November 25, 2011

TRANSMITTAL MEMORANDUM

New Haven Board of Education
- and -
AFSCME Co. 4, Local 287

Case No. 2010-MBA-116

AWARD OF THE ARBITRATION PANEL

M. Jackson Webber, Esquire—Chair Panel Member
John Romanow, Esquire—Management Panel Member
Mr. Kevin Murphy—Union Panel Member

Representatives of the parties:

Floyd Dugas, Esquire – Town - certified return receipt requested
Thomas Fascio & Anne Peckham Staff Reps. - Union – certified return receipt requested (1 copy sent)

cc: File
Charles Plungis, Labor Relations Analyst-CCM
John W. Olsen, President
Town Clerk – certified return receipt requested

/sk
Enclosure

STATE OF CONNECTICUT
LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD
UNDER §7-473c
OF THE
CONNECTICUT GENERAL STATUTES

In the Matter of the Arbitration Between:	:	CASE No. 2010-MBA-116
NEW HAVEN BOARD OF EDUCATION	:	
-and-	:	
LOCAL 287 of COUNCIL 4,	:	
AFSCME, AFL-CIO (Custodians)	:	November 22, 2011

The undersigned Arbitration Panel, having been duly appointed in accordance with the Rules of Procedure of the Connecticut State Board of Mediation and Arbitration, and pursuant to the provisions of 7-473c of the General Statutes of the State of Connecticut, does respectfully make this Arbitration Award as required by said Statute.

REPRESENTATIVES OF THE PARTIES

Appearing for Board: Floyd J. Dugas, Esq.

Appearing for the Union: Thomas Fascio, Staff Representative
Anne Peckham, Staff Representative

PANEL

M. Jackson Webber, Esq., Chair
John Romanow, Esq., Management Member
Kevin M. Murphy, Labor Member

STATUTORY FACTORS

"(2) In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of the demands on the financial capability of the municipal employer. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; . . . (B) the interest and welfare of the employee group; . . . (C) changes in the cost of living; . . . (D) the existing conditions of employment of the employee group and those of similar groups; and . . . (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits."

STATE OF CONNECTICUT

BOARD OF MEDIATION AND ARBITRATION

NEW HAVEN BOARD OF EDUCATION	:	**Case No.: 2010-MBA-116 Custodians**
and	:	
AFSCME, Council 4, Local 287	:	**September 22, 2011**

ISSUES IN DISPUTE

Issue #	Paragraph Number[1]	Article/ Section	Party	Description
2a	22	Art 3, Sec 6	Board	No Lay Off Clause
6	26	Art 5, Sec 1	Board	Training
11	28	Art 5, Sec 4	Union	Bid Meetings
13	34	Art 7, Sec 2	Board	Vacation Allotment
14	35	Art 7, Sec 2	Board	Vacation Allotment
77c	157	Art 20	Joint	Wage Increases FY 2011-12
87	161	Art 22, Sec 1	Joint	Hours of Work- shift differential
88	162	Art 22, Sec 2	Board	Hours of Work – shift differential requirements
101a-b	183	Art 25, Sec 5	Joint	Overtime for special projects
102	184	Art 25, Sec 5	Union	Overtime- equitable distribution within a school
103	185	Art 25, Sec 5	Joint	Overtime – annual assignment list
121A	196	Art 30, Sec 2	Board	Staffing
121B	196	Art 30, Sec 2	Board	Buyout
122	196	Art 30, Sec 3	Board	Special Provision – seasonal employees
133a	209	Art 32, Sec 3	Union	Arbitrability
133b	209	Art 32, Sec 3	Joint	Privatization

[1] Reference is to Agreed Upon Language Document

INTRODUCTION

This dispute concerns bargaining between the City of New Haven and AFSCME Council 4, Local 287 over the negotiation of a Successor Labor Agreement.

The undersigned arbitrators were designated to hear and decide the dispute in accordance with Section 7-473c of the Connecticut General Statutes. Over several days, the parties appeared before the arbitration panel in New Haven, Connecticut. Both parties were represented and were accorded a full opportunity to submit evidence, examine and cross-examine witnesses, and present arguments. The parties' last best offers on the issues in dispute were submitted to the panel on October 7, 2011. The panel members met in three executive sessions to deliberate and decide each outstanding issue.

The agreed-upon language submitted to the panel is incorporated and made a part of this award.

Issue 2a – Article 3, Section 6

Issue 121a – Article 30, Section 2

Issue 121b – Article 30, Section 2

The parties have taken diametrically different positions with regard to issues 2a, 121a, and 121b.

". . . (T)he Union's LBO seeks language that would prohibit any layoffs from the date of issuance of the award forward, the Board's LBO would allow the Board to reduce the bargaining unit to the staffing levels proposed under Issue #121A, and only after those levels are reached would the Board be prohibited from further layoffs during the balance of the agreement. In essence, in conjunction with its LBO on Issue #121A, the Board's LBO on Issue 2A allow for limited subcontracting (bringing the bargaining unit down from 186 employees to 130 then eventually to 100 employees) then prohibits any further reductions. The Union's LBO (combined with its LBO on Issue #121A), not only does not provide for any reduction in size of the bargaining unit, but would also take away from the Board the only relief mechanism it has to deal with an unexpected financial downturn or to "right size" the work force to match the economic realities of the day – the right to lay off workers. That is one of the most basic management rights. . . . The statutory factors of public interest and ability to pay both support the Board's LBO on Issue #2A, as well as #121A, which are inextricably intertwined. C.S.G. §7-473c(d)(9). As noted *Supra*, the City of New Haven is facing severe fiscal challenges. Expenses are expected to outpace revenue growth over the next four (4) years by millions of dollars, and the City's fund balance is an abysmal 2%. As the weight of the evidence shows, the Board could have reaped $8 million in savings had it been allowed

to completely subcontract the school custodial and maintenance functions. Modifying its position to eventually reduce the workforce to 100 employees, still generates substantial savings that can be used to relieve some of the fiscal pressures faced by the City/Board." (Board brief, pp. 28, 29.)

The Union has proposed a no-layoff clause for the duration of the contract.

"In order for the Union to have that security from the Board's offer, it has come at a high price to the bargaining unit under the Board's LBO on the above captioned issues. The Board's staffing plan calls for a reduction of employees to not more than one hundred thirty employees by December 31, 2011. The Board proposes to get to that level of employees through attrition and early retirement incentives. If the staffing plan number of one hundred and thirty is not met by December 31, 2011, there will be lay offs to meet the number of one hundred and thirty employees. The Board's combined LBO's reduce the bargaining unit by eighty seven positions within eighteen months per their costs data dated August 28, 2010. Under the Board's offer, employees who have either thirty years of service or are close to thirty years under paragraph A and B of their buy-out plan, would most likely take advantage of it and retire. But, employees who do not meet those conditions wind up unemployed and too young to retire. . . . Throughout these proceedings, the Board proposed total elimination of the bargaining unit through subcontracting. The Board's LBO's now propose a reduction of forty six and one-half percent (46.5%) of the work force. It is unclear what percentage of the bargaining unit will become unemployed by their proposals, but what is clear is the Board is still pursuing a part-time work force to work side by side with the full-time employees. The median hourly wage of a full-time bargaining unit employee is twenty

dollars and ninety cents ($20.90) per hour; far below the average salary of a part-time employee proposed by the Board of Education under the GCA contract of twelve dollars and fifty cents ($12.50) per hour. The Union can only assume that the Board of Education will either hire part-time workers or enter into a new contract with GCA services, or some other contractor, to manage the part-time work force. In either case any employee laid off seeking employment in the New Haven Public Schools would see a drastic reduction in pay and benefits." (Union brief, pp. 4, 6.)

The City argues that it is on the edge of a financial crisis. The recession has demonstrated that "the rich benefits negotiated over decades by the Unions representing City employees is simply not sustainable. While the recent recession, dubbed, the 'Great Recession,' has magnified the problem, that fact is that costs, most notably pensions, post-retirement employee health care, current employee health care and debt service, are rising at a much faster pace than City revenues, giving rise to a structural deficit in City finances. Given the many other demands placed on City resources, not the least of which is trying to narrow the achievement gap and raise overall student performance, the inescapable conclusion is that the current employee wage, benefit and staffing structure is unsustainable. While the City has taken has number of steps to control costs, including substantial reductions in force and canceling any non-essential capital improvement projects, extraordinary measures are now needed or the City could face a state takeover or bankruptcy. These terms are not used lightly. In negotiations with the union representing school custodial and maintenance employees (the "Unit"), the Board of Education (the "Board") has admittedly proposed

by Connecticut standards[2] major changes. But it does so knowing there are not any better solutions to avoid the fiscal abyss the City of New Haven now faces. It also does so knowing the evidence overwhelmingly supports the Board's last best offers." (Board brief, pp. 1-2.)

The Board of Education's last best offer is trying to balance the needs of the Board and the Union employees.

Therefore, after reviewing all of the information received by the Arbitration Panel, in light of the statutory criteria, the last best offer of the Board for Issue 2a is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board, based on the same statutory criteria.

After reviewing all of the information received by the Arbitration Panel, in light of the statutory criteria, the last best offer of the Board for Issue 121a is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board, based on the same statutory criteria.

After reviewing all of the information received by the Arbitration Panel, in light of the statutory criteria, the last best offer of the Board for Issue 121b is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board, based on the same statutory criteria.

[2] "Such measures pale in comparison to initiatives in other parts of the country including Wisconsin, New Jersey and Michigan." (Board brief, p. 2)

Issue 6 -- Article 5, Section 1

The Board of Education is proposing to eliminate the current contract language, stating that it is no longer relevant based on the new staffing structure which the parties have agreed to in Article 30.

ARTICLE 30 – Special Provisions

> Effective upon issuance of the award in case number 2010-MBA-116, notwithstanding Article 1, Section 1, or any prior certification issued by the State Board of Labor relations, the bargaining unit shall be comprised of only the following classifications: Building managers, Assistant Building Managers, Floaters and Divers. The job descriptions for said positions are attached hereto as appendix C. The existing classifications shall thereafter cease. . . .

Inasmuch as Head Custodians, Crew Leaders and Engineering positions, by agreement, are among these positions eliminated upon issuance of the award in this matter, the language the Union seeks to preserve is no longer relevant, therefore, should not be included in the new agreement. For this reason, the Union's LBO should not be selected; rather the Board's proposal for "no such language" should be adopted. (Board brief, pp. 30, 31.)

The Union stated: "Training for high classification (Head Custodian, Crew Leader – day or night, Engineers) benefits the Employer by ensuring that trained, qualified employees obtain the expertise necessary to perform these higher level positions. . . . The Union is baffled by the Employer's LBO to eliminate all training. The Board has to provide training only when applicable and appropriate, and that determination is made before training is scheduled for three (3) positions. In addition, and most importantly, the training ensures that highly qualified employees perform in the positions which require greater responsibility." (Union brief, p. 9.)

After reviewing all of the information received, it appears that if the Union language were adopted, it would cause a conflict with Article 30 as to which classification existed in the contract. Therefore, in light of the statutory criteria, the last best offer of the Board for Issue 6 is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board, based on the same statutory criteria.

Issue 11 -- Article 5, Section 4

The Board is proposing that the current contract language be deleted from the contract. Under the current contract language, employees bid four (4) time per year.

"On average 25% of bargaining unit members change their assignment each year through the bidding process. As a result, the Board has to constantly train employees on equipment and systems that are unique to the school to which they are re-assigned. (Tr. 12/9/10), pp. 58-59.) In addition to removing employees from their work sites while this day long complex process takes place, it requires building principals and staff to acquaint themselves with the new custodian and to work their way through yet another learning curve. This language was given as an example by Mr. Clark as one of the many work rules which restrict the Board from operating efficiently. . . . . In addition the language agreed to at Article 30, Section 1 (last paragraph) provides for a more stream lined bidding process in the event of a vacancy:

> Employees will have one opportunity to select a work assignment, based solely on seniority and qualifications, with a 90 day probationary period, following issuance of the award in case number 2010-MBA-116. Employees will remain in that assignment until a vacancy occurs in another position. Vacancies will be posted and awarded to the most qualified senior employee. The position vacated by the most senior qualified employee will also be posted and filled as was the first vacancy. Any additional vacancies will be filled with a new hire. (Joint Ex. 2, p. 33.)"

(Board brief, pp. 31, 32.)

The Union is proposing to retain the current contract language. "When a vacancy exists for a bargaining unit position, the Board calls a meeting of all qualified custodial personnel for the purpose of holding an open bid for the position. The listing indicates the job title, the work location and the hours of work. Although seniority is a

factor, an employee is deemed qualified by demonstrating by past performance that he/she has the abilities and/or capabilities to perform in the vacant position. In addition disciplinary action automatically disqualifies an employee from the process. . . . The union acknowledges that the Board has the right to direct the workforce. Nevertheless, Article 14, Section 2, states in part: 'The right to make reasonable work rules and resolutions relating to personnel policy, procedures, practices and matters of working conditions, the Board shall be bound by the obligation imposed by law and the responsibilities set forth in this agreement.'" (Union brief, p. 10.)

After reviewing all of the information received, it appears that the Union's last best offer would conflict with the agreed upon language of Article 30, which the parties have submitted to the Arbitration Panel. Further, the Board's last best offer creates a more efficient process of filling vacancies. Therefore, in light of the statutory criteria, the last best offer of the Board for Issue 11 is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board based on the same statutory criteria.

Issue 13 – Article 7, Section 2

Issue 14 – Article 7, Section 2

The Board stated that "the Union seeks to preserve the status quo for eligibility for 20 and 25 days vacation at 15 and 20 years service respectively. The Board, however, seeks to limit the maximum number of vacation days to 20, and require 20 years of service for 20 vacation days for new hires as agreed to in the Settlement Agreement. In order to continue to deliver school custodial and maintenance services using bargaining unit members, it is imperative that the contract allow the Board to run the schools more efficiently and with better productivity out of the remaining workforce." (Board brief, p. 32.)

The Union stated that the Board of Education proposal to reduce vacation allotment for new hires makes no economic savings for fifteen (15) years. "What it does in the long run is to create a two-tier system for vacations way out in the future. In comparison to other bargaining units within the City of New Haven and the other municipalities, no other bargaining unit has a two-tier system for vacations. The evidence clearly supports the Union's LBO on these issues. Union Exhibit 4, tab 13, 14. It is unfair to members of the bargaining unit not to receive equal time off. Vacations are requested in advance and approved based on operational need so management can properly staff the work force. The Board presented no evidence to show they are pursuing the same position with other bargaining units within the City, and if the Arbitration Panel were to award issues 13 and 14 to the Board, Local 287 would be the only bargaining unit in the City and Board of Education with a two-tier vacation allotment." (Union brief, p. 12.)

After reviewing all of the information received by the Arbitration Panel, the last best offer of the Board of Education would start to reign in some of the costly benefits that current employees now receive without adversely affecting current employees, who have worked twenty (20) years or more of continuous service. In light of the statutory criteria, the last best offers of the Board for Issues 13 and 14 are accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Board based on the same statutory criteria.

Issue 77c – Article 20

The Board of Education position is that its offer of 1.75% in the third year of the contract is not retroactive whereas the Union's 2.0% wage increase is retroactive to July 1, 2011. The Board indicated that the difference between the two proposals is about $90,000.00.

"Even with the agreed upon zero's in the first and second year, with the Board's LBO for the only year in dispute, bargaining unit members' salaries will still remain competitive as compared to their counterparts in other school districts. Therefore, statutory factors (D) (existing conditions of employment and those of similarly groups) and (E) salaries in the prevailing market, also supports election of the Board's LBO." (Board brief, p. 34.)

The Union stated that the Board of Education has negotiated wage increases with other bargaining units "as follows:

- Local 24 – United Brotherhood of Carpenters
- District Council 11 – Brotherhood of Painters
- Local 90 – International brotherhood of Electrical Workers
- Local 777 – United Association of Journeymen, Plumbers and Pipe Fitters

General wage increases for the above locals were

- July 1, 2008 – 0%
- July 1, 2009 – 0%
- July 1, 2010 – 3.0%
- July 1, 2011 – 3.0%
- July 1, 2012 – 3.5%

The year in dispute, July 1, 2012, the trades received 3.0%. The Union is requesting 2.0%: a full 1.0% less. In addition, if the Board can give nine and one-half percent (9-1/2%) over four (4) years to the trades, surely it can afford an additional

quarter percent (0/25%) for this bargaining unit. Local 287 members last received a general wage increase on July 1, 2008. If the Arbitration Panel awards the Union's LBO, it will be the first general wage increase in over three (3) years. Since the contract expired June 30, 2009, they have patiently waited through two (2) years of negotiations and the interest arbitration proceedings." (Union brief, pp. 13 - 14.)

After reviewing all of the information received, it appears that the Union members have taken a zero percent wage increase for each of the last two (2) years and now request a two percent (2%) raise in the third year. When compared to other bargaining units in the City, their request is not unreasonable even in light of the plight of Board of Education and the City of New Haven. Therefore, in light of the statutory criteria, the last best offer of the Union for Issue 77c is accepted. The Union appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Board appointed Panel Member dissents on the selection of the last best offer of the Union based on the same statutory criteria.

Issue 87 – Article 22, Section 1

Issue 88 – Article 22, Section 2

Issue 102 – Article 25, Section 5

Issue 103 – Article 25, Section 5

The Board of Education stated: "The Union's LBO's seek to revert back to the existing contract language, which was based upon the now eliminated wage classifications. In developing job descriptions and salaries for the new positions of Assistant Building Manager, the parties took into consideration that said positions will work afternoon-evening hours. In the Settlement Agreement the Parties eliminated the shift differential, because they were built into the salaries for this new positions. For this reason, and in particular statutory factor (A), the Union's LBO's on Issues 87 and 88 should be rejected. The same is true as to Issues 102 and 103. The language proposed by the Union is existing contract language which immediately follows and refers to the language in the Union's LBO's on issues 101A and 101B. If that language is eliminated as obsolete, the language proposed by the Union in its LBO on Issue #102 is superfluous; therefore, should be rejected as well." (Board brief, p. 35.)

The Union is proposing to retain the current contract language as it relates to shift differential, which is $0.50 per hour for second shift and $0.90 per hour for the third shift. "Although the Board regularly assigns a second shift, at this time and for many years, there has been no third shift assigned. The second shift is 3:00p.m. to 11:00 p.m. and is a regularly Board-assigned shift which enables the custodial staff to thoroughly clean the schools after the children have left for the day. It is an industry

standard to pay a shift differential for working beyond what is considered a normal work day and the Board has always recognized that. This recognition is further evident with the Board paying the Trades Union members and additional sixty-five cents (.65¢) (sic) for a second shift differential. In addition, two (2) other bargaining units in the City of New Haven receive second shift differentials. Classified members receive an additional forty-five cents (.45¢) (sic) per hour and Public Works also receives and extra forty-five cents (.45¢) (sic) per hour. (See Union Exhibit Number 4, tab 87.) . . . The requirements for receiving the shift differentials are simple. The employee must be regularly assigned to the shift. It must be their regular schedule of hours. It is not given to employees working overtime from one shift to another. For example, a custodian regularly assigned to a day shift, who is assigned to overtime and that overtime then overlaps into the second shift, would not receive the second shift differential. This agreement prevents unnecessary differentials being paid." (Union brief, pp. 15, 17.)

In Issue 102, "(t)he Union's LBO seeks to retain current contract language which equitably distributes special overtime assignments. The Board's LBO seeks to eliminate current contract language. Although the overtime is computed and used in determining equitable distribution of overtime within each school as discussed in Issue Numbers 101a and 101b, the Board has sole discretion to assign the overtime. If the Board determines there are multiple custodial staff within a school, the overtime is computed to be given fairly. It is a process that has always worked. By eliminating it as the Board's LBO is requesting, would make the process of assigning subjective. The current process is objective and employees know that if they work efficiently on the

overtime for special projects, they will be in the rotation. And if they don't, then they won't." (Union brief, p. 20.)

In Issue 103, The Union's LBO seeks to retain current language which allows employees to let the Board know they would like to be considered for special assignment overtime. This is a very simple process. If an employee is interested in special assignment overtime, they can let the Board know after the Board's memo which is posted once per year. Should the employee decide they are interested, the Board still has the right to determine if they would efficiently and effectively perform in special assignments. Just because the employee wants to be on the list, doesn't mean the Board will approve." (Union brief, p 21.)

After reviewing all of the information received, the parties in the settlement agreement took into consideration the shift differential by building it into the salary and the other Union proposals are obsolete. Therefore, in light of the statutory criteria, the last best offers of the Board for Issues 87, 88, 102, and 103 are accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Board based on the same statutory criteria.

Issues 101a and 101b – Article 25, Section 5

The Board of Education stated "the Union once again seeks to include language in the contract which has been rendered absolute by virtue of the new staff structure agreed to in Article 30. Specifically, in the first paragraph of Article 30, Section 1, quoted in Section A, *Supra*, the Parties agree that other than requiring overtime to replace Building managers and Assistant Building managers under certain circumstances, the Board is not obligated to use bargaining unit members for overtime needs. More to the point, the parties have agreed '. . . all other non-cleaning duties shall be outsourced, e.g. plowing, grounds, V.' (Joint ex. 2, p. 33.) Given this language, there is no need, indeed no use for, the language the Union seeks to remain in the contract." (Board brief, pp. 35-36.)

The Union stated "(t)he assigning of overtime for special projects has always been solely at the discretion of the Board. The Board determines which employees are most able to efficiently and effectively perform the special projects work. The project of snow and ice removal of the sidewalks and parking lots ensures a safe parking area for teachers, a safe driveway for school busses and safe walkways for teachers and students. This work must be completed prior to the start of the school day so that by the time teachers and students arrive the snow is removed. The very nature of accomplishing this prior to the start of the school day necessitates overtime. Once this work is done. The custodian precedes (sic) to his/her regular work assignment. Special assignments such as this example are assigned to custodial staff with each school who the Board knows does work effectively and efficiently." (Union brief, p 18.)

After reviewing all of the information received by the Arbitration Panel, it appears that the current Union last best offers conflict with Article 30 of the agreed upon language and, therefore, if awarded, would create conflict. Therefore, in light of the statutory criteria, the last best offers of the Board for Issues 101a and 101b are accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offers of the Board based on the same statutory criteria.

Issue 122 -- Article 30, Section 3

The Board of Education stated that it has the right to hire seasonal employees to supplement the workforce when needed. "The Union does not contest that right and therefore, the Parties' LBO's are very similar. The only difference is that the union's LBO would arguably limit this to summer recess, whereas the Board's LBO has no such limitation. Given the previously articulated need to run the school district more cost-effectively the Union's LBO's should be rejected in favor of the Board's." (Board brief, p. 36.)

The Union stated that its LBO "allows the use of seasonal employees at the most critical period of time, within the school year for custodial work and maintenance during the summer shut down. It is during the shut down when classrooms are emptied out and the floors are done along with all the heavy work not able to be performed during the regular school year. During this period of time it makes sense to hire temporary workers to supplement the work force for the summer shut down only. The Board's offer would allow them to use seasonal employees all year long, which would then have a negative impact to the bargaining unit ranging from positions not being filled to the loss of possible over time opportunities." (Union brief, p. 24.)

The Board of Education and the City have demonstrated the severe financial situation that they are facing. The Board of Education's last best offer gives the Board and the City more flexibility to manage their workforce in an efficient and financially prudent manner. After reviewing all of the information received by the Arbitration Panel, in light of the statutory criteria, the last best offer of the Board for Issue 122 is accepted.

The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board based on the same statutory criteria.

Issue 133a -- Article 32, Section 3

The Union has stated that the Board of Education offered document Exhibit #1, page 43, which stated, "specifically effective July 1, 2009 the Board shall have the right to subcontract or privatize any or all work normally performed by members of the bargaining unit."

"On September 21, 2010, the third (3rd) and last session to submit new proposals per the signed ground rules, the Board submitted this proposal: **'Work normally performed by bargaining union members may be subcontracted when such subcontracting is in the best interest of the Board.'** (Board Exchange 3, pg 22.) AS is evident, the Board did not submit the proposal submitted in their offering document. Currently, the Board does have the right to subcontract bargaining unit work in leased buildings. The Board cannot eliminate bargaining union positions by subcontracting the core of municipal work. There is a significant difference between subcontracting and privatization. Often they are intertwined as one and the same. With privatization the employer gives up total control; allowing an outside entity to perform the work, manage the work and own the work. With subcontracting the employer retains control of the work, manages the work and the outside entity performs their jobs under the direction of the employer. The Board cannot arbitrarily choose to rewrite proposals when it had ample time to submit all new proposals by September 21, 2010. Therefore this issue is not arbitrable. Conclusion: The Board has attempted to assert management rights in an article of the contract which it has already waived. *Issue 5a; paragraph 24, Article 5, Section 1.) The Board of Education is attempting to have the arbitrators determine if the Union should relinquish this negotiated provision by giving the Board an opportunity to

keep the membership out of the process and unilaterally deciding how employees bid for positions." (Union brief, filed December 16, 2010, pp. ___.)

The Board stated in its brief submitted to the Panel December 16, 2010 "(t)he Union claims that Issue 133a regarding privatization and/or subcontracting bargaining unit work is not arbitrable because during the negotiating process the Board made no specific proposals to privatize or subcontract the bargaining unit work. In alleging that the Board failed to present the issue, Tom Fascio representing the Union stated, 'the Board of Ed made no specific proposal from the Board of Ed to either privatize or to subcontract out the bargaining unit work and yet in offering the document, the Board of Ed has now raised the issue of privatization and/or subcontracting out the bargaining unit work.' Exhibit 2 pp. 12-13. The Board offered a proposal in accordance with the Ground Rules. The Ground Rules required proposal in writing and state that no new topics can be submitted after the third negotiation session. The Board did not violate the Ground Rules. During the third proposal exchange dated September 21, 2009, the Board presented proposal No. 36 which stated, 'Work normally performed by bargaining unit members may be subcontracted when such subcontracting is in the best interest of the Board.' A true and corrected copy of Proposal No. 36 is attached as Exhibit 3. Te Union received this proposal and cannot now claim they were unaware of the issue. Additionally, the Union and many of its members have repeatedly made mention of their objection to the privatization and subcontracting issue in many public forums. In a newspaper interview, Local 287 President Robert Montuori accused the city o trying to intimidate workers and punish the union for opposing privatization. On June 24, 2010, custodians held a press event to launch the beginning of an anti-privatization campaign

and the Union put up eight billboards across town with the message: 'Privatization Equals Corruption.' At a press conference announcing the purchase of the billboards, Larry Dorman, a spokesman for AFSCME stated, 'We understand how serious the treat of privatization is and we intend to mobilize to stop it.' A true and corrected copy of article detailing these activities are (sic) attached as exhibit 4. The Union has not provided any evidence to show that privatization and subcontracting was never presented. The Ground Rules allow for presentation of an issue during any of the three rounds of proposals and the board abided by this rule. The Union also made repeated public statements regarding the privatization and subcontracting issue, they cannot now state that they had no knowledge of this issue. The Panel must find that issue 133a was presented to the Union in adherence with the Ground Rules and is arbitrable." (Footnote omitted.) (Board brief, dated December 16, 2009, pp. 5-7.)

After reviewing all of the information received, it appears that the question of arbitrability is moot because the Board of Education's last best offer does not use the word "privatize;" therefore, the last best offer of the Board is accepted as to Issue 133a. The Board appointed Arbitrator agrees with the Neutral Arbitrator and the Union appointed Panel Member dissents.

Issue 133b – Article 32, Section 3

The Board of Education stated: "Under the Union's proposal, the Board would be prohibited from subcontracting or privatizing bargaining unit work beyond what has historically been done. The language would of course be unnecessary as that is the current state of the law as embodied in City of New Britain , SBLR Dec. 3290 (1995). The Union's LBO would actually take away rights the Board has under the current contract language. It has, however, failed to present any evidence to support his (sic) position. To the contrary, the weight of the evidence, including, but not limited to that on the ability to pay, proves that he Board needs more, not less, flexibility to outsource work where it can be performed more economically by doing so. On the other hand, the Board's LBO provides that the Board may subcontract and privatize bargaining unit work, but only so long as it maintains staffing levels established by way of its LBO on Issue #121A. This language, once again, comes directly out of the Settlement Agreement reached by the Parties on August 1, 2011. Accordingly, the Board's LBO on Issue #133B is also supported by the bargaining history. C.G.S. §7-473c(d)(9)(A). Finally, adoption of the Union's LBO on Issue #133B would give rise to conflicting language were the Panel to award the Board's LBO on Issue #121A, which, as per the Settlement Agreement, would permit the Board the right to subcontract all work other than basic cleaning and the work of drivers." (Board brief, pp. 38-39.)

The Union has stated: "In the public and private sector, subcontracting and privatization of jobs has always been a difficult issue for union. The employer's motivation is almost always to save money, and while that is not inherently bad, It is frequently done without regard to the damage it may do to individuals and, in many

instances, whole communities, nor is the frequent result of a diminution of the quality of the work adequately considered – if at all. The City cannot reasonably claim that the quality of life for the displaced workers, whether or not they end up as employees, will be even remotely preserved. The question this raises is both relevant and important. It is fatuous to presume that a corporate employer will provide anything remotely close to what employees currently earn: a low but survivable living for them and their families. Unlike municipalities, corporations are, if anything, bound to *lower* the quality of their jobs. . . . As previously noted, the language the Union seeks to preserve is by no means unique. In fact, among Connecticut;' major cities, it is closer to commonplace. Clearly, criterion D, "the existing conditions of employment of the employee group and those of similar groups" has been satisfied. But to those familiar with the complexities of the interest arbitration process, know that often one criterion is of overreaching importance. That is the case here. In making its decision the Arbitration Panel is obliged to 'give priority to the public interest and financial capability of the municipality' and further consider five other criteria, including criterion B, "the interests and welfare of the employee group.' As to this issue, we assert that the public interest is best served by protecting the interests and welfare of the employee group. It is of overreaching importance. . . . Testimony of several witnesses reveals the City's longstanding predilection for subcontracting, so it was no surprise that the existing contract language to control it. The language is necessary and has the potential to foster good labor relations. It's (sic) existence in the contract has the salutary effect of encouraging the City to closely examine the value of subcontracting from a broad meaningful prospective, rather than from a simple, often misleading, price comparison that ignores

continuing costs and harmful side effects. The evidence strongly suggest that the City seeks to eliminate this language entirely because it does not want dialog or compromise; it seeks hegemony. That is precisely what the absence of language will accomplish. The tense climate surrounding these negotiations is not because of the language; it is because of the City's demand to escape the restraints of a clause the (sic) forces the City to justify it's (sic) action. Without this provision justification of subcontracting becomes superfluous. In Connecticut without contract language that controls subcontracting the likelihood of meaningful examination of the benefits and harm caused by subcontracting is remote. . . . The evidence of the damage subcontracting of the bargaining unit work will do to the lives of the workers is well established in the record, but aside from pay cuts, no persuasive evidence has been offered regarding the level of service that the replacements will provide. The City makes much of contractual terms it claims are troublesome, but there is no evidence of any real effort on the City's part to win changes or modifications at the bargaining table. To the contrary, the mayor testified that during his long tenure, over fifty Board of Education contracts were settled at the table; only three by interest arbitration. Transcript, May 4, 2011 @26. Clearly, the City did not fight for changes in language. Now, as an example, it uses that language – which *it badly claims* without support to be a problem – as a justification for subcontracting. Board 17, p. 23. Then, in this difficult but limited period of financial difficulty, the City chose to seek the elimination of the bargaining in its entirety. In its rush to accomplish its task, it has left out key areas of inquiry. We have identified its utter disregard for the union members whose lives will be

massively disrupted, but there is another that, in their zeal, apparently escaped notice: the children." (Union brief, pp. 27-31, 34-35.)

After reviewing all of the information received, the Board of Education's last best offer has struck a compromise, which protects a majority of the Union members and creates flexibility to manage the custodial staff in an efficient and cost saving manner. Therefore, in light of the statutory criteria, the last best offer of the Board for Issue 133b is accepted. The Board appointed Arbitrator agrees with the Neutral Arbitrator, based upon the same statutory criteria, and the Union appointed Panel Member dissents on the selection of the last best offer of the Board based on the same statutory criteria.

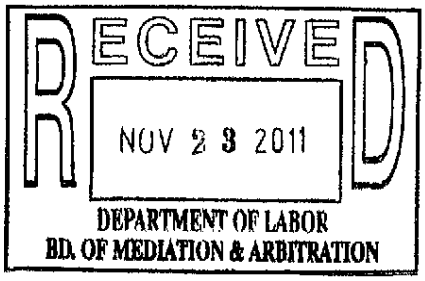
In the Matter of the Arbitration Between:

NEW HAVEN BOARD OF EDUCATION
-and-
LOCAL 287 of COUNCIL 4, AFSCME, AFL-CIO (Custodians)

M. Jackson Webber, Esquire

John Romanow, Esquire

Kevin M. Murphy



Issue #2a
Article 3, Section 2
Paragraph #22
No Lay Off Clause

The Board's Last Best Offer as to Issue No. 2a is:

> "Once the agreed upon staffing level pursuant to Article 21, Section 2, has been met, no member of the bargaining unit shall be laid off from employment between the signing of this agreement and the end of FY 2012-13."

Issue #6
Article 5, Section 1
Paragraph #26
Training

The Board's Last Best Offer as to Issue No. 6 is:

No Such Language

Issue #11
Article 5, Section 4
Paragraph #28
Bid Meetings

The Board's Last Best Offer as to Issue No. 11 is:

No Such Language

Issue #13
Article 7, Section 2
Paragraph #34
Vacation Allotment

The Board's Last Best Offer as to Issue No. 13 is:

> "(c) Any employee hired on or after the date of issuance of the award in case number 2010-MBA-116 shall be required to complete 20 years of continuous service before receiving 20 working days of paid vacation."

Issue #14
Article 7, Section 2
Paragraph #35
Vacation Allotment

The Board's Last Best Offer as to Issue No. 14 is:

> "(d) All full-time employees hired prior to the date of the issuance of award in case number 2010-MBA-116, regularly scheduled to work and who have worked, and completed 20 years or more of continuous service shall receive 25 working days vacation."

Issue #77c
Article 20
Paragraph #157
Wage Increases

The Board's Last Best Offer as to Issue No. 77c is:

"one and three-quarters (1.75%) percent"

Issue #87
Article 22, Section 1
Paragraph #161
Shift Differential

The Board's Last Best Offer as to Issue No. 87 is:

No Such Language

Issue #88
Article 22, Section 2
Paragraph #162
Shift Differential

The Board's Last Best Offer as to Issue No. 88 is:

No Such Language

Issue #101a
Article 25, Section 5
Paragraph #183
Overtime for Special projects

The Board's Last Best Offer as to Issue No. 101a is:

No Such Language

Issue #101b
Article 25, Section 5
Paragraph #183
Overtime for Special Projects

The Board's Last Best Offer as to Issue No. 101b is:

No Such Language

Issue #102
Article 25, Section 5
Paragraph #184
Overtime – Equitable Distribution Within a School

The Board's Last Best Offer as to Issue No. 102 is:

No Such Language

Issue #103
Article 25, Section 5
Paragraph #185
Overtime – Annual Assignment List

The Board's Last Best Offer as to Issue No. 103 is:

No Such Language

Issue #121A
Article 30, Section 2
Paragraph #196
Special Provisions – Staffing Plan

The Board's Last Best Offer as to Issue No. 121A is:

No later than December 31, 2011, the number of bargaining unit members shall be reduced from the current number to not more than one hundred and thirty (130). No later than July 1, 2012, the number of bargaining unit members shall be reduced further to one hundred (100), as follows: Building Managers-39; Assistant Building Managers-38; Truck Drivers-11; and Floaters-12. Building Manager and Assistant Building Manager positions shall be as follows:

STAFFING

#	BUILDING	Bldg.Mgr Days	Asst Bldg. Mgr. Nights
1	Barnard Magnet School	1	1
2	Bassett, Lincoln School	1	1
3	Beecher, L.W. School	1	1
4	Brennan, Katherine School	1	1
5	Celentano Museum Academy	1	1
6	Central Kitchen Facility	0	1
7	Clemente ,Roberto	1	1
8	Clinton Avenue School	1	1
9	Columbus, Christopher	1	1
10	Conte, Harry	1	1
11	Cooperative Arts & Humanities	1	1
12	Cross, Wilbur High School	0	0
13	Daniels, John School	1	1
14	Davis School	1	1
15	East Rock Magnet School	1	0
16	Edgewood Magnet School	1	1
17	Fair Haven School	1	1
18	Field house (Hillhouse HS)	0	0
19	Goffe Street Swing Space	1	1
20	Hale, Nathan School	1	1
21	Hallock Swing	1	1
22	High School in the Community	1	1
23	Hill Central (New)	0	0
24	Hill Regional Career High School	0	0
25	Hillhouse, James High School	0	0
26	Hooker, School	1	1
27	Hooker, Worthington School	1	1
28	Jepson, Benjamin Magnet School	1	1
29	King/Robinson Magnet School	0	0
30	Lexington Ave Swing (Hill Central)	1	1
31	Martinez, John S. School	1	1

32	Mauro, Sheridan School	1	1
33	Metro Business Academy	1	1
34	New Haven Academy	1	1
35	Orchard Swing	1	0
36	Polly McCabe Center	0	0
37	Quinnipiac Ave Swing (Hill Cent)	1	1
38	Rogers, Clarence School	1	1
39	Ross, Betsy Arts Magnet School	1	1
40	Ross/Woodward School	1	1
41	Sound School (Anderson Building)	0	0
42	Sound School (Aquaculture Center)	0	0
43	Sound School (Emerson Building)	1	1
44	Sound School (McNeil Building)	0	0
45	Sound School (Thomas Building)	0	0
46	Strong - Columbus	1	1
47	Troup Magnet Academy of Science	1	1
48	Truman School	1	1
49	Valley/Micro Society	1	1
50	Wexler/Grant Community School	1	1
51	Woods, Bishop	1	1

In the event these staffing levels are not met by attrition and/or early retirement incentives, the number of bargaining unit members which exceed the above mentioned staffing levels shall be laid off. Employees will be selected for layoff based on their two year history of attendance and discipline. In the event employees have similar attendance and disciplinary records, seniority shall control. The Union shall have the right to object to the Board's selection of employee(s) to be laid off based on the above criteria. In the case of a dispute, the Parties shall meet to discuss with deference given to the Union's application of the above criteria. The decision shall not be subject to the contractual grievance procedure.

Issue #121B
Article 30, Section 2
Paragraph #196
Special Provisions – Buyout

The Board's Last Best Offer as to Issue No. 121B is:

Employees who make an election to do so by December 1, 2011 on Forms provided by the Board, and who in fact retire or otherwise voluntarily terminate their employment with the Board between the date that the award in case number 2010-MBA-116 is issued and December 31, 2011, shall be eligible for the following Early Retirement/Severance benefits:

a. Employees with more than thirty (30) years of service and who have reached the contractual rule of eighty (80), and employees who will attain thirty (30) years of service by applying a sick leave buyback with 30 days of sick days equaling 1 year of service, shall receive an additional retirement benefit of $20,000.00 for exercising their right to retire under this Early Retirement/Separation Package. This additional retirement benefit shall be paid in a lump sum within 45 days of retirement. In addition, at the employee's option he/she may be issued an IRS Form 1099R related to the additional retirement benefit.

b. Employees who can utilize the above referenced sick leave buyback shall be entitled to the addition of up to five (5) years of service added to their pension calculation in order to reach the Rule of Eighty (80) for exercising their right to retire under this Early Retirement Package.

c. Employees who can utilize the above referenced sick leave buyback plus the addition of up to five (5) years of service added to their pension calculation in order to reach the Rule of Seventy (70) with no early retirement penalty.

d. Any employee not eligible for the above with less than ten (10) years of service shall receive a payment of $20,000 if they elect to resign under this Early Retirement/Separation Package.

e. Employees shall not be permitted to utilize any sick leave buyback time or the granting of any time by the City to move from an unvested to a conditionally vested status.

f. Any employee taking advantage of the Early Retirement/Separation Package shall sign a general release of claims against the New Haven Board of Education and the City of New Haven.

Issue #122
Article 30, Section 3
Paragraph #196
Special Provisions – Seasonal Employees

The Board's Last Best Offer as to Issue No. 122 is:

"Seasonal employees may be utilized to assist the workforce."

Issue #133a
Article 32, Section 3
Paragraph #209
Arbitrability of Issue 133a - Arbitrability

The Board's Last Best Offer as to Issue No. 133a is:

"The matter is arbitrable"

Issue #133b
Article 32, Section 3
Paragraph #209
Privatization

The Board's Last Best Offer as to Issue No. 133b is:

> "So long as the Board maintains at least one Building Manager and one Assistant Building Manager in each open building owned by the Board, and operated as a school, as well as at least 11 Drivers and 12 Floaters, the Board in its discretion shall have the right to establish contracts and/or subcontracts with outside vendors to perform bargaining unit work."

Issue No.: 2 A

NO LAY-OFF CLAUSE

Upon the issuance of the Aware in Case Number 2010-MBA-116 and for the duration of the Agreement between the parties, there shall be no lay-off of bargaining unit employees.

Issue No.: 6

TRAINING

Training for Head Custodian, Crew Leader (Day or Night) and engineering positions shall be provided by the Board at not cost to the employee. All employees who volunteer for such training shall be enrolled in the training course(s); provided, however, that all employees occupying such positions as of April 1, 1996, shall be required to take the applicable training course(s) until they successfully complete the course(s). Employees who are required to take training shall be paid for all course hours; employees who volunteer for such training so that they may qualify for promotional opportunities shall only be paid for such course hours as take place during their regular working time.

Issue No.: 11

BID MEETINGS

The Board shall call an open bid meeting at least once each six (6) months if a vacancy exists.

Issue No.: 13

VACATION ALLOTMENT

All full-time employees regularly scheduled to work twelve (12) months during each fiscal year and who have worked and completed fifteen (15) years or more of continuous service shall, receive twenty (20) working days paid vacation.

Issue No.: 14

VACATION ALLOTMENT

All full-time employees regularly scheduled to work twelve (12) months during each fiscal year and who have worked and completed twenty (20) years or more of continuous service, shall receive twenty-five (25) working days vacation.

Issue No.: 77 C

WAGE INCREASE, 2011 - 2012

Effective and retroactive to July 1, 2011, all wage rates in effect on June 30, 2011 shall be increased by two percent (2%).

Issue No.: 87

HOURS OF WORK – SHIFT DIFFERENTIAL

The differential for employees regularly assigned to the second shift shall be fifty cents (.50¢) per hour. The differential for employees regularly assigned to the third shift shall be ninety cents (.90¢) per hour.

Issue No.: 88

HOURS OF WORK – SHIFT DIFFERENTIAL REQUIREMENTS

It is understood by the parties that the shift differentials above are only paid to employees regularly assigned to such shifts. Such differentials are not to be paid to employees working overtime from one shift to another, e.g., from the first (day) shift into the second (middle) shift. Further, such differentials will only be paid to employees who actually work the regularly assigned hours for the second and third shifts.

Issues No.: 101A and B

OVERTIME FOR SPECIAL PROJECTS

Overtime assignments, for landscaping and snow removal or other special projects, shall be made by the Director of Personnel Labor Relations or his/her designate and shall be made solely on the basis of assigning those employees who, in the opinion of the Director of Personnel Labor Relations or his/her designate, are most able to effectively and efficiently perform such work.

Issue No.: 102

OVERTIME EQUITABLE DISTRIBUTION

Overtime hours worked on such assignments shall be computed and used in determining equitable distribution of overtime within a school.

Issue No.: 103

ANNUAL OVERTIME LIST

Once each year, a memorandum will be posted by the Director of Personnel and Labor Relations or his/her designate so that employees who would like to be considered for such assignments may make their wishes known.

Issue No.: 121 A

STAFFING

No such language.

Issue No.: 121 B

BUYOUT

No such language.

Issue No.: 122

SPECIAL PROVISIONS – SEASONAL EMPLOYEES

Seasonal employees may be utilized to assist the workforce from close of one school year to the commencement of the next school year.

Issue No.: 133a

ARBITRABILITY

The matter is not arbitrable.

Issue No.: 133b

PRIVATIZATION

For the duration of this Agreement, the Board agrees that it shall not privatize or contract out the work normally performed by members of this bargaining unit; provided however, that this Section is not intended to change or alter in any way the past practice of the parties with regard to the use of outside vendors for the provision of services or any currently contracted out services.