and 40 had been scheduled and known to the employee in advance. (b) when the additional hours had been assigned to employees before the sick leave was taken. (c) when the sick time had been taken after the employee worked the overtime. This change may help reduce the number of times work is cancelled or delayed due to short-staffing, while striking a balance between the Authority's need to get work performed with little disruption and the employees' need to be compensated at the overtime due to their work responsibilities when sick time is taken is some instances.

Issue No. 4: New Section 8.8 - Call In

Position of the Authority: Since the operation of the facilities requires around-the-clock attention, the management needs to have a reliable and efficient means to assign and call employees in to work on off-hours, holidays and weekends. The current seniority-based call system requires too many calls to employees who are unavailable or unwilling to respond, when employees are needed to attend to emergency and non emergency calls to the plant or customers. The Authority's proposal will establish a system where the Union will provide a list of four (4) employees per week to be available if and when they are needed outside the work schedule. In addition, it will provide three progressive levels of discipline for employees who are on the list but do not respond to a call. The system will reduce the number of random calls while providing employees with a schedule for responding to call-ins.

Position of the Union: The Union objects to the proposal, because the Authority has not indicated a problem in the past. In addition, it is objectionable, because the Union does not want to be responsible for producing the weekly list, the proposal will put 40% of the workforce on call, it does not pay employees for being on-call. If the proposal is to be considered at all, management should make the list, there should be no more than two employees weekly, each employee should be paid a minimum of 2 hours of straight time for being on call, and the prescribed discipline should be eliminated as a separated disciplinary procedure and treated under the existing discipline provisions of the Agreement.

Analysis and Opinion: The employees know or should have known when hired that the operation is a 24 hour, 7 day a week operation that may require their appearance at work at times when other employees in other types of jobs almost never get called. The Authority should have a reliable method to ensure that the facilities' and customers' needs, especially emergency needs for employees to respond are met. In addition, employees should have a system whereby they know that they most likely will not be called during any specific week to plan personal and family occasions. The Authority's proposal in concept is not unreasonable and should be adopted with the following changes: Management should be responsible for making the list, because this procedure is a typical management duty that should not be delegated to the Union. The prescribed discipline should be increased to at least five progressive levels of discipline. Given that employees will be required to respond and will be subject to discipline for failing to do so, their being on the list approaches restricted on-call and should be paid.

Recommendation: The following provision should be incorporated into the Agreement:

Section 8.8: The Authority shall distribute an On-Call Volunteer List to employees not later than Wednesday of each week for four (4) employees to volunteer to be on call for the following week. Employees shall enter their name to the list no later than 12:00 noon on

[1] A relatively new employee is one among the three highest users of sick leave for 2014.

Friday. When more that four (4) employees volunteer, the most senior employees shall be selected. When there are fewer than four (4) employees volunteering, the Authority may select the least senior employees by inverse seniority until there is a combined total of four (4) selected and volunteer employees on the list. Only the employees who volunteer to be on the list by the Friday noon deadline will be paid one (1) hour of straight time at their current base pay rate, ***provided they are not called in during the week they are on the list***. (The on-call pay will be replaced by the call-in pay.) Employees who did not volunteer, but were selected by the Authority will not qualify for on-call pay. All employees on the list are required to respond to calls to work during the week they are on the list or be subject to discipline in progressive order in the following manner:

First missed call:	verbal warning and forfeit the on-call pay
Second missed call:	written warning and forfeit the on-call pay
Third missed call:	one (1) day suspension without pay and forfeit the on-call pay
Fourth missed call:	two (2) day suspension without pay and forfeit the on-call pay termination
Fifth missed call:	of employment and forfeit the on-call pay

Issue No. 5: New Section 9.3 - Removing Discipline from Personnel File

Position of the Union: The Union is proposing that discipline that is 24 months or older should be not be used by the Authority to in any manner and to determine future or progressive discipline. Aged disciplinary records are not true indicators of employees' current performance. Many times employees' early unacceptable behavior has been remediated, only to be used again when the employee gets into a new disciplinary situation. Removing old discipline is consistent with progressive discipline, because progressive discipline is intended to correct unacceptable behavior. Because the best of employees make mistakes, out of date work history should not be used against them. The removal of information older that 24 months from consideration is fair and proper.

Position of the Authority: Employees have the option to and should grieve discipline they believe is not proper when it is given so that they will have only information in their file that is correct, accurate and for cause. Employees' work history should be complete and accurate to give a complete picture of their performance throughout their employment with the Authority.

Analysis and Opinion: The Authority should have a complete and accurate record of employees' work history available, even though the universally accepted concept of progressive discipline is based on the belief that employees' behavior can be changed for the better. The Authority should be able to maintain a complete record of employees' work history for future reference for matters related and unrelated to employee performance. For matters of work performance, the use of old, unrelated, lesser discipline should have a shelf-life in the true progressive disciplinary concept. To that end, I am making the following recommendation that strikes a balance between the employees' and the Authority's needs.

Recommendation: The following language should be incorporated into the Agreement:

Section 9.3: Verbal warnings and written discipline for behavior that is not repeated within 24 months of their original issuance may not be used or referenced for discipline after 24 months from the original occurrence or 24 months after a repeat the same or similar occurrence, whichever is later, unless the verbal or written discipline was given for sexual or verbal and physical abuse toward other employees or theft from the Authority. The Authority may continue to keep all disciplinary records on file indefinitely.

Issue No. 6: Section 12.4(d) - Return to Work Policy for Non-Work Related Illness or Injury

Position of the Authority: The Authority proposes to change this section to permit it to terminate employees after 12 months instead of the current18 months of absence for non work related injury or illness. The Authority cannot continue to run short-staffed, especially in the operator classifications, due to long-term absences.

Position of the Union: The provision would have caused the termination of a current long-term employee who returned to work after 12 months of absence. Long-term, older employees are more vulnerable to being discharged under this proposal, because they are more likely to contract illnesses and diseases that require extensive treatment and longer recovery periods. Given this workforce is aging, the Union cannot accept any modification that makes employees more vulnerable to the loss of their jobs and income.

Analysis and Opinion: The current provision is fair and proper for absences due to on the **job related** illness and injury. However, the Authority should not lose productivity by being required to keep an existing position, especially critical and licensed positions unfilled for 18 months for employees for non job related illness and injury. The Authority's proposal strikes a fair balance between employees' ability to retain their job for absences caused by matters outside the workplace and the Authority's ability to run the shop with a full complement of trained employees. The Authority's proposal should be included in the Agreement subject to the following recommendations.

Recommendation: The following provisions should be added to the end of the Section:

Section 12.4 (d): Employees hired on or after January 1, 2015 who are injured or become ill off the job shall accumulate and retain seniority and shall not be terminated until the employees have been off the job for twelve (12) consecutive months. The Authority shall send a written warning notice of termination to the such employees with a copy to the Union not later than thirty (30) days before the end of the twelve (12) month period.

Issue No. 7: Section 13.1 - Holiday Pay

Position of the Authority: The Authority is proposing that employees will not be eligible for holiday pay when they take an unscheduled sick leave day on the last scheduled day of work before or on the first scheduled day of work after the holiday, except when the employee is admitted to the hospital or is treated at the hospital emergency room or uses a personal day instead of a sick day for the absence. The Authority objects to the Union's proposal to add urgent care medical treatment centers in order to qualify, because they are used for primarily for non life threatening medical treatment. The Authority believes these conditions will eliminate the use of sick time to extend holiday periods for non medical reasons.

Position of the Union: Although the Union does not fully endorse this proposal, it proposed to add urgent care as an acceptable treatment center as an additional provision to qualify for holiday pay under the Authority's proposal, and further provided that employees may use personal leave in place of sick leave for such absences.

Analysis and Opinion: The proposal is not an unusual provision for qualifying employees for holiday pay. The Union's proposal to add urgent care to the list of acceptable medical providers is consistent with the reducing health insurance costs by seeking treatment from the most cost effective source consistent with the degree of medical urgency. However, urgent care facilities, and those in the Milton area in particular, limit their practice to injuries or illnesses that require immediate treatment but are not serious enough to warrant an emergency room visit. The thrust of the Authority's proposal is toward limiting absences for non emergency reasons, where the employee will make a conscious decision as whether it is merely inconvenient but not medically necessary to miss a work day. It is not clear from testimony which section this proposal should be placed in Article 13.

Recommendation: The Agreement shall include the Authority's proposal with the addition of use of personal leave to replace sick leave.

Section 13.1: Eligible employees are those who shall have completed their probationary period. Employees are not eligible for holiday pay if they utilize an unscheduled sick day on their last scheduled day of work prior to or the first scheduled day of work following a holiday, unless the absence is due to a medical emergency that required immediate treatment at an emergency room or the admission to a hospital. Employees may change a non-qualifying sick leave absence to personal leave to qualify for holiday pay.

Issue No. 8: Section 13.2 - Holiday Staffing

Position of the Union: The Authority is not following Section 13.2 by requiring employees to work only one four hour slot rather than the eight hour and four hour slots as they had in the past. Since a normal work day is eight hours, the Authority's scheduling employees to work only four hours is a violation of the Agreement.

Position of the Authority: The Agreement has permitted the Authority to designate the number of slots to be filled by employees on holidays. Until the August 27, 2014 memo changed holiday staffing to one eight hour slot, the Authority would designate one eight hour slot and one four hour slot. (see Union exhibit 2, below) As the needs of the facility have changed since the Memo, only one employee is needed for a four hour slot on holidays. The memo was distributed and the procedures were enacted without prompting a grievance from the Union. The Authority believes it is proper and within its authority to determine staffing needs on holidays.

Analysis and Opinion: The August 27, 2014 memo appears to indicate that technological change has reduced the hours needed for employee presence at the facility: "Due to the fact that we are now using the pump station SCADA[2] computer to collect our pump station flows and monitoring of pumps, we will no longer need to staff for the four (4) hour holiday shift. The most senior operator scheduled on the day of the holiday will have the option of working the eight (8) hour holiday shift or having the day off. If the senior operator elects to have the holiday off then the junior operator will be required to work the eight (8) hour holiday shift." (Union exhibit 2) It appears that technological changes now have reduced the need to only one employee working four hours. The Agreement refers to "Designated Slots" to be filled on holidays without defining what a slot is or for how many hours. Had the parties intended a slot to be equivalent to a normal shift, it seems that they would have referred to them as shifts instead, but I am not here in

[2] The SCADA computer refers to a computer programed with a supervisory control and data acquisition program for data collection and remote operations. Many sewerage treatment facilities use this or similar systems for remote and automatic operations and monitoring for many functions that once required employees on site.

the capacity of a grievance arbitrator. As a fact finder, however, I find that the Union is not persuasive arguing that SCADA, notwithstanding, the changes do not warrant fewer employees working fewer hours and that those staffing changes are not unreasonable and inconsistent with the Agreement. Moreover, the Authority is permitted to change operations as new and different technology is developed and adopted when not specifically prohibited by the specific provisions of the Agreement. Based on the limited information provided here, I find that the Authority's evolving staffing practices on holidays is reasonable.

Recommendation: The current practices under the contract provisions should remain unchanged.

Issue No. 9: Section 19.2 - Compensation (Settlement Agreement 6/12/2014)

Recommendation: The parties agree that Section 19.2 shall be replaced in its entirety with the *"Settlement Agreement*, Terms and Conditions, Paragraph 2. Revised Section 19.2." (see Union exhibit 3)

Issue No. 10: Section 20.8 (New) - Trash Disposal

Position of the Authority: The Authority is proposing to eliminate the employees' ability to dispose of their household trash and other debris at the facility by the addition of a new Section 20.8. Since the Authority has no control over what employees may dispose, the Authority believes that it is as risk for hazardous and other waste that may need special and expensive disposal techniques, a risk and an expense it cannot justify, especially as a publicly owned facility.

Position of the Union: The Authority attempted to eliminate this benefit and practice when on December 21, 2010, the Pennsylvania Labor Relation Board ("Board") declared that this benefit was a binding past practice that could not be unilaterally curtailed. As a result of that decision, the Authority notified the Board that it had complied with the Order on January 11, 2011, and has ever since. The Union objects to the Authority's proposal, unless there is compensation of $.25 per hour per employee. That amount will be adequate compensation for employees to pay for private disposal costs it did not have with this benefit.

Analysis and Opinion: This is an unusual benefit that may occur in solid waste facilities that are equipped to handle, process and dispose of household trash and debris. I understand that the Union wants to keep a hard-fought benefit that it managed to keep as a result of the Board's ruling. This practice has no limitations but caries with unreasonable liability. The Union's proposed $.25 per hour per employee will cost a total of $6,760 in addition to premium pay and other related payroll costs for a benefit that may save the occasional employee a few dollars a year for the disposal of construction debris and trash. I am not convinced that the provision should be maintained and compensated at any amount if eliminated.

Recommendation: I do not recommend the Union's proposal to compensate employees in exchange for the elimination of this practice. The Authority's proposal shall be included in the Agreement:

Section *20.8*: Effective upon the execution of the Agreement, the prior practice of employees bringing their personal trash to the Authority for disposal will no longer be permitted. The employees acknowledge and agree that as of January 1, 2015 and going forward, that they are no longer permitted to dispose of their personal trash in any of the Authority's facilities. This prohibition does not apply to employees' disposal of trash related to items they eat while on the Authority's premises, such as wrappers and containers from their lunch.

Issue No. 11: Section 21.1 – Pension

Position of the Authority: The Authority's proposal will change the pension plan for new employees from the current plan, which provides full benefit after 60 years of age and 20 years employment, with 50% benefit calculated at 2.5%, to a new plan with full benefits after 62 years of age and 40 years employment with the benefit calculated at 1.25% for each year. The Authority argues for the change to keep the plan solvent since the Commonwealth's Public Employee Retirement Commission rated the current plan at distress level 3, severely distressed, in 2010; in 2014 based on the 2013 *Actuarial Evaluation Report*, the plan is rated at level 2, moderately distressed.[3] Based on those scores, the Authority is required to implement mandatory remedies according to Chapter 6 of Act 205. The proposed changes will help the plan recover so that the benefits provided will be available to current and future retirees.

Position of the Union: The distress level is not as dire as the Authority states. At least six employees have a shared plan, because they are former Milton Borough employees, where they remain part of the Borough's plan where some or all of the pension liability remains. The proposed change will require employees to have been hired at 22 years of age to qualify for the full 50% benefit at 62 years of age. It is more likely, employees will be working into their late 60s or 70s before they will qualify for full pension.

[3] www.perc.state.pa.us/portal/server.pt/community/perc_home/2513/act_205_distress_scores/735168

Analysis and Opinion: According to the 2014 Distress Scores report dated December 1, 2014, the distress level has improved from level 3 to level 2, although the plan has approximately only 53% of available assets needed to cover its liabilities. The Authority needs to continue to improve its asset to liability ratio to make sure the plan is healthy enough to pay former and current employees' pensions. Therefore, I find that the Authority's proposal is necessary to the current and future well-being of the pension plan; the change shall be effective for any employee hired on or after January 1, 2015.

Recommendation: The pension plan available for new employees hired on or after January 1, 2015 shall be modified to be consistent with the Authority's proposal. The plan for current employees hired before January 1, 2015 shall continue unchanged from the plan currently in effect.

Issue No. 12: Section 22.0 - Foul Weather Gear

Recommendation: The parties have agreed to the following to replace the existing provision;

Section 22.0: The Employer shall furnish employees with suitable foul weather gear (foul weather gear will consist of a rain suit, pants and boots) for their job; including but not limited to gloves and safety gear and up to One Hundred Fifty Dollars ($150) per year of the contract as needed to purchase coveralls or safety shoes.

Issue No. 13: Section 27.0 - Term of the Agreement

Position of the Union: The Union is proposing a three year contract that will expire on December 31, 2017. By the time the Agreement is resolved and executed, the parties will be required to begin bargaining very soon thereafter if there is a two year contract that expires in 2016, as the Authority proposes.

Position of the Authority: The Authority is proposing a two year contract that will expire on December 31, 2016. A two year contract will permit the Authority to bargain over changes that may be needed as result of the completion of the upgrading of the facility and other impending changes. It would prefer to have an open contract so that bargaining to meet the anticipated changes will commence in late 2015 or early 2016 to go into effect in 2017.

Analysis and Opinion: I recommend the Union's proposal for a contract to expire on December 31, 2017, to provide a break from bargaining so that parties can get a fresh perspective that most likely won't occur with the Authority's proposal. In addition, given the thorough review and the changes agreed to and recommended here, changes, if there are any, can wait until 2017 even if the parties cannot agree to deal with them immediately.

Recommendation: The existing language should be changed to incorporate the following:

Section 27.0: All the terms and provisions of this Agreement and all rights and obligations created by this Agreement shall become effective retroactive to January 1, 2015 and shall remain in full force and effect through December 31, 2017.

Issue No. 14: New Section - Return to Work Policy

Position of the Authority: The Authority proposes its current policy, as modified, to determine when an employee is physically and mentally fit to return to work after being absent from work for 30 consecutive calendar days or less. The policy is a reasonable means to determine when employees may return to work, are fit for duty and will not injure themselves or others.

Position of the Union: The proposal is too broad and all encompassing. It is not clear what physical and emotional demands are required and who determines if there is reasonable cause to subject employees to the tests to determine fitness. Moreover, the 30 day period that triggers the tests under the policy is arbitrary and subject to change as the Authority chooses without any good and sufficient reason.

Analysis and Opinion: The Authority should have a reasonable policy to determine fitness for duty when employees have been absent from work for a sufficient time when there are reasonable indicators, both for the Authority's and the employees' protection. The policy proposed by the Authority should be modified to protect employees from being subjected to multiple and unwarranted tests and procedures to qualify to return to work, and the tests should be reasonably related to the illness or injury measured against the physical and mental requirements of the specific employees' job description. In addition, the Agreement provides adequate recourse for employees who believe they are not permitted back to work after an illness or injury for reasons not related to their fitness and ability perform their job adequately and safely.

Recommendation: I recommend that the following language be included in the Agreement:

New Section: RETURN TO WORK: Employees who are absent from work due to illness or injury for more than 30 consecutive calendars may be required to submit certification from their attending physician that they are physically or mentally fit, whichever may apply, to perform the essential duties of their job as specified by their job description. Employees absent for less than 30 consecutive calendar days also may be required to produce such certification if there are factors made known to the Authority that reasonably may indicate that the employees' fitness may affected in the same manner.

After submission of their attending physician's written certification and expected date authorizing them to return to work or after 30 consecutive calendar days of absence, whichever may occur first, the Authority may permit them to return to work or notify them that they will be scheduled for an Independent Medical Examination ("IME") and/or a Functional Capacity Evaluation ("FCE"), for further evaluation. With advance notice to employees, the Authority will attempt to schedule the IME (and/or FCE) as close as possible to the employees' expected return to work date. The Authority will pay for the costs of the IME (and/or FCE) and the mileage for employees to travel from the Authority's location to the evaluation site. The Authority will pay for one IME (and/or FCE) per every thirty (30) days or sooner if necessary, thereafter, until employees are cleared to return to work or their employment with the Authority ends. Employees may pay for additional IMEs (and/or FCEs), but must schedule them through the Authority and authorize the reports to be provided to the Authority, if they are to be used in the employees' on-going evaluation.

After the IME (and/or FCE) reports are provided to the Authority, the Authority will evaluate and inform employees whether or not they will be able to return to work. If the employee is not permitted to return to work, the Authority will identify the specific portions of the IME (and/or FCE) report and discuss its decision with employees to further determine if the employee's fitness is impacted, and determine what, if any tests and treatment may be required.

IMEs and FCEs will be waived by the Authority when employees provide a written report signed by their treating physician indicating that the physician has reviewed their job description, personally examined them and certifies that they may return to full duty without any restrictions. After employees return to work, the Authority may require an IME (and/or FCE) when the Authority observes them having physical or mental difficulty performing their essential job functions and duties for reasons related to their original absence.

The Authority may require and pay for employees to undergo an IME (and/or FCE), at any time employees indicate or are observed to be physically or mentally unable to adequately perform the essential physical and mental duties in accordance with the requirements specified by their job description. In these situations, employees' return to work shall be treated in accordance with the above terms.

Issue No. 15: Section 20.1 - Health and Welfare (Health Insurance)

Position of the Authority: The Authority proposes two options: change from the Teamsters Health Insurance Plan 16 to Teamsters Health Insurance Plan 14 or change to the Geisinger Marketplace Solutions 2 Plan. It also proposes a higher wage increase with the Geisinger selection due to the plan's cost savings. It rejects any opt-out stipend provisions under either plan. The Authority's proposal is as follows for changes to Section 20.1:

With either Plan the Authority proposes the following:

1. Employees pay 10% of the annual premium which to be divided over 52 payrolls based on the premium for each individual employee. The weekly co-pay will increase when the monthly premiums increase at the start of the new contract year.

2. The age of the employee/dependents at the effective date of coverage may change the premium for that employee.

If Geisinger Marketplace Solutions 2 Plan is selected the following will apply:

1. The MRSA will fund the HRA account up to $2500 for single coverage or $5000 for a couple & family.

2. If the out of pocket maximum increases on the Geisinger Plan during the term of the Union Agreement, the Authority will fund the HRA account to the higher maximum.

3. The Authority will have Geisinger issue a debit card to the employees to pay out of pocket in-network expenses as specified above. The employee would be responsible for all out of network charges or ineligible expenses.

4. The change will take place as soon as possible after ratification, however the Authority will not pay premiums for both Teamsters and Geisinger for the same month due to "hours worked" clause in the Teamster's plan requirements.

Position of the Union: The Union proposes to change to the Teamsters Health Insurance Plan 14 including the opt out provision with the employees' premium share at $38.32 per week for 2015 with subsequent annual premiums at $38.32 or 10% of the premium, whichever is greater, and with the increase not to exceed $4.00 per week. In addition, the current Plan 14 premium rate now in effect will remain unchanged until 2016, one year from the date the Plan 14 plan with opt-out is in effect, at which time the rates established for July 2015 will become effective. In other words, the rate change for 2016 is now known, at least 12 months in advance. The Union resists the Geisinger plan because it is unknown to the employees who are comfortable keeping the Union plan, which will provide the same coverage available to them now, but a lower rate because Plan 14 does not have retiree coverage and the rating pool is municipal groups only. Also, the Union proposes: *An annual health care stipend shall be offered in the amount of $2000.00 for those employees who elect to opt out beginning in 2015, provided they have proof of other insurance coverage and submit the required waiver form to the Fund. The stipend will be paid by separate check, the first week of December, in the full amount and a 1099 will be issued to each individual employee who receives the stipend.*

Analysis and Opinion: Since the Authority is agreeable to either plan, I recommend that the Teamster Central Pennsylvania Teamsters Health and Welfare Fund continue to provide health insurance with Plan 14 with the opt-out provision. The plan is known to the employees, the premium is less than current premium and will remain in effect for an additional 12 months from the execution of the Agreement, the 2016 rates have been established. In addition, Plan 14 will cost the Authority about the same as the Geisinger Plan until the HRA costs are factored in. The HRA maximum liability is $65,000 at 100% usage, although a more reasonable estimate is in the 35% to 45% range or $23,000 to $30,000. Plan 14 removes that risk.

With respect to the op-out stipend, health insurance is benefit that is available to employees as needed. Employees who have insurance available from another source will select that other plan anyway if it is less expensive and the benefits are reasonably equivalent. Although the stipend may lure some employees to not take the plan, there is no way to calculate that direct cost and subsequent savings to the Authority. Therefore, I do not recommend the stipend although I do recommend Plan 14 opt-out provision with no stipend.

Recommendation: Following are the complete sections and subsections of Section 20.1 that will change in accordance with my recommendations that follow the existing format with changes only as necessary to accommodate my recommendations (the remaining sections will continue unchanged):

SECTION 20.1 – HEALTH AND WELFARE:

The Authority will provide coverage to full-time employees beginning the 1st of the month following thirty days of employment, contingent upon an employee meeting all other requirements and obligations of Section 20.1 and the health insurance plan.

Beginning on (insert effective date of the change), the Employer agrees to provide full-time employees health insurance through the Teamsters Health and Welfare Fund Plan 14 Dependent Opt-Out during this Agreement, subject to the following terms and conditions:

a. Each employee shall pay a contribution of Thirty-eight Dollars and Thirty-two Cents ($38.32) per week for the benefit year 2015. For each subsequent benefit year of this Agreement, each employee shall pay a contribution of either $38.32 or ten percent (10%) of the health insurance premium, whichever is greater, except that no increase from one year to the next shall exceed Four Dollars ($4.00) a week increase. Also, there shall be no increase in the employee contribution in a year in which no wage increase is provided by the Agreement. Each employee's weekly contribution is broken down individually, into fifty-two (52) weekly, payroll deducted, pre-taxed payments for their employee health care contributions.

b. Employer shall be able to opt out of the Teamsters Health Insurance Plan and place the full time employees into the then health insurance plan for non-bargaining unit employees, if any of the following shall occur:

    1. The Teamsters Health Insurance Plan requires non-bargaining unit positions to be included within the Teamsters Health Insurance Plan;

    2. The Teamsters Health Insurance Plan requires participation of more than 80% of eligible employees;

    3. The Teamsters Health Insurance Plan requires that eligible employees elect spouse or family coverage when such coverage is available through the eligible employee's spouse; or

    4. The Teamsters Health Insurance Plan changes the eligibility requirements and/or qualifications for participation in the Teamsters Health Insurance Plan that conflict with the requirements of this Agreement.

c. If the Employer (under Section 20.1.b) or the bargaining unit employees, as a whole, elect to opt out of the Teamsters Health Insurance Plan, the bargaining unit employees may participate in the non-bargaining unit employee health insurance plan, as long as each participating employee pays the weekly health insurance contribution in the amount set under this subsection. The parties have agreed to have the weekly contribution rate set in accordance with the following terms:

1. The Employer shall select an individual to set the weekly contribution rate ("Decision Maker"). The Employer may select any individual, including but not limited to a Board member of the Employer, the Employer's legal counsel, a member of the Employer's management staff or any other competent adult, to serve as the Decision Maker. The Union cannot challenge, on any basis, including but not limited to bias, the Employer's selection of the Decision Maker.

2. The Decision Maker shall schedule a meeting with the Union and the Employer. At the meeting, the Union and the Employer will each be given up to a half hour to present the amount that each believes the weekly contribution rate should be set at. Only the Decision Maker may ask questions of either the Union or the Employer.

3. The Decision Maker shall set a weekly contribution rate that is within the following parameters: The weekly contribution rate shall not be less than $38.32 per week nor greater than ten percent (10%) of their total annual premium, whichever is greater, except that no increase from one year to the next shall exceed Four Dollars ($4.00) a week increase. Also, there shall be no increase in the employee contribution in a year in which no wage increase is provided by the Agreement.

4. Within seven (7) days of the meeting, the Decision Maker shall issue the weekly contribution rate. The weekly contribution rate will become effective the first pay period in which the bargaining unit employees receive coverage under the non-bargaining unit employee health insurance plan. The Decision Maker shall not be required to provide an explanation of the selected weekly contribution rate.

5. As long as the Decision Maker's decision is in accordance with the parameters set forth in subparagraph 3 of this subsection, the decision on the weekly contribution rate shall be final, without right of appeal. Both the Employer and the Union agree to waive any and all rights to file a grievance, unfair labor charge or any other legal challenge to the Decision Maker's decision on the weekly contribution amount. If either party files any type of legal challenge to the Decision Maker's decision, that party shall be responsible for all costs, expenses and damages incurred by the other party as a result of the legal challenge. Costs, expenses and damages shall include but not be limited to attorney fees, arbitrator fees or an increase in health insurance costs. The Union explicitly acknowledges and agrees that it is waiving all rights and claims to challenge the Decision Maker's decision, including all rights to the grievance procedure, arbitration, unfair labor practice charges and any other administrative, judicial or quasi-judicial procedure.

d. Plan 14 Dependent Opt-Out terms

Section 1. Employer Contributions.

a. The Employer agrees to make the following monthly contributions to the Central Pennsylvania Teamsters Health and Welfare Fund (the Fund) for each Eligible Employee covered by this Agreement in order to qualify such employee for benefits in accordance with the terms of the Declaration of Trust and the Central Pennsylvania Teamsters Health and Welfare Fund - Plan 14 executed by the Employer and subject to the qualifications hereinafter specified:

Effective 12 months from the date of the conversion to Plan 14 with Op-out:

Eligible Coverage	2015 Monthly Rates	2016 Monthly Rates
Married	$ 874.75	$ 1,350.10
Single	406.00	605.90
Family	1,172.00	1,808.74
Single parent with child(ren)	696.25	1,062.03

The rates for the remaining years of the Agreement shall be established by the Central Pennsylvania Teamsters Health and Welfare Fund. (See note below)

[**Note**: *Once the Agreement is in effect, it should reflect the actual, effective annual health insurance rate change dates in the same manner as the expired 2009 -2013 Agreement. The effective dates for the rate increases, if any, shall be determined by the effective date of this Agreement, after which the rates will remain in effect for 12 months from the time the insurance is converted to Plan 14, provided the change is made prior to July 1, 2015. The rates established on July 1, 2015 will not take effect until 12 months from the conversion to Plan 14. Rate changes thereafter will take effect on that newly established date.*]

The Employer shall be bound by the terms of the Fund's Trust Agreement, Plan Document, policies and procedures (including this Agreement).

NOTE: Under the "Dependent Opt Out" provisions under Plan 14, Participants are permitted to select whether they will elect coverage under the Plan and which eligible dependents they elect to cover under the plan. Dependents cannot be covered under the Plan if the Participant does not elect coverage for himself/herself. Participants can make elections only once annually during the open enrollment period, except in the event of a "special enrollment" opportunity as defined under HIPAA. The coverage selection information will be provided to the Employer by the Fund following the close of Plan's annual open enrollment period or when a change is made in a Participant's coverage selection. The Employer is obligated to remit contributions on the basis of the selections made by the individual Employee.

The above schedule is only intended to set out what the contribution rates are, and when they are subject to change. Eligibility for a contribution is based on the language as set forth in Section 2, below.

b. The above-listed rates shall include the Base Benefits and the following Optional Benefits: **The above-listed rates shall include the Base Benefits (Level A) and the following Optional Benefits: Option #3 – Mental Health/Substance Level A (matches Base Benefits Level A), and Option #5 – Prescription Drugs Level A.**

c. Notwithstanding the provisions of Section 1.a. above, the Employer is responsible for notifying the Fund of any change in status of an employee (e.g., single to married, etc.).

d. Monthly contributions for each Eligible Employee shall be paid not later than the fifteenth (15th) day of the month.

e. The Employer shall use the reporting forms required by the Trustees of the Fund (the Trustees) and shall comply with the instructions of the Trustees in filling out such forms.

f. Employer is responsible for the collection of all co-payment amounts by employees. Co-payments are to be designated as stated in Section 20.1a of this Agreement.

Section 20.2: [No change]

Section 20.3: [No change]

Section 20.4: [No change]

Section 20.5: [No change]

Section 20.6: [No change]

Section 20.7: [No change]

Issue No. 16: Section 20.1 - Schedule A. Wages

Position of the Authority: The Authority is proposing to eliminate the Operator 3 classification, and reclassify the current Operator 3 to Operator/Mechanic 2 at the higher Operator 2 rate, reclassify the current Operator 2 to Operator/Mechanic 1 at the higher Operator 1 rate, reclassify the current Mechanic 1 to the new Operator/Mechanic 2 classification and pay rate, eliminate the Foreman and Maintenance Foreman classifications, which have been vacant for sometime, and establish a new classification, Laborer. The changes are more in line with the current operating procedures and production needs. The addition of a laborer will eliminate or reduce the need to hire casual employees either seasonally and as needed. In addition, each of the rates will be increased by either $.40 per hour in 2015 and 2016 if the Geisinger plan is accepted or $.25 per hour if the current health plan is continued. There is no proposed rate increase for 2014. The $.40 per hour is estimated to cost approximately $10,816 additional in each of the two years, while the $.25 per hour is estimated at $6,760 additional in each year.

Position of the Union: The Union agrees with the Authority to keep the wages unchanged for 2014, but proposes a three year contract with 3% increase for 2015, 3% for 2016 and 3% for 2017. The estimated cost for each year is $16,225, $13, 800 and $17,300. The changes proposed to the Operator and Mechanic 1 classifications, but not to the elimination of the Foreman and Maintenance Foreman classifications or the proposed Laborer classification. With respect to the Foreman and Maintenance Foreman, the Union will agree to their elimination provided Jeremy Hans and Joseph Nickey, formerly in the classifications but now classified as Operator 2, are redlined at the 2013, $20.74 per hour, Foreman and Maintenance Foreman pay rate until that rate reaches their Operator 2 pay rate. The Union argues that newly proposed laborer position is an undefined and unnecessary position paying much less than the existing lowest paid bargaining unit position.

Analysis and Opinion: With respect to the reclassification of the operator and mechanic classifications, the Authority's proposal in reasonable and in line with its current operational needs. It did not make a case for adding the laborer position, especially since the Authority has been hiring casual and seasonal employees to perform the work that will be assigned to the proposed Laborer classification. Over time, it may be much less expensive to continue that practice in order to control and keep lower wage and benefit costs for that work. I agree with eliminating the Foreman and Maintenance Foreman positions, because they have been, and the Authority plans to keep them vacant, with the provision that Hans and Nickey each be redlined at the higher, $20.74 pay rate until the pay rate for their current classification increases or exceeds that rate.

With respect to the pay increases, the Union's proposed 3% per year for three years costing approximately $50,000 exceeds cost of living and without additional justification. The Authority's proposal for $.25 per hour no longer has merit because it was premised on the new rates for the Plan16 exceeding the cost of the Geisinger plan. However, by adopting Plan 14 with the opt-out provision, those rates are less than the current cost of Plan 16 and equivalent to the Geisinger rates minus the liability that the Authority would incur from the HRA. Although the Authority still is liable for increases to Plan 14 premiums, it knows what the increases will be and that they will be in effect as late as March of 2017. By combining all these knowns, unknowns and speculations, I propose a three year contract with increases for 2105, 2016 and 2017 at $.35 per hour which are approximately a 1.7% increase, the current cost of living, which costs less than the combined cost of the Authority's wage and Geisinger health proposal, and eliminates its liability for the HRA. However, with the $4.00 per week cap on the employees' health insurance cost, it still has some albeit much less liability. For the Union, it maintains the Union sponsored health plan, but with lower premiums and the same benefits, while providing the employees with a cost of living adjustment annually and a third contract year. Both parties will benefit equally from the three year contract and its predictable costs.

Recommendations:

1. The 2014 rates will be unchanged from the 2013 rates.
2. Increase the 2014 rates by $.35 per hour for 2015, retroactive to 1/1/2015.
3. Operator 3 becomes Operator/Mechanic 2 at the Operator 2 rate
3. Operator 2 becomes Operator/Mechanic 1 at the Operator 1 rate
4. Operator 1 becomes Operator/Mechanic 1 at the Operator 1 rate
5. Mechanic 1 becomes Operator/Mechanic 2
6. Eliminate Operator 3 classification.
7. Eliminate the Foreman and Mechanic Foreman classifications
8. Hans and Nickey redlined at $20.74 per hour until exceeded by the Operator/Mechanic 2 rate.
7. No Laborer - Authority will continue the option to hire part-time employees as needed.
8. Effective 1/1/2016 - above rates will be increased by $.35/hr.
9. Effective 1/1/2017 - 2016 rates will be increased by $.35/hr.

10. As stated in Issue No. 10, I do not recommend any pay increase in exchange for the ceasing the ability of employees to bring their household and debris in the Authority's trash dumpsters.

Schedule A

Waste Water Operation	**2014**	**2015** (Add $.35/hr)	**2016** (Add $.35/hr)	**2017** (Add $.35/hr)
Foreman	20.74	Eliminate	Eliminate	Eliminate
Operator/Mechanic 1	20.23	20.58*	20.93	21.28
Operator/Mechanic 2	20.02	20.37**	20.72	21.07
Operator/Mechanic 3	19.81	Eliminate	Eliminate	Eliminate
Maint. Foreman	20.74***	Eliminate	Eliminate	Eliminate
Mechanic 1	20.02	Reclassified to Operator/Mechanic 2 1/1/2015		
Laboratory				
Lab. Technician	21.04	21.39	21.74	22.09
Clerical				
Sewer Billing Clerk	19.09	19.44	19.79	20.14

* Operator/Mechanic 1 - maintains a license for the Facility.

** Operator/Mechanic 2 - does not maintain a license for the Facility

*** Jeremy Hans and Joseph Nickey - Effective 1/1/2015, $20.74/hour redlined until the Operator/Mechanic 2 rate equals or exceeds this rate.

Summary

I want to thank the parties for their complete and in-depth presentations that enabled me to arrive at my recommendations with reasonable assurance that I have the necessary information and understanding of the issues. I believe my recommendations strike a reasonable balance between the needs of the Authority to operate the facility while providing employees with a salary and benefit package that gives them economic stability, while recognizing the importance of their work.

Please note that you are directed to notify the PLRB of your decision to accept or reject the recommendations herein within ten (10) days of the date of the issuance of this Report.

January 26, 2015

John C. Alfano, Arbitrator
1622 Birch Street
Scranton, Pennsylvania 18505