

AGREEMENT

between

BUTLER COUNTY CLERK OF COURTS

and

LOCAL 3984, OHIO COUNCIL 8,

**AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO**

January 1, 2004, to December 31, 2006

* * * * *

Approved by the Butler County Board of Commissioners

Charles R. Furmon, President
Michael A. Fox, Vice President
Gregory V. Jolivette, Commissioner

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A G R E E M E N T

AGREEMENT made and entered into this 10th day of March, 2004, by and between **THE BUTLER COUNTY CLERK OF COURTS** (hereinafter called the “Clerk,” the “County,” the

“Employer,” or “Management”) and **LOCAL 3984, OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO** (hereinafter referred to as the “Union” or “AFSCME”) acting herein on behalf of the Employees of the Employer, as hereinafter defined, now employed and hereafter to be employed and collectively designated as the “Employees.”

WITNESSETH:

WHEREAS, the Employer recognizes the Union as the collective bargaining representative for the Employees covered by this Agreement as hereinafter provided; and

WHEREAS, it is the intent and purpose of the parties hereto that this Agreement protect against interruptions and interferences with services to the citizens of Butler County and to set forth herein their agreement covering wages, hours, and conditions of employment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

Recognition - The Collective Bargaining Unit

1. The Employer recognizes the Union, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, and the Local 3984, American Federation of State, County and Municipal Employees, AFL-CIO, as the sole and exclusive collective bargaining representative of the bargaining unit certified by the State Employment Relations Board in Case No. 93-REP-06-0115 as follows:

Included: All employees of the Title Division of the Butler County Clerk of Courts including all Deputy Clerks-Title Division and all Bookkeepers and Assistant Bookkeepers including Bookkeeper-Legal Division.

Excluded: All management level employees, professional employees, supervisors, students, and confidential employees as defined in the Act, including the Chief Deputy, Administrator, the Director of Personnel/Purchasing, Title Supervisor (3), Legal Division Supervisor and Assistant Supervisor (2), and the Administrative Assistant (one employee- confidential); and all employees performing a judicial function including all Deputy Clerks-Legal Division; and all seasonal and casual employees as determined by the State Employment Relations Board.

2. Whenever the word “Employee” is used in this Agreement, it shall be deemed to

mean the employees in the bargaining unit covered by the Agreement, as defined in Article I, Section 1 hereof.

ARTICLE II

Union Activity, Visitation, And Bulletin Boards

1. Upon reasonable notification to a Management representative on the premises, a nonemployee representative of the Union may have access to the Employer's premises for the purpose of conferring with Management, delegates of the Union, or Employees for the purpose of administering this Agreement, provided that the Employer's operation shall not be impaired.

2. The Employer shall provide one bulletin board in each of the work locations. These bulletin boards shall be used for the purpose of posting proper Union notices. The parties shall agree to the actual location of each board in each work facility. The Employer may remove any notice posted which attacks another employee, contains derogatory attacks upon the Employer or another organization, or contains comments regarding a candidate for public or union office.

3. No insignia which has not been authorized by the Employer shall be worn on an Employee's clothing in public areas or when meeting with persons outside the agency.

4. The Union agrees to provide the Employer with:

(a) The name, address, and telephone number of the professional staff member who will act as representative for the Union local; and

(b) The names, addresses, and positions held of the local president, vice president(s), secretary, and treasurer and each steward.

The Union further agrees to keep such lists current, and the Employer has no obligation to recognize or deal with any Union official or steward not so designated.

5. Employees, officers or stewards whose attendance is reasonably required at meetings

with Management scheduled, by agreement of the parties, during normal working hours shall lose no pay for that portion of the meeting occurring during the regularly scheduled work shift. Management retains the right to schedule meeting times outside normal working hours.

6. Rules governing the activity of the Union representatives are as follows:

(a) The Union agrees that no official of the Union (employee or nonemployee) shall interfere, interrupt, or disrupt the normal duties of other Employees unless authorized by this Agreement or with the express, prior approval of the Administration. The Union further agrees not to conduct Union business during working hours except to the extent authorized by the Agreement or with the express, prior approval of the Administration. Under this section, the Employer may, in his/her sole discretion, authorize one or more Employees limited release time to investigate and process grievances during working hours if such is not possible during nonduty hours.

(b) The Union shall not conduct Union activities in any work area without notifying the supervisor in charge of that area of the nature of the Union activity.

(c) The Union employee official or steward shall cease unauthorized Union activities immediately upon the request of the supervisor of the area in which Union activity is to be conducted or upon the request of the steward's immediate supervisor.

7. The Union shall select up to a total of five (5) Employees to serve as negotiating committee representatives.

8. When an Employee is entitled to representation under this Agreement or under Ohio law, the Employee may be represented by Union but is entitled to no other representation, notwithstanding any other provision of Ohio law.

ARTICLE III

Dues Deductions

1. The Employer shall make payroll deductions from the pay or wages of Employees upon submission of a signed check-off card for the Employee. Amounts deducted shall be remitted to Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, 6800 North High Street, Worthington, Ohio 43085. The Union shall advise the Employer, in writing, of the amounts to be deducted. The Union shall designate, in writing, the address where the monies shall be remitted.

2. The payroll deduction shall be made by the Employer bi-weekly. If an Employee has insufficient pay or wages to satisfy the amount to be deducted, the Employer will make successive deductions until the amount to be deducted has been satisfied. Monies deducted pursuant to the provisions of this section shall be remitted to the Union within fifteen (15) days of their deduction. Each remittance shall be accompanied by the following alphabetical lists:

(a) For Employees for which deductions were made, the name, address, and social security number of the employee, and amount deducted;

(b) The name of each Employee whose name has been dropped from the prior check-off list and the reasons for the omission.

3. The Union agrees that it will indemnify and hold the Employer harmless from any recovery of damages and expenses sustained by reason of any action taken under this Article. Further, the Union agrees to defend, indemnify, and hold harmless the Employer and its officials, employees, and agents from any and all claims, demands, suits, charges, or other forms of liability, monetary or otherwise, and for all legal costs, resulting from any claim of a failure of the Union to fulfill its duty to fairly represent all members of the bargaining unit pursuant to Section 4117.11(B)(6) of the Revised Code.

4. The Employer shall be relieved from making such “check-off” deductions upon:

- (a) termination of employment, or
- (b) transfer to a job other than one covered by the bargaining unit, or
- (c) layoff from work, or
- (d) an agreed leave of absence, or
- (e) written revocation of the check-off authorization by the Employee.

5. Effective June 1, 2001, an Employee who has authorized deduction of Union dues may only revoke the dues deduction during the thirty (30) to forty-five (45) day period prior to the expiration of the collective bargaining agreement with the Employer by the Employee giving written notice to the Union and the Employer with proof of service. The dues deduction shall continue after revocation of membership until thirty (30) days after receipt of said timely notice by the Union or the termination of any current collective bargaining agreement, whichever is later.

ARTICLE IV

Management Rights

1. Except as otherwise specifically provided in this Agreement, it shall be the Employer's sole and exclusive right and responsibility to:

- (a) determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy such as the functions and programs of the Employer, standards of services, its overall budget, including wages, utilization of technology, sub-contracting, and organizational structure;
- (b) direct, supervise, assign, reassign, schedule, evaluate, hire, suspend, discipline, demote, discharge, lay off, transfer, promote, or retain employees;
- (c) maintain and improve the efficiency and effectiveness of the Employer's operations;

(d) determine the overall methods, process, means, or personnel by which the Employer's operations are to be conducted;

(e) determine the adequacy of the work force, as well as to make, amend, and enforce work rules, regulations, standard operating policies and procedures;

(f) to determine the duties to be included in all job classifications;

(g) determine the overall mission of the Employer as a unit of government;

(h) effectively manage the work force; and

(i) take actions to carry out the mission of the Employer as a governmental unit.

2. It is agreed that the above listing of management rights shall not be deemed to exclude other proper functions not specifically listed herein traditionally exercised by the Employer.

3. Notwithstanding the provisions of Section 4117.08 of the Revised Code, during the term of this Agreement the Employer is not required to bargain on any subjects, including but not limited to those enumerated above, reserved to and retained by the Employer under this Article or the remainder of this Agreement. This provision does not relieve the Employer of the obligation to bargain with the Union with respect to any proposed modifications of this Agreement. The Union specifically waives any right it may have to impact or effects bargaining for the duration of this Agreement.

ARTICLE V

Subcontracting

1. The Employer agrees that prior to implementing any decision to subcontract work, the effect of which is to abolish positions or lay off Employees within the bargaining unit, the Employer shall meet, confer, and bargain with the Union regarding the decision, provided that the decision is motivated in substantial part by labor costs.

2. Regardless of the reason for any decision to subcontract work, the effect of which is to abolish positions or lay off Employees within the bargaining unit, the Employer agrees to meet, confer, and bargain with the Union with regard to the effects of such decision on the Employees.

3. If in the course of implementing a decision to subcontract work, the Employer transfers or reassigns an Employee to another classification or job assignment with the same or higher rate of pay, such transfer or reassignment shall not be considered a layoff within the meaning of this Agreement.

ARTICLE VI

Probationary Employees

1. Newly hired Employees shall be considered probationary for a period not to exceed one hundred twenty (120) calendar days as set forth and defined in the rules, regulations, policies, and procedures of the Employer. Employees retained by the Employer beyond the probationary period acquire seniority retroactive to the first day of reporting for work.

2. During the probationary period, the Employer may discharge, suspend, or reduce any probationary employee at will, and such discharge or other discipline shall not be subject to the grievance and arbitration procedure of this Agreement.

3. All promotions within the unit described in this Agreement shall be probationary for a period not to exceed one hundred twenty (120) calendar days. Prior to the expiration of the promotional probationary period, the Employer may demote the probationary employee to the position from which he or she was promoted, and such demotion shall not be subject to the grievance and arbitration provisions of this Agreement.

4. The period of any probationary period under Sections 1 and 3 may be extended, in the discretion of the Employer, for the period of the Employee's absences, when such absences, in the

aggregate, have exceeded five (5) business days.

ARTICLE VII

Seniority

1. Definition. Seniority shall be defined as the length of continuous service measured in years, months, and days that an Employee has accumulated since the last date of hire as a permanent, full-time Employee in the service of the Butler County Clerk of Courts.

2. Accrual.

(a) An Employee's seniority shall commence after the completion of the probationary period and shall be retroactive to the first day the Employee reported for work.

(b) Seniority shall accrue during a continuous authorized leave of absence without pay up to six (6) months or for the period of an approved maternity leave, provided that the Employee returns to work immediately following the expiration of such leave of absence or maternity leave; during a period of continuous layoff not to exceed six (6) months, if the Employee is recalled into employment; and during a sick leave without pay of up to six (6) months.

3. Loss of Seniority. Except as otherwise provided herein an Employee's seniority shall be lost and employment terminated when he or she:

(a) terminates voluntarily, unless the Employee returns to work within one (1) year of the date of termination and successfully completes the required probationary period for new hires;

(b) is discharged for just cause;

(c) exceeds an official leave of absence;

(d) is laid off for a period of more than two (2) years;

(e) fails to qualify for return from disability separation within eighteen (18) months after the expiration of the sick leave without pay.

(f) fails to notify the Employer of his or her intent to return to work on a recall from layoff as otherwise provided herein at Article XVII, Section 5.

4. Within thirty (30) calendar days of the approval of this Agreement by the Board of County Commissioners and the Union membership, the Employer shall provide the Local Union president and post at the main office and each of the branch offices a seniority roster listing each Employee and the date on which his or her seniority commences under this Article. Such list shall be updated, posted, and provided to the Local Union president during January of each succeeding calendar year of this Agreement. The Union or the Employee must notify the Administrator, in writing, of any alleged error in the seniority roster within thirty (30) calendar days of the posting or such claim of error is forever waived, and any waived claim of error may not be raised in subsequent postings.

5. Following the expiration of the thirty-day objection period in Section 4, the Employer shall provide the Local Union president with a copy of the final seniority roster with any corrections, and a copy of the corrected list shall be posted at the main office and each of the branch offices. The Union president may request a copy of the list at any time.

ARTICLE VIII

Performance Evaluation

1. The Employer shall endeavor to evaluate Employees in accordance with the following schedule:

(a) Probationary Employees -- once at the approximate midpoint of the probationary period and again prior to the end of the probationary period.

(b) Permanent Employees -- once annually, in January.

2. Nothing in Section 1 shall be construed to limit the Employer's right to order special evaluations, to remove an Employee serving in an initial probationary period, or to reduce an Employee serving in a promotional probationary period.

3. The Employee shall sign the evaluation form to indicate that he or she received and reviewed it. Above or below the space for signature on the form shall appear this legend: "Your signature indicates that you have received and reviewed the evaluation, but not necessarily agreement with its contents." The Employee being evaluated shall receive a copy of the evaluation at the time of review at no cost to the Employee.

4. An Employee may review with the Administrator an unsatisfactory evaluation, and have the right to make written objections to be included in his personnel file. Any request for a review meeting or written objection must be submitted within ten (10) calendar days from the Employee's receipt of the evaluation. The Employee may have a Union representative present at this meeting.

5. The provisions of this Article supersede all provisions of the Revised Code and the rules of the Ohio Department of Administrative Services regarding performance evaluations.

ARTICLE IX

No Discrimination

1. Neither the Employer nor the Union shall discriminate against or in favor of any Employee in a manner which would violate applicable law on account of race, color, religion, creed, national origin, sex, age, or disability. The Union and the Employer shall share equally the responsibility for implementing this Article of the Agreement.

2. Words used in this Agreement in the masculine gender will be read and construed in

the feminine gender as well.

3. Neither the Union nor the Employer shall discriminate against or in favor of any Employee because of his or her membership or non-membership in the Union. Further, the Employer agrees not to discriminate against any Employee because of that Employee's activity as an officer, steward, representative, or in another capacity on behalf of the Union.

4. The Americans with Disabilities Act of 1990 (the "ADA") requires the Employer and the Union to remove all barriers to the employment of qualified individuals with disabilities and to reasonably accommodate disabilities unless such accommodation would result in an undue hardship. Accordingly, notwithstanding the other provisions of this Agreement, the Employer may undertake any action required in order to secure compliance with the ADA or to reasonably accommodate a person with a disability, including but not limited to the restructuring of positions, modification of hours or location of work, reassignment or transfer of an employee, reallocation of duties, modification of leave policies, or any other form of reasonable accommodation.

ARTICLE X

Classifications

1. The Employer shall provide to the Union a copy of all current classification specifications and position descriptions that have been or may be developed by the County. The Employer is hereby designated as the issuing agency for classification specifications for classifications within the bargaining unit.

2. In the event the Employer creates a new classification, the Employer agrees to meet and bargain with the Union with regard to:

- (a) whether the classification is within or excluded from the bargaining unit; and
- (b) if the classification is within the bargaining unit, the rate of pay and hours of

work of such classification.

3. In the event the Employer changes classification specifications, the Employer agrees to meet and bargain with the Union with regard to the pay of that classification. If the parties are not able to agree on the rate of pay, the Employer shall set the rate of pay; provided, however, that the Union shall have recourse through the grievance and arbitration procedure to challenge the Employer's determination. In any such grievance or arbitration proceeding, the Union shall bear the burden of proof to show that the Employer's decision was for arbitrary or capricious reasons.

4. The Employer agrees to meet and bargain with the Union regarding any change in a position description of a current Employee that would result in the reassignment of that current Employee's position to another classification. Further, an Employee whose position description has been substantially amended, but whose classification has not changed, may request a meeting with the Administrator, accompanied by Union representatives if desired, to discuss concerns relating to this change.

ARTICLE XI

Job Audits

1. Upon request of the Employee or the Employer, the Personnel Office shall conduct a job audit to determine whether the Employee is properly classified. The Employee shall provide all necessary information to the Personnel Officer regarding the job audit.

2. Within thirty (30) working days of receipt of the information, the Personnel Officer shall determine if the Employee should be reclassified. In the event of reassignment to a classification in a higher pay range, the Employee shall be reassigned to the base rate of the new classification or the pay step representing at least four percent (4%) increase over the Employee's prior rate of pay, whichever is higher. In the event of reassignment to a classification having the

same pay range as the Employee's current classification, no increase will be received. Job audit reviews are subject to the Grievance Procedure.

ARTICLE XII

Job Postings

1. When a vacancy occurs, the Employer shall post for ten (10) calendar days a notice of the opening stating the job classification, a description of the job duties and minimum qualifications, the hours of work and workweek assigned to the position, the rate of pay, the location and person to whom applications must be made, the date of posting, and the final date on which applications will be accepted. The Employer shall provide a copy of this posting to the Local Union president.

2. Employees who wish to be considered for the posted job must file written application with the Employer by the end of the posting period.

3. The Employer will decide, in its sole discretion, when a vacancy exists and whether to reassign an Employee within a classification prior to filling the vacancy. The bidding procedure as described herein shall only apply to bargaining unit vacancies.

4. The applications timely filed will be reviewed by the Employer. The Employer shall make the selection for bargaining unit positions on the basis of skill, experience, performance, and the ability to perform the work in question. If, in the judgment of the Employer, the skill, experience, performance, and ability to perform the work of two (2) or more applicants are equal, seniority shall govern, subject to the grievance and arbitration provisions of Section 6 of this Article. The Employer shall post a notice of the person selected after the position has been filled.

5. The Employer shall determine whether those applicants who are currently employed are qualified, pursuant to the criteria of Section 4, before considering outside applications. An Employee who is not selected for a position shall be so notified prior to the consideration of outside

applicants. The Employer may consider outside applicants for positions for which no currently employed applicant is qualified pursuant to the criteria of Section 4.

6. The Union shall have recourse through the grievance and arbitration procedure to challenge an Employer's selection to fill a vacancy not in compliance with this Article. In any such grievance or arbitration proceeding, the burden shall be on the Union to show by clear and convincing evidence that the Employer's decision was for arbitrary or capricious reasons.

7. The Employer shall have the right to fill a position, and make transfers on a temporary basis until such time as the selection of a permanent employee is made to fill the position, subject to the provisions of Article XXIII regarding temporary reassignments.

8. The Employer shall not accept applications from Employees still serving an initial probationary period.

9. The foregoing provisions on promotions and the filling of vacant positions are intended to supersede all otherwise applicable provisions for public employees in the Ohio Revised Code and/or the rules of the Ohio Department of Administrative Services (ODAS), relative to transfers, promotions and the filling of vacant positions, including any requirement for civil-service testing for non-original appointments.

ARTICLE XIII

No Strike or Lockout

1. No Employee, during the term of this Agreement, shall engage in any strike, sympathy strike, slowdown, sit-down, cessation, stoppage, refusal to perform work, or any other interference with the work and statutory functions or obligations of the Employer.

2. Neither the Union or its officers or agents shall in any way authorize, institute, aid, condone, or participate in any strike, sympathy strike, slowdown, sit-down, sit-in, cessation,

stoppage, refusal to perform, or any other interference with the work and statutory functions or obligations of the Employer.

3. In addition to any other liability, remedy, or right provided by applicable law or statute, should a strike, sympathy strike, slowdown, sit-down, sit-in, cessation, stoppage, refusal to perform work, or other interference as stated above occur, the Union, within twenty-four (24) hours of a request by the Employer, shall:

- (a) publicly disavow such action by the Employees;
- (b) advise the Employer in writing that such action by Employees has not been caused or sanctioned by the Union;
- (c) notify Employees, including its local officers and representatives, of its disapproval of such action and instruct such Employees to cease action and return to work immediately;
- (d) post notices on Union bulletin boards advising that it disapproves of such action and instructing Employees to return to work immediately;

4. The Employer agrees that it will not lock out Employees during the term of this Agreement, and the Union and Employees agree that no picketing or handbilling against the Employer will occur during the term of this Agreement.

5. In addition to any other rights or remedies provided by law, the Employer may discharge or otherwise discipline an Employee, subject to the grievance and arbitration procedure of this Agreement, for a violation of his or her obligation under this Article.

6. Nothing contained herein shall preclude the Employer from obtaining judicial restraint and damages in the event of a violation of this Article.

ARTICLE XIV

Discharge and Discipline

1. The Employer shall have the right to discharge, reduce, suspend, or discipline any Employee for just cause.

2. In the event of a suspension, reduction, or discharge, the grievance and arbitration procedures of this Agreement shall be applicable.

3. With respect to all written disciplinary matters, the Employer will notify the Employee, in writing, within a reasonable period of time of any discharge, reduction, suspension, or written reprimand. If the Union desires to contest a suspension, reduction, or discharge it shall give written notice thereof to the Employer within a period not to exceed seven (7) calendar days from the date of the above notice. This written notice shall be included in the Employee's personnel file, together with any subsequent decisions under the grievance and arbitration procedures. In the event that such a Union notice is timely filed, the dispute shall be submitted and determined under the grievance and arbitration procedures hereinafter set forth, commencing at step 3 of the grievance procedure and the Clerk of Courts may limit the scope of such proceedings as provided in Article XV, Section 7 of this Agreement.

4. When a written reprimand is issued, the Employee shall sign to indicate receipt of the reprimand, and above the Employee's signature, the reprimand shall contain this legend: "The Employee's signature indicates receipt but not necessarily agreement with the contents of this written reprimand." If an Employee disputes a written reprimand, he or she may submit a written response or rebuttal, which shall be included in the Employee's personnel file. In addition, the Employee may request a meeting with the Clerk of Courts or his designee to review the reprimand and to present information and witnesses supporting the Employee's position, and if the Employee desires, he or she may be accompanied by a Union representative at this meeting. Following this meeting, the Clerk of Courts shall issue a final, written disposition on the reprimand determining

whether the reprimand is retained as written, modified, or removed from the Employee's personnel file, and no verbal or written reprimand is subject to the grievance and arbitration procedures of this Agreement. Any written rebuttal or request for a meeting to discuss a written reprimand must be submitted within ten (10) calendar days of the Employee's receipt of the reprimand.

5. An Employee who has been absent from work for a scheduled shift (other than vacation or an approved leave of absence which are covered by other Articles herein) must notify the Employer within one-half (½) hour of the scheduled starting time and, upon the request of the Employer, must furnish satisfactory proof justifying the reason for the absence or be subject to disciplinary action.

6. Prior to the discharge, reduction, or suspension of any Employee who has completed his or her probationary period, the Employer shall provide the Employee with written notice of the charges against him or her, an explanation of the Employer's evidence, and an opportunity to present a response to the charges. The Clerk of Courts or his designee shall conduct this predisciplinary hearing. If, in the Employer's judgment, the presence of the Employee pending the predisciplinary hearing might create disturbance or disruption in the workplace, the Employer may place the Employee on suspension, with or without pay, pending the outcome of the hearing. The Employee may be represented in a predisciplinary hearing pursuant to Article XV, Section 9 of this Agreement.

7. Following the discharge of an Employee, the Employer shall request the Auditor to issue a warrant, in the next subsequent pay period, to the Employee for all wages and other compensation earned and due the Employee, less any deduction for County property withheld or debts pursuant to law or this Agreement.

ARTICLE XV

Grievance Procedure

1. A grievance shall be defined as a dispute or complaint arising between the parties

hereto under this Agreement or the interpretation, application, performance, termination, or any breach thereof. Furthermore, this procedure is intended to supersede all provisions in the Ohio Revised Code, the Rules of the Ohio Department of Administrative Services and the State Personnel Board of Review regarding any and all matters subject to the Grievance and Disciplinary Procedures of this contract or otherwise made subject to this Agreement.

2. All grievances must be in writing and must contain the following information to be considered:

- (a) the grievant's name and signature;
- (b) the grievant's classification;
- (c) the date the grievance was first discussed at the Informal Step;
- (d) the name of the supervisor with whom the grievance was discussed at the Informal Step;
- (e) as much information as possible regarding the events giving rise to the grievance, including the date and time, to the extent possible, that such events occurred;
- (f) the specific provisions of the Agreement alleged to have been violated; and
- (g) the remedy sought to resolve the grievance.

3. A grievance shall be processed and disposed of in the following manner:

Informal Step: Prior to reducing any grievance to writing pursuant to Step 1, the grievant shall discuss the subject of the grievance with his or her immediate supervisor and attempt to resolve the matter informally. The Employee may request that a steward or the Local President be present during this discussion.

Step 1: Within a reasonable time, not to exceed ten (10) calendar days following the date on which the Employee knew or should have known of the occurrence, an Employee having a grievance or his or her Union representative shall put the grievance in writing and take it to the Employee's

immediate supervisor. The Employer shall give its answer to the Employee or his Union representative within ten (10) calendar days after the presentation of the grievance in Step 1. Within this twenty (20) calendar day period, the Employee is encouraged to continue to seek to resolve the grievance on an informal basis.

Step 2: If the grievance is not settled in Step 1, the grievance may, within seven (7) calendar days after the answer in Step 1, be presented in Step 2 in writing to the Administrator, or her designee. The Administrator may schedule a meeting with the supervisor, the Employee, and their representatives, if any, to discuss the grievance. A grievance so presented in Step 2 shall be answered by the Employer in writing within seven (7) calendar days after its presentation or the meeting at which it is discussed, whichever is later.

Step 3: If the grievance is not settled in Step 2, the grievance may, within seven (7) calendar days after the answer in Step 2, be presented in Step 3 in writing to the Clerk of Courts, or his designee. At this time, representatives of the Union, including a representative of the Local Union, may be in attendance at a meeting where, if both parties agree, witnesses and evidence may be presented which may relate to a resolution of the grievance. A grievance so presented in Step 3 shall be answered by the Employer in writing within seven (7) calendar days of its presentation or the meeting at which it is heard, whichever is later.

Step 4: Within fifteen (15) calendar days of the Step 3 written response, either party may invoke arbitration pursuant to the procedures of Article XVI, Section 1 of this Agreement.

4. In the event no appeal of a grievance is taken within the time limits specified herein, including any extensions to which the parties agree under Section 6 of this Article, the grievance shall be deemed resolved and shall not thereafter be considered subject to the grievance and arbitration provisions of this Agreement.

5. Any grievance not answered by the Employer within the prescribed time limit,

including any agreed extensions, shall be considered to have been answered in the negative and may be advanced to the next step.

6. A time limit under this Article may be extended by the mutual agreement of both parties in writing.

7. The parties may agree to waive one or more steps in the grievance procedure and commence the grievance at a higher step. A grievance regarding a discharge, reduction, or suspension for disciplinary reasons shall commence at Step 3 of the grievance procedure, and after a pre-disciplinary hearing, the Clerk of Courts shall allow the parties to present, in writing or, if the parties agree, at a meeting, only those arguments or new evidence that supplements their presentations at the pre-disciplinary hearing.

8. Where a group of Employees desires to file a grievance involving a matter affecting several Employees in the same manner, the affected Employees shall select one Employee to process the grievance, and each Employee who desires to be included in the grievance shall so indicate by signing the grievance at Step 1.

9. At any step of this grievance procedure, any pre-disciplinary hearing, or investigatory interview in which the Employee is the target of potential disciplinary action, the Employee may choose to be assisted by a Union representative, subject to the provisions of Section 4117.03(A)(5) of the Revised Code. An Employee electing not to be represented by the Union is not entitled to other representation.

10. An Employee serving in an initial probationary period shall not be entitled to use the grievance and arbitration procedure for any purpose.

11. The Union may withdraw a grievance at any time or during any step of the grievance procedure, subject to the other provisions of this Article.

ARTICLE XVI

Arbitration

1. A grievance as defined in Article XV which has not been resolved thereunder may, within thirty (30) calendar days after the completion of Step 3 of the Grievance Procedure, be referred for arbitration by either party to this Agreement by directing a written demand therefore to the American Arbitration Association (AAA), with a copy of said notice to the other party. The arbitrator shall be selected from a panel of arbitrators furnished by AAA; provided, however, that the parties may agree in a particular case to request a list of arbitrators from the Federal Mediation and Conciliation Service (FMCS). The arbitration and selection of the arbitrator shall be conducted in conformity with AAA rules.

2. The fees and expenses of the arbitrator shall be borne equally by the parties. If a grievance is withdrawn from arbitration by the Union, the Employee, or the Employer prior to the arbitration hearing but after arbitration expenses have been incurred, such expenses shall be paid by the party withdrawing the grievance. If the grievance is settled by agreement of the parties after arbitration expenses have been incurred but prior to an arbitrator's award being issued, such expenses shall be shared equally by the Employer and the Union.

3. The arbitrator shall submit his or her decision in writing within thirty (30) calendar days of the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension.

4. The award of the arbitrator hereunder shall be final and binding on the Employer, the Union and the Employees.

5. The arbitrator shall not have the power to add to, subtract from or modify any of the terms of this Agreement. Furthermore, with regard to the Employer's right to promulgate work rules and regulations, operating policies, and procedures as set forth herein in the Article addressing

Management Rights, the Union or grievant shall not have recourse through the grievance and arbitration procedure to challenge the reasonableness or appropriateness of the Employer's work rules, regulations, operating policies, and procedures, provided that such work rules, regulations, operating policies or procedures do not violate or are not otherwise impermissible under this Agreement. This provision does not prevent an Employee disciplined by any such rule, regulation, or policy from grieving the application of that rule to his or her particular circumstances. If the arbitrator's decision awards the payment of back wages covering the period of the Employee's separation from the County's payroll, the amount so awarded shall be reduced by the amount of unemployment compensation or wages earned attributable to the period, from whatever source.

ARTICLE XVII

Layoffs

1. Grounds and Order of Layoff. The Employer shall determine whether layoffs or job abolishments are necessary for reasons including, but not limited to, lack of work, lack of funds, or reasons of economy or efficiency. A job abolishment shall mean the permanent deletion of a position from the organization structure of the Employer. If it is determined that layoffs or job abolishments are necessary, Employees will be laid off in the following order:

- (a) Temporary Employees;
- (b) Intermittent and Seasonal Employees;
- (c) Probationary Employees;
- (d) Permanent part-time Employees who have completed their probationary periods; and
- (e) Employees by classification in order of inverse seniority and their present ability to perform the remaining work available.

2. Notice. Employees who are subject to layoff or job abolishment shall be given notice

of the action, with the effective date of the action and reference to the recall and grievance procedures of this Agreement, in one of the following manners:

(a) The Employer shall send the notice by certified or registered mail at least fourteen (14) days prior to the effective date of the action to the Employee's last known address; or

(b) The Employer shall hand-deliver the notice at least ten (10) calendar days prior to the effective date of the action.

3. Bumping Rights. Employees may displace (bump) the least senior Employee in a lower classification in the same classification series provided that the Employee has more seniority than the Employee displaced and is presently qualified to perform the work. Classification series are set forth in Appendix 1 to this Agreement. Employees displaced pursuant to this provision may in turn displace less senior Employees in their classification, or if there are none, the least senior Employee remaining in a lower classification in the same classification series, provided the Employee has more seniority than the Employee displaced and he or she remains presently qualified to perform the work. This procedure shall continue successively until the last Employee in the lowest classification in the classification series has been reached and, if necessary, laid off.

4. Reassignment following Reduction in Force. The parties agree that a reduction in the work force within a classification may result in the reassignment of Employees to different job assignments within their respective classifications, and reassignment of hours and days of work, subject to the provisions of Article XXII of the Agreement (Hours of Work and Overtime).

5. Recall. An Employee who is laid off (including through job abolishment) shall be placed on a recall list for a period of two (2) years. If there is a recall, Employees on the recall list shall be recalled to the classification from which they were laid off or any lower classification in the same classification series, in the inverse order of their layoff, provided they are presently qualified to

perform the work in that classification. Employees who are eligible for recall shall be given fourteen (14) calendar days' notice of recall, and notice of recall shall be sent to the Employee by certified mail with a copy to the Union, provided that the Employee must notify the Employer of his or her intention to return within seven (7) calendar days after receiving notice of recall. The Employee shall report to work within fourteen (14) calendar days of the receipt of the notice of recall, or his or her recall rights are waived. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice by certified mail, return receipt requested, to the mailing address provided by the Employee, it being the obligation and responsibility of the Employee to provide the Employer with his/her latest mailing address.

6. In the event of a tie among two or more Employees with respect to the order of layoff or recall, the affected Employees shall draw lots, according to a mutually agreed procedure, to determine the order of layoff or recall.

7. An Employee or the Union may pursue through the grievance and arbitration procedure of this Agreement the application of or an alleged violation of this Article with regard to a particular layoff or job abolishment. In any such arbitration proceeding, the Arbitrator's jurisdiction shall be limited to determining whether the Employer has complied with the provisions of this Agreement governing layoffs and job abolishments, and the Arbitrator shall not have the power to determine the reasonableness or appropriateness of the Employer's decision to lay off or abolish positions.

8. The Employer shall provide the Union with a list of bargaining unit employees by classification and date of appointment to the classification.

9. The provisions of this Article shall be the sole and exclusive authority for the layoff, job abolishment, or recall of employees subject to this Agreement, notwithstanding any contrary provision of the Revised Code or rules of the Department of Administrative Services.

ARTICLE XVIII

Personnel Records

1. Within a reasonable time of a request, not to exceed three (3) business days, an Employee may inspect his or her personnel file, provided such requests have not been made with unreasonable frequency. The following requirements govern such requests:

(a) The Employee shall inspect the personnel file at a time mutually agreeable to the Employee and the Employer. With prior notification to the Employer, the Employee may have a representative present during such inspection. The Employee may designate, by presentation of a signed written authorization, a representative to inspect the Employee's personnel file in his or her place, subject to the other provisions of this Article.

(b) If the Employee objects to any item in the personnel file, he or she may provide written clarification or explanatory response for inclusion in the file.

(c) Employees may request copies of items in their personnel file subject to a reasonable copying charge imposed in the discretion of the Employer.

2. Employees shall receive a copy of any warnings, reprimands, orders of discipline, commendations, or performance evaluations placed in their personnel files after the effective date of this Agreement.

3. The Employer shall serve upon the Local Union President a copy of all written disciplinary actions issued against an Employee, as well as all written commendations the Employees receive.

4. Employees may have included in their personnel files any certifications, awards, or commendations that were earned whether from the agency or outside the agency. Any certifications, awards, or commendations shall not be removed from any Employee's personnel file without

permission from the affected Employee.

ARTICLE XIX

Labor Management Committee

1. Meetings will be scheduled at the request of either party (Union or the Employer) to discuss problems of concern of the parties in the Labor Management area. Meetings will not be held more frequently than every ninety (90) days, unless the parties agree otherwise.

2. The Labor Management Committee is to consist of no more than four (4) designated committee members and a Business Agent, from the Union, and no more than four (4) representatives appointed by the Employer.

3. Prior to the meeting, the party requesting the meeting shall submit a proposed agenda to the other party, and the Union shall notify the Employer of the bargaining unit Employees to attend, not to exceed four (4) Employees. The other party may also submit agenda items to be considered. The parties shall consider, in alternate order, the consecutively placed items from each list.

ARTICLE XX

Health & Safety

1. It is the responsibility of the Employer to provide reasonably safe working conditions in compliance with applicable requirements of federal and state law. It is the duty of the Employees to comply with all safety rules, regulations, and procedures promulgated by the Employer.

2. In the event an Employee believes that the physical facility, equipment, or furnishings are in an unsafe condition, he or she shall report the unsafe condition to the immediate supervisor, or, if the supervisor is unavailable, to the Chief Deputy of the Division, the Administrator, the Clerk of Courts, or other designee of the Clerk of Courts. The Employer shall determine what action shall

be taken in response to any claim under this Section, and endeavor to correct any unsafe working condition as soon as practicable. Failure of the Employer to correct an unsafe working condition shall be subject to the grievance procedure.

3. Employees shall promptly report all on the job or work related injuries to the Administrator, Chief Deputy, or Personnel Officer. Copies of these reports will be forwarded to the Union's president.

ARTICLE XXI

Emergency Evacuation Procedure

The Employer shall, in consultation with the appropriate safety authorities, establish properly planned emergency evacuation routes and procedures at all of its locations. Once established, notice of said routes and procedures shall be permanently and conspicuously be posted at each location, and appropriate emergency exit signs and arrows shall be erected. Emergency procedure drills shall be conducted.

ARTICLE XXII

Hours of Work and Overtime

1. The normal work week for Employees shall be thirty-five (35) hours per week. The seven-day work period, for overtime calculation purposes, shall commence on Thursday at 12:01 a.m. and conclude the following Wednesday at 12:00 midnight, or whatever other period is set by the Auditor's Office for payroll purposes.

2. The Employer shall set work schedules and starting times, which shall remain flexible based upon the needs of the Employer. The Employer may restructure the normal work day or work week for the purposes of promoting efficiency or improving services. If the proposed change is of a permanent nature, the Employer agrees to notify the Union and, upon the Union's request, meet and

bargain with the Union regarding the proposed change.

3. (a) An Employee whose hours worked, as defined by the Fair Labor Standards Act, total in excess of forty (40) hours in one work week, shall, at the option of the Employer, either be paid cash at one and one-half times his or her regular rate or receive compensatory time off on the basis of one and one-half hours off for each hour of overtime worked. An Employee whose hours worked in one work week exceed thirty-five (35) hours but do not exceed forty (40) hours shall be paid cash or receive compensatory time off, at the option of the Employer, at an hour-for-hour rate.

(b) In January of each year, the Employer shall request Employees to indicate if they are interested in receiving overtime assignments during the course of that year. This provision does not otherwise limit or restrict the Employer's rights regarding assignment of overtime.

(c) Compensatory time off will be allowed to be used within a reasonable time of the Employee's request for the time off, not to exceed forty-five (45) days, unless granting the request would unduly disrupt the operations of the Employer. No Employee shall be permitted to accrue more than two hundred forty (240) hours of unused compensatory time and any Employee who has accrued unused compensatory time to the two hundred forty- (240-) hour limit shall be paid in cash for additional overtime worked. Additionally, any compensatory time not used within one hundred eighty (180) days of the date of accrual may be converted to and paid as cash overtime at the Employer's option. If an Employee is paid in cash for accrued compensatory time, he or she shall be paid at the Employee's regular rate at the time of payment. Upon termination of employment, unused compensatory time shall be paid at the Employee's average regular rate for the last three (3) years of employment or the Employee's final regular rate, whichever is higher.

(d) It is the intention of the parties, for reasons of efficiency and economy, that the Employer be permitted to utilize work scheduling and compensatory time to minimize its overtime liability.

(e) This Article is intended to be used as the basis for computing overtime and shall not be construed to limit other rights granted to management in this Agreement.

4. With the prior approval of the Employee's supervisor, the Employee may use a flexible work schedule within a work week; provided that the Employee works a number of hours equivalent to his or her full work week and completes the required form. The supervisor may deny the request to adjust hours in his or her sole discretion, and the denial of such a request is not subject to the grievance and arbitration procedures of this Agreement.

ARTICLE XXIII

Temporary Reassignments

1. An Employee who is temporarily assigned to perform the duties of a classification with a pay rate higher than his or her own shall, after actually performing such duties for more than three (3) consecutive work days, be eligible for a temporary pay adjustment to the pay rate of the next higher pay step in the classification in which the work is performed or a pay rate representing at least a four percent (4%) increase over the Employee's prior rate of pay, whichever is higher.

2. After completion of more than three (3) consecutive days of work in the higher classification, the temporary pay adjustment shall be retroactive to the first day worked in the higher classification.

3. The three- (3-) day period provided in Sections 1 and 2 shall commence when the Employee is directed by his or her supervisor or the Administrator to assume the duties of the higher classification, except as the Administrator otherwise may designate.

4. An Employee will be considered to perform the duties of a higher classification when he or she performs substantially all of the duties of the classification for the entire shift.

5. In no event shall an Employee's pay be reduced in the event of a temporary reassignment. This section does not apply to a demotion, reduction, suspension, or layoff.

6. The Employer shall not schedule Employees for temporary reassignment in an arbitrary or capricious manner with the intent to evade the obligation to give Employees who perform the duties of a higher classification for more than three (3) consecutive work days the temporary pay adjustment provided in Section 1 of this Article.

7. Employees may voluntarily choose whether to accept or decline a temporary reassignment to a higher classification under this Article. Further, an Employee who has accepted a temporary reassignment may, with at least seven (7) calendar days' notice to the Employer, return to his or her regular classification if the Employee determines that he or she no longer wants to remain in the higher classification. The Employer shall request Employees at least once a year to indicate whether they are interested in temporary reassignments to a higher classification by so indicating in writing. Nothing in this Section prohibits the Employer from offering temporary reassignments to other Employees who are willing to accept such assignments, whether or not on the list. Further, this Section shall not be construed to limit the Employer's right to select Employees for temporary reassignments in the Employer's discretion.

ARTICLE XXIV

Mileage and Travel Reimbursement

1. In accordance with the travel reimbursement policy adopted by the Board of County Commissioners, Employees shall be reimbursed for actual miles traveled in the Employee's personal vehicle on official business at the rate of \$.30 per mile for the use of privately owned

automobiles or at the rate of \$.085 per mile for the use of privately owned motorcycles, or at such higher rate as (1) the Board of County Commissioners may adopt as part of such policy, or (2) as the Ohio Department of Administrative Services adopts for mileage compensation for state employees, whichever is higher. Travel between the Employee's home and work site is not generally reimbursable. Employees required to travel in their personal vehicles on a trip commencing before or after regularly scheduled work hours shall be reimbursed for mileage from the Employee's home or from the agency, whichever is less, to the approved destination and for the return trip.

2. Employees are not eligible for mileage reimbursement and may not drive private vehicles on official business unless the Employee possesses a valid operator's permit for the vehicle driven and the Employee carries motor-vehicle liability insurance pursuant to Ohio law. Employees must use safety belts provided at all times when driving or riding in a vehicle on official business.

3. When two (2) or more Employees are required to travel together in a personal vehicle, only one (1) Employee shall be eligible for mileage reimbursement pursuant to this Article.

4. Employees required to use commercial travel in the performance of official duties shall, with the prior approval of the Employer, be reimbursed for the cost of travel at the lowest available rate, in accordance with the County's travel reimbursement policy.

5. Employees shall be entitled to other travel and expense reimbursement provided pursuant to the policy adopted by the Board of County Commissioners.

ARTICLE XXV

Call-Out Pay and Reporting Pay

1. Call-out time shall be defined as work assigned by the Employer performed and completed at a time disconnected from the beginning or the end of Employee's normal hours of work. An Employee who works call-out time shall be paid for actual hours worked at the applicable

rate; provided, however, that in the event the Employee is required to respond in person at another location, the Employee shall receive no less than the equivalent of four (4) hours straight-time pay at the Employee's regular rate.

2. Employees shall not be entitled to a separate, four-hour guarantee of call-out pay for calls received during the four-hour period following the first call.

ARTICLE XXVI

Break Periods

The Employer shall provide two ten (10) minute break periods in each completed work shift for full-time Employees, to the extent practicable. The break period will be scheduled as authorized by the Employee's supervisor based upon the Employer's operational needs at the time. If possible, without adverse impact on operational needs, in the Employer's sole judgment, the rest period will be scheduled within a two (2) hour period in the middle of each half-shift. Breaks may not be scheduled adjacent to the Employee's lunch hour or the beginning or the end of the work day.

ARTICLE XXVII

Unpaid Leave

Employees shall be eligible for unpaid leave in accordance with the following:

1. **Pregnancy-Related Leave.**

(a) An employee may take accrued sick leave with pay for pregnancy, childbirth, and related medical conditions. In addition, the Employee may use any accrued vacation leave. Following exhaustion of accrued sick leave, the Employee may request sick leave without pay for pregnancy-related purposes ("pregnancy-related leave"). Sick leave with pay and pregnancy-related leave shall be used only for that period in which the Employee is

unable to perform the substantial and material duties of her position because of her pregnancy, recovery from childbirth, or related medical conditions, including reasonable pre-delivery, delivery, and recovery time, as certified by a licensed physician. Within thirty (30) days of the termination of pregnancy, the Employee shall provide a statement by her attending physician stating the period for which the Employee is unable to work and the projected date on which she will be able to return to work.

(b) Pregnancy-related leave without pay granted under subsection (a) for pregnancy, childbirth, and related medical conditions shall in no event exceed six (6) months. If the Employee is unable to return to work within six (6) months, the Employee shall be given a disability separation. Pregnancy-related leave without pay shall not include time requested for purposes of child care following the Employee's recovery from childbirth or other termination of the pregnancy.

(c) Any additional leave without pay for parental or child care purposes must be requested under the provisions of Section 3 below. All requests for leaves of absence without pay for purposes of child care shall be considered on a nondiscriminatory basis without regard to the sex of the Employee. An adoptive parent's request for leave of absence for purposes of child care shall be considered on the same basis as that of a biological parent under similar circumstances. The Employer retains the right to consider such requests in its discretion under Section 3, and may limit such leave to one of two parents.

2. Military Leave. Leaves of absence without pay, for the purpose of induction into duty with the United States Armed Forces or with a Reserve component thereof, shall be granted in accordance with applicable law.

3. Other Leaves. The Employer shall grant leaves of absence where required by the Family and Medical Leave Act of 1993, and the Union and the Employer agree to consider such

requests for leave in accordance with the Employer's FMLA Policy attached to the Agreement as Appendix 3. Leaves of absence without pay or benefits for other reasons, including but not limited to for purposes of child care, educational reasons, or attendance at Union conventions or functions or other service as a delegate or officer, may be granted at the sole discretion of the Employer; provided, however, with respect to unpaid Union leave, the Employer shall grant up to ten (10) total days per calendar year to Union officers or representatives selected by the Union for the purpose of attending official Union conventions or functions. Unpaid Union leave not used by the end of the calendar year shall not be carried over. Such leave must be requested, in writing, at least fourteen (14) days in advance. Furthermore, it is expressly understood that while the ten (10) days of unpaid Union leave is the aggregate amount for the entire bargaining unit, it may be split by two or more Union officers or representatives.

4. Seniority. When an Employee returns to work following a leave of absence, the Employee shall be returned to his or her former classification without loss of seniority.

5. Benefits. Benefits and insurance will not accrue during any period of unpaid leave except that during such leave of absence, upon the Employee's request, and subject to any conditions or requirements of the insurer, the Employer shall continue group health insurance coverage at the expense of the Employee to the extent required by federal law; provided further that the Board of County Commissioners shall continue group health insurance coverage in force, at the expense of the Employer, for the same period as is offered to other County employees generally, not to exceed the first ninety (90) days of a leave without pay.

6. Abuse of Leave. If the Employer becomes aware at any time during an unpaid leave that the leave is not being used for the purposes for which it was granted, the Employer may terminate the leave, order the Employee to return to work, and may take such disciplinary action as it may deem appropriate.

ARTICLE XXVIII

Holidays

1. (a) Employees shall be entitled to the following holidays as observed by the Employer:

- (1) New Year's Day
- (2) Martin Luther King's Birthday
- (3) Presidents' Day
- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Veterans Day
- (8) Thanksgiving Day
- (9) Day after Thanksgiving
- (10) Christmas Day

(b) In the event a scheduled holiday falls on a Saturday, it shall be observed on the preceding Friday; in the event it falls on a Sunday, the holiday shall be observed on the following Monday.

2. (a) In addition to the holidays specified in Section 1, full-time Employees shall receive three and one-half (3½) hours off at their regular rate of pay on the afternoons of Christmas Eve Day and New Year's Eve Day. Christmas Eve Day and New Year's Eve Day shall be observed on the business day preceding the day upon which the Christmas and New Year's Day holidays are observed, respectively.

(b) The Employer may, at its discretion, schedule all Employees to work the same

three and one-half (3½) hour shift on the morning of Christmas Eve Day and New Year's Eve Day, irrespective of individual work schedules.

3. In observance of the above holidays Employees will normally be scheduled off and paid their regular rate of pay for the holiday. However, if Employees covered by this Agreement are required to work on any of the above holidays, or the day observed as such, but not both, they will be given compensatory time off or cash at the appropriate rate, as provided in Article XXII (Hours of Work and Overtime).

4. If a holiday falls during an Employee's vacation, the holiday shall not be included in the calculation of vacation leave used.

5. An Employee, in order to receive holiday pay or compensatory time or other overtime compensation as set forth above, must be in active pay status and, if scheduled, work the day before and the day after the holiday unless absence from work is due to illness or injury, in which event a doctor's certificate shall be required. In addition to the doctor's certificate, in order for an Employee to receive holiday pay or compensatory time or other overtime compensation, who has been prevented from meeting the eligibility requirements because of illness or injury, such Employee must have worked at least one (1) scheduled work day in the five (5) calendar days immediately preceding the holiday.

ARTICLE XXIX

Vacations

1. Full-time Employees, after completion of their probationary period, shall be entitled to vacation time each year as follows:

(a) After completion of one (1) year of service with the Employer – two (2) weeks.

(b) After completion of eight (8) years' service with the Employer, the State of Ohio, or any political subdivision of the State – three (3) weeks.

(c) After completion of fifteen (15) years' service with the Employer, the State of Ohio, or any political subdivision of the State – four (4) weeks.

(d) After completion of twenty-five (25) years' service with the Employer, the State of Ohio, or any political subdivision of the State – five (5) weeks.

2. Notwithstanding the provisions of Section 1 of this Article, an Employee hired on or after July 5, 1987, shall only be able to count a maximum of eight (8) years of service credit with the State, or a political subdivision of the State other than Butler County or another Ohio county for purposes of vacation accrual. Any prior service time with Butler County or another Ohio county may be counted for purposes of vacation accrual irrespective of the date of hire.

3. Vacation is in addition to any recognized holidays as set forth in Article XXXVIII that may fall within an Employee's vacation period. If a holiday falls within an Employee's vacation period, the holiday shall not be counted against vacation time used.

4. (a) Following completion of the first year of employment, Employees shall accrue vacation leave in each biweekly pay period in which they are in active pay status at the following rate:

<u>Annual Rate</u>	<u>Biweekly Rate</u>
Two weeks	2.7 hours
Three weeks	4.04 hours
Four weeks	5.39 hours
Five weeks	6.73 Hours

(b) In any biweekly period in which a full-time Employee is in active pay status for fewer than seventy (70) hours, he or she shall accrue vacation at a pro-rata rate.

5. Vacation will be scheduled at the discretion of the Employer based on the staffing

requirements within the classification at the Employee's worksite. Vacation requests shall not be unreasonably denied. When two or more Employees request vacation leave and the Employer determines that not all the requests can be accommodated, scheduling shall be based on the Employee's seniority; provided, however, that the Employer is not required to alter or cancel the vacation already approved for an Employee because a more senior Employee has later requested vacation for the same period.

6. Vacation pay shall be based upon the Employee's regular pay in effect when the Employee starts his or her vacation. Vacation may be taken in minimum units of one-quarter ($\frac{1}{4}$) hour.

7. Vacation leave may be carried over for a period of up to two (2) years.

8. An Employee who retires, resigns, or has otherwise terminated his or her employment, and who has not been discharged for theft, falsification of records, destruction of Employer equipment, or mistreatment of customers, members of the public, or other employees, and who has not received the vacation pay to which he or she is entitled, shall receive said vacation pay at the next regular pay period.

9. In the case of the death of an Employee, the unused vacation leave and unpaid wages of the Employee shall be paid in the following order to:

- (a) The surviving spouse;
- (b) Any one or more of the Employee's children eighteen (18) years of age or older, in equal shares;
- (c) The father and mother of the Employee, in equal shares, or the survivor of them; or
- (d) The estate of the Employee.

ARTICLE XXX

Sick Leave

1. Employees will earn sick leave at the rate of four and twenty five-hundredths (4.025) hours per each completed seventy (70) hours in active pay status. Active pay status shall be defined as hours worked, hours on vacation leave, hours on holiday leave, hours on paid sick leave, hours of compensatory time off, and all other hours of authorized, paid leave. Sick leave shall be cumulative without limit. In any calendar year, however, the Employee shall not be paid for sick leave for short-term absences that exceed, in the aggregate, forty-two (42) hours during the year; unless the Employee has a sick-leave balance of at least one hundred seventy-five (175) hours. For purposes of this Article, "short-term absences" shall be defined to include any absence of less than three (3) work days, including partial days.

2. Pay for any sick leave shall be at the Employee's regular rate of pay.

3. Sick leave may be requested for the following purposes provided that the Employee has notified his or her supervisor or the supervisor's designee within one-half (½) hour of the scheduled starting time for each day of the Employee's absence:

(a) Illness or injury of the Employee;

(b) Serious illness or injury of immediate family members, pursuant to Section 5;

(c) Medical, dental, or optical examinations that cannot be scheduled outside normal working hours;

(d) Exposure of the Employee to a contagious disease, if, by reason of such exposure, the Employee's presence at work would pose a substantial risk of contagion and serious illness to coworkers;

(e) Pregnancy, childbirth, and related medical conditions, but only to the extent the Employee is rendered unable to work by reason of such condition;

(f) Death of a member of the Employee's immediate family, pursuant to Sections 10 and 11.

4. Upon request of the Employer, an Employee must furnish satisfactory proof of his or her sickness, illness, or disability before a day of sick leave is paid, including a physician's statement. In the case of an illness or injury for three (3) or more consecutive days, an Employee may not return for duty or be paid sick leave without a statement from the Employee's physician.

5. Sick leave may be granted, in an amount determined in the Employer's discretion, when an immediate family member suffers serious illness or injury requiring the Employee's presence at home. "Immediate family member" shall be defined as the spouse, child, stepchild, brother, sister, parent, legal guardian, or other relative who normally resides in the Employee's home. The Employer may require the Employee to produce a physician's statement regarding the illness and the necessity for the Employee's presence.

6. (a) Upon exhaustion of accrued sick leave, the Employee may be permitted to use vacation leave. At the sole discretion of the Employer, sick leave without pay or benefits up to a period of six (6) months may be granted when an Employee is sick or injured and is without any accumulated sick leave.

(b) If the Employee's physician cannot certify likely recovery within six (6) months, or if the Employee remains unable to return to work after the expiration of the six-month leave, the Employee shall be placed on disability separation. The Employee may request reinstatement to his or her prior classification or any lower classification in the same classification series within a period of two (2) years from the date the Employee was placed on disability separation or unpaid sick leave, whichever was earlier.

(c) An Employee requesting reinstatement from a disability separation may be required to submit to an examination by a physician selected by the Employer. The

examination must show that the Employee has recovered from the disability and is able to perform all of the essential duties of the position to which reinstatement is sought. The Employer shall pay the cost of the examination.

(d) In the event there is no vacancy in the Employee's prior classification or a lower classification in the same classification series, the Employee requesting reinstatement shall be laid off.

7. Upon retirement from active service with the Clerk of Courts, and with ten or more years of service with the County, the State, or any political subdivisions of the State, the Employee shall be paid for one-fourth of his or her accrued but unused sick leave credit, not to exceed thirty (30) days' pay. The payment shall be based upon the Employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the Employee at the time of retirement.

8. Sick leave shall be charged in minimum amounts of one-quarter ($\frac{1}{4}$) hour. An Employee requesting sick leave shall inform his or her supervisor or the supervisor's designee of such request and the reason therefor within one-half ($\frac{1}{2}$) hour of his or her scheduled starting time for each day of absence, unless the Employee is hospitalized or has provided a medical statement indicating the expected date of return. Failure to do so may result in denial of sick leave for the period of absence and/or disciplinary action.

9. The Employer may require the Employee to submit to a medical examination to verify the proper use of sick leave or the Employee's ability to perform the essential duties of his or her position. The Employer's determination following such an examination that an Employee is unable to perform his or her duties is subject to the grievance and arbitration procedure. The Employer shall select the physician and shall pay for the examination.

10. An Employee shall be paid sick leave pay for up to three (3) working days' absence

for the death of a member of the Employee's immediate family, as defined in Section 5 of this Article. Such three (3) days must coincide with the day of death or day of the funeral.

11. In the event of a death of a relative other than those in the immediate family as described in Sections 5 and 9 above, the Employer may, at its sole discretion, grant one (1) day of sick leave in order that the Employee may attend the funeral.

12. In circumstances of unusual distances of travel or extreme weather conditions the Employer may, at its sole discretion, grant up to an additional two (2) days of unpaid leave for the Employee to travel to the funeral of a relative in the immediate family as described in Sections 5 and 9 above.

13. If an Employee transfers to the service of the Employer from another public agency, the Employer shall credit the Employee, upon written request and verification, with the sick leave balance held by the Employee with the public agency to the extent provided by law.

ARTICLE XXXI

Other Paid Leave: Verification

1. All Employees, who have completed their probationary period and who are called (not volunteered) to serve as jurors, will receive their regular pay less their pay as jurors for a period not to exceed fifteen (15) work days. Any additional jury duty pay will be at the discretion of the Employer.

2. An Employee testifying as a witness pursuant to a lawful subpoena of a court or agency, in a proceeding in which the Employee is not a party, shall receive his or her regular pay less any compensation received as a witness for the period of such testimony.

3. Employees who are members of the Ohio National Guard, the Ohio Military Reserve, the Ohio Naval Military, or members of other reserve components of the armed forces of the United

States are entitled to a leave of absence for such time as they are in the military service on field training or active duty for periods not to exceed, in the aggregate, thirty-one (31) days in any calendar year. During such leaves, an Employee shall be paid his or her regular pay less any compensation earned in the pay period by reason of such military service.

4. The Employer shall have the right to demand proof of proper use of any paid leave. Falsification of any information with respect to any paid leave, including, but not limited to paid sick leave, shall be grounds for discharge.

5. Attendance Incentive.

(a) Employees who have completed their initial probationary period shall be entitled to one (1) personal day for each period of four (4) consecutive months of perfect attendance, commencing November 1, 1994, provided, that, following any award of a personal day, the Employee must maintain perfect attendance for a subsequent period of four (4) calendar months before any additional personal day may be awarded. No calendar month may be counted twice for purposes of personal day accrual, and no Employee may earn more than three (3) personal days in any calendar year under this Section.

(b) The use of a rolling four (4) month period under Section 5(a) is on a trial basis only, and if the Employer concludes that the use of a rolling period has resulted in Employee manipulation of the system with periods of increased sick leave use between four-month periods of perfect attendance, then effective January 1, 1996, the Employer may, upon prior notice and discussion with the Union, institute a fixed calendar period system, with perfect attendance measured by the following periods: January through April, May through August, and September through December.

(c) For purposes of this Section, all use of sick leave or unpaid leave shall be counted as an absence, but the Employee's use of prior approved vacation or compensatory

time off shall not be deemed to be an absence barring a perfect attendance award. Nothing in this subsection requires the Employer to grant vacation leave or compensatory time off for purposes of illness or other sick leave purposes where the Employee has not prior scheduled such leave.

(d) The above personal days will be awarded by the Employer following the four-month period for which they are earned. Personal days may be taken for any purpose by the Employee with the prior approval of the Employee's supervisor, provided that any personal day must be used within one (1) year of when it is awarded or be forfeited.

(e) Unused personal days shall be paid to an Employee who has resigned with no less than two (2) weeks' notice or to an Employee who has otherwise terminated his or her employment and has not been discharged for theft, falsification of records, destruction of Employer equipment, or mistreatment of members of the public or other employees.

ARTICLE XXXII

Life and Health Insurance

1. The Employer will continue to provide the same life and health insurance coverage provided by the Butler County Board of Commissioners to its other County employees during the term of this Agreement.

2. The extent of coverage under the insurance policies referred to in this Article shall be governed by the terms and conditions set forth in said policies. Any questions concerning coverage shall be resolved in accordance with the terms and conditions in said policy and shall not be subject to the grievance and arbitration procedures set forth in this Agreement.

3. The Employer shall offer a plan of disability-income insurance to Employees, through payroll deduction at the Employees' cost.

ARTICLE XXXIII

Employee Assistance Program

The Employer agrees to adopt and maintain an employee assistance program (EAP) providing for short-term counseling and referral for Employees and eligible family members during the term of this Agreement. The Employer shall be responsible for determining the scope and provider for this program. Upon request, the Employer shall meet and confer with the Union regarding the procedures for the program, including referrals by supervisors and Union officers, training programs, orientation to Employees and Union officers, and other concerns relating to the Employees' use of the program. Both the Employer and the Union are jointly committed to the implementation of this program as a cooperative venture designed to help Employees and family members cope with personal problems before they adversely affect performance.

ARTICLE XXXIV

Step Increases

1. Employees shall be eligible for step increases in accordance with current pay ranges and pay steps, as provided in Schedule 1.
2. Employees shall be eligible to be considered for step increases on the anniversary date of initial employment with the Employer. Any step increase approved by the Employer shall take effect at the beginning of the first pay period following the anniversary date of employment.
3. Notwithstanding the provisions of Section 2, no Employee shall receive an annual step increase during any promotional probationary period or for a period of six (6) months after the successful conclusion thereof, where the Employee has received an increase in pay as a result of the promotion.
4. Notwithstanding the provisions of Section 2, no Employee shall receive an annual

step increase if the Employee has received an overall unsatisfactory rating in his or her most recent performance evaluation (excluding promotional probationary evaluations), as certified by the Clerk of Courts.

5. No step increase shall be denied on the basis of a performance evaluation not completed within the time limit provided in Article VIII.

6. Notwithstanding the nonappealability of performance evaluations through the grievance and arbitration procedure under Articles VIII, XV, and XVI of this Agreement, an Employee may appeal, through said grievance and arbitration procedure, any performance evaluation with the overall rating of “unsatisfactory” the effect of which is to deny the Employee a step increase under this Article. In any grievance or arbitration proceeding pursuant to this Section, the burden shall be on the Union and the Employee to prove that the evaluation rating was an abuse of discretion or arbitrary or capricious.

ARTICLE XXXV

Wages

1. Effective retroactive to January 10, 2004, Employees shall receive a three percent (3%) across-the-board wage increase at all ranges and steps, as shown in Schedule 1 to this Agreement.

3. Effective on January 8, 2005, Employees shall receive a three percent (3%) across-the-board wage increase at all ranges and steps, as shown in Schedule 2 to this Agreement.

4. Effective on January 7, 2006, Employees shall receive a three percent (3%) across-the-board wage increase at all ranges and steps, as shown in Schedule 3 to this Agreement.

ARTICLE XXXVI

Amendment/Exclusive Application

1. The parties acknowledge that during the negotiations that resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement, and this Agreement embodies all applicable provisions relating to Employees covered. Therefore, the Employer and the Union, for the term of this Agreement, each agree that the other shall not be obligated to negotiate with respect to any subject matter referred to or covered by this Agreement, notwithstanding the provisions of Section 4117.08 of the Revised Code. The Employer and the Union may, however, mutually agree to alter, amend, supplement, enlarge or modify the provisions of this Agreement only by a written agreement or letter of understanding.

2. The parties agree that this Agreement will be the sole exclusive recourse available to Employees and the parties hereto, and where provisions of this Agreement conflict with otherwise applicable provisions of Ohio law, this Agreement shall prevail pursuant to Ohio Revised Code Section 4117.10(A).

ARTICLE XXXVII

Waiver In Case Of Emergency

1. In cases of Emergency declared by the President of the United States, the Governor of the State of Ohio, or the Clerk of Courts, resulting from acts of God, civil disorder, or other causes of an unforeseen nature, the following conditions of the Agreement shall automatically be suspended for the duration of the emergency:

- (a) Time limits for the Employer's or the Union's replies on grievances; and,
- (b) All work rules, provisions, and practices relating to the assignment of

Employees when it is not reasonably possible to follow such work rules, provisions, or practices during the emergency.

2. Upon the termination of the emergency, should grievances exist, they shall be processed in accordance with the provisions outlined in the Grievance Procedure of this Agreement and shall proceed from the point in the Grievance Procedure to which the grievance(s) had properly progressed.

ARTICLE XXXVIII

Copies Of Agreement

1. This Agreement will be printed and the cost of such printing shall be borne by the Butler County Clerk of Courts. Each Employee and newly hired Employees after completion of their probationary period shall be provided with a copy.

2. The Union, AFSCME Ohio Council 8, shall be given ten (10) copies.

ARTICLE XXXIX

Savings Clause

1. Should any provision of this Agreement be found to be illegal or unenforceable by a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

2. The parties agree to meet for the purpose of negotiating a lawful alternative provision with respect to the replacement of any provision found illegal and unenforceable as noted in Section 1 of this Article. Unless the parties agree otherwise, such meeting will be scheduled within twenty (20) calendar days of the receipt of a request by either party for such a meeting. The meeting cannot be used for any purpose other than negotiating with respect to the provision found to be unlawful.

ARTICLE XL

Duration

1. This Agreement shall become effective upon the commencement of the next succeeding pay period following ratification by the membership of the Union and the Board of County Commissioners, and shall continue in effect until December 31, 2006.

2. Thereafter, the Agreement shall remain in full force and effect from year to year unless either party, in writing, shall notify the other at least sixty (60) days prior to the expiration of the term or any extended term of this Agreement of any intention to make changes in the Agreement.

**LOCAL 3984, OHIO COUNCIL 8,
AFSCME**

BUTLER COUNTY CLERK OF COURTS

Larry E. Watkins
Staff Representative

Douglas E. Duckett
Counsel for the Employer

Jerrie Chandler
President, Local 3984

Cindy Carpenter
Clerk of Courts

Linda Cathers
Vice President, Local 3984

Stewart C. Leonard
Title Director

Stephanie Griffin
Secretary, Local 3984

Deborah L. Grubb
Director of Finance

Priscilla L. Mann
Assistant Title Director

SCHEDULE 1

2004 Wage Rates

<u>Classification</u>	<u>Grade</u>	<u>Pay Range</u>	<u>Step No.</u>	<u>Pay Rate</u>
Title Clerk	1	\$18,814.79-\$24,862.91	1	\$18,814.79
			2	\$19,486.97
			3	\$20,158.56
			4	\$20,830.44
			5	\$21,502.62
			6	\$22,174.61
			7	\$22,846.68
			8	\$23,854.50
			9	\$24,862.91
Bookkeeper	3	\$20,158.56-\$25,534.22	1	\$20,158.56
			2	\$20,830.44
			3	\$21,502.62
			4	\$22,174.51
			5	\$22,846.68
			6	\$23,518.57
			7	\$24,190.75
			8	\$24,862.91
			9	\$25,534.22
Head Bookkeeper5		\$25,534.22-\$30,909.87	1	\$25,534.22
			2	\$26,206.39
			3	\$26,878.27
			4	\$27,550.16
			5	\$28,222.34
			6	\$28,894.22
			7	\$29,566.40
			8	\$30,238.28
			9	\$30,909.87

SCHEDULE 2

2005 Wage Rates

<u>Classification</u>	<u>Grade</u>	<u>Pay Range</u>	<u>Step No.</u>	<u>Pay Rate</u>
Title Clerk	1	\$19,379.23-\$25,608.80	1	\$19,379.23
			2	\$20,071.58
			3	\$20,763.32
			4	\$21,455.35
			5	\$22,147.70
			6	\$22,839.85
			7	\$23,532.08
			8	\$24,570.14
			9	\$25,608.80
Bookkeeper	3	\$20,763.32-\$26,300.25	1	\$20,763.32
			2	\$21,455.35
			3	\$22,147.70
			4	\$22,839.75
			5	\$23,532.08
			6	\$24,224.13
			7	\$24,916.47
			8	\$25,608.80
			9	\$26,300.25
Head Bookkeeper5		\$26,300.25-\$31,837.17	1	\$26,300.25
			2	\$26,992.58
			3	\$27,684.62
			4	\$28,376.67
			5	\$29,069.01
			6	\$29,761.05
			7	\$30,453.39
			8	\$31,145.43
			9	\$31,837.17

SCHEDULE 3

2006 Wage Rates

<u>Classification</u>	<u>Grade</u>	<u>Pay Range</u>	<u>Step No.</u>	<u>Pay Rate</u>
Title Clerk	1	\$19,960.61-\$26,377.06	1	\$19,960.61
			2	\$20,673.73
			3	\$21,386.22
			4	\$22,099.01
			5	\$22,812.13
			6	\$23,525.05
			7	\$24,238.04
			8	\$25,307.24
			9	\$26,377.06
Bookkeeper	3	\$21,386.22-\$27,089.26	1	\$21,386.22
			2	\$22,099.01
			3	\$22,812.13
			4	\$23,524.94
			5	\$24,238.04
			6	\$24,950.85
			7	\$25,663.96
			8	\$26,377.06
			9	\$27,089.26
Head Bookkeeper5		\$27,089.26-\$32,792.29	1	\$27,089.26
			2	\$27,802.36
			3	\$28,515.16
			4	\$29,227.97
			5	\$29,941.08
			6	\$30,653.88
			7	\$31,366.99
			8	\$32,079.79
			9	\$32,792.29

APPENDIX 1

Classification Series

The classification series for Employees in the bargaining unit consists of three classifications, in the following, descending order:

Head Bookkeeper

Bookkeeper

Title Clerk

APPENDIX 2

BUTLER COUNTY CLERK OF COURTS

315 High Street, 5th Floor ♦ Hamilton, Ohio 45011

169 City Centre Mall ♦ Middletown, Ohio 45042

POLICY FOR IMPLEMENTATION OF FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

EFFECTIVE DATE: February 4, 1994

I. INTRODUCTION. On February 2, 1993, President Clinton signed into law the Federal Family and Medical Leave Act providing unpaid leaves to employees for the birth, adoption or foster placement of a child, the employee's own serious illness, or the serious illness of a child, spouse or parent.

II. WHEN EFFECTIVE.

A. **Non-Organized Employees.** The Act is generally effective August 5, 1993.

B. **Employees Covered by a Collective Bargaining Agreement.**
For the employees covered by a collective bargaining agreement the effective date is the earlier of the date the collective bargaining agreement expires or February 5, 1994.

NOTE: Any leave taken prior to the effective date of the Act may not be counted as leave for FMLA purposes.

III. DEFINITIONS.

A. **"Son or Daughter"** means a biological, adopted, or foster child, a stepchild, a legal ward or a child or a person standing *in loco parentis* ("in place of a parent") who is either less than 18 years of age, or who is 18 years of age or older and is incapable of self care because of a physical or mental disability. "Incapable of self care" means the individual requires active assistance or supervision to provide daily self care in several of the activities of daily living, including: grooming, hygiene, bathing, dressing, eating, taking public transportation, maintaining a residence, etc.

B. **"Spouse"** means a husband or wife as defined or recognized under State law, including common-law marriages in Ohio entered into on or before October 9, 1991. Domestic partners are not covered, however.

C. **"Health Care Provider"** means any of the following licensed or certified professions: a doctor of medicine or osteopathy, podiatrists, dentists, clinical psychologists, chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by x-rays to

exist), nurse practitioners and nurse midwives, and Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee relies on a Christian Science practitioner the employer may require a second opinion from a medical doctor.

- D. **“Parent”** means the biological parent or a person who stood *in loco parentis* to the employee. Parents-in-law are not included.
- E. **Twelve-month period** for determining whether 12 week entitlement has been exhausted means the period established by the employer. The Board of Butler County Commissioners establishes a uniform rolling twelve (12) month period measured backward from the first date of the FMLA leave as the method for computing this 12-month period.

IV. **COVERAGE.**

A. **Employers.**

All Butler County agencies will be covered by the FMLA.

B. **Employees.**

To be eligible for FMLA benefits an employee must have worked for the employer in the following capacity:

1. For at least 12 months (the 12 months of employment need not be consecutive and the employee need not work full time. Any week in which an employee was on the employer’s payroll for any part of the week counts toward the required 12 months employment. Further, the 12 months employment need not immediately precede the leave.); and
2. Worked at least 1,250 hours during the 12 months immediately preceding the start of the leave.

C. **Health Conditions Covered.**

The threshold question for the medical leaves under the Act is whether a “serious health condition” exists.

1. **Serious health condition** means an illness, impairment, or physical or mental condition that involves:
 - a. Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, nursing home, or a hospice; or

- b. Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three *consecutive* calendar days, that also involves continuing treatment by or under the supervision of a health care provider; or
- c. Any period of incapacity due to a chronic serious health condition, defined as a condition that:
 - 1) Requires periodic visits for treatment by a health care provider, or nurse, or physician's assistant under the health care provider's supervision;
 - 2) Continues over an extended period of time, including recurring episodes of a single, underlying condition; and
 - 3) May cause episodic rather than a continuing period of incapacity, such as asthma, diabetes, epilepsy, and similar conditions; or
- d. For prenatal care.

Examples of "serious health conditions" cited in the Senate record and the Department of Labor (DOL) comments include: heart attacks, heart bypass operations and procedures, "most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries from serious accidents, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth and recovery from childbirth." An employee is unable to perform the duties of the job if the employee is unable to work at all or is unable to perform any of the essential functions of the job as defined by the Americans with Disabilities Act (ADA).

2. **Continuing Treatment.** The continuing treatment by a health care provider means one or more of the following:

- a. The employee or family member is treated two or more times for the injury or illness by a health care provider or by a provider of health care services under direction of a health care provider; or
- b. The employee or family member is treated by a health care provider on at least one occasion and is given a regimen of continuing treatment under the supervision of the health care provider; or
- c. The employee or family member is under the continuing supervision

of a health care provider for a long-term or chronic condition or disability which is permanent or long-term and for which treatment may not be effective.

V. LEAVES AVAILABLE.

The employee is entitled to up to twelve weeks of “family leave” in any 12 month period for any of the following events:

A. Birth, Adoption, or Foster Care.

1. An employee is entitled to unpaid leave for:
 - a. Birth of the employee’s child;
 - b. Placement of child for adoption or as precondition to adoption;
 - c. Placement of a child in foster care.
2. Entitlement expires 12 months after birth, adoption, or placement.
3. Spouses who are both employed by Butler County are only entitled to 12 weeks of combined, aggregate leave for the birth, adoption, or foster care of a child. The two employed parents may split the time in any manner they choose, however, upon the employer’s approval.

B. Care of Child, Spouse, or Parent with Serious Health Condition.

1. An employee is entitled to leave to care for the employee’s child, spouse, or parent who has a “serious health condition.”
2. To “care for” includes caring for either physical or psychological needs. The employer may request verification that the employee is needed to provide care or that the employee’s presence will be beneficial to the family member.

C. Employee Personal Illness. An employee with a “serious health condition” that renders the employee unable to work is entitled to “FMLA leave.”

VI. PROCEDURAL REQUIREMENTS.

A. Medical Certification.

1. **Requirement.** When an employee requests personal medical leave or leave to care for a seriously ill child, spouse, or parent, the employer may require an employee to provide medical certification from an appropriate health care provider. The information that may be required in

this certification under FMLA includes:

- a. The identity of the medical professional and the type of practice;
- b. The date the serious health condition commenced and its probable duration;
- c. The certification of which part of the definition of “serious health condition,” if any, applies to the patient’s condition, and the medical facts which support the certification, including a brief description of how the medical facts meet the criteria of the definition;
- d. A description of the treatment, including the number of visits, and the nature, frequency, and duration of treatments;
- e. An indication whether inpatient hospitalization is required;
- f. If the requested leave is for a serious health condition of the employee, a description of the extent to which the employee is unable to perform his or her job duties, including the likely duration of the employee’s incapacity;
- g. If the requested leave is to care for a seriously ill family member, a statement that the employee is needed to care for the employee’s spouse, child, or parent, and the amount of time needed to provide the care;
- h. If the employee is requesting partial or intermittent leave, information regarding the need for and the schedule of treatment.

The Certificate of Physician or Practitioner Form OP-93-1 should be completed and attached to the Request for Leave Form.

2. **Additional Certification.** For employee medical leave the County may, at the County’s expense, require the employee to obtain the opinion of a second health care provider chosen by the employer. If the two health care providers disagree about any of the information in the certification, the parties may mutually select a third medical provider at the employer’s expense. The decision of the third provider shall be final and binding.
3. **Recertification.** An employer may request recertification at reasonable intervals, but not more often than every 30 days. The employer may request more often, however, if the employee requests an extension, circumstances change, or the validity of an initial certification is questioned.
4. **Fitness for Duty.**

- a. An employer may have a uniformly applied policy or practice that requires all employees who take leaves for similar purposes to obtain certification of fitness to return to work. If state or local law or the collective bargaining agreement governs an employee's return to work, those provisions shall apply.
- b. An employer may deny return to employment until the certification is submitted.

B. Scheduling Leave

1. Advance Notice.

- a. **Foreseeable or Planned Leave.** An employee must provide the employer with at least 30 days notice of the need for leave for birth, adoption, foster care or planned medical treatment when the need for the leave is foreseeable.
- b. **Unforeseeable.** Where circumstances make 30 days' notice impossible, the notice must be given as soon as practicable, typically within one or two days of the employee learning of the need for the leave.
- c. **Form of Notice.** The employee should provide notice either in person, by telephone, by telegraph, by fax or by other electronic means. Notice may be given by an employee representative if the employee is unavailable to do so.

2. Not Unduly Disruptive. In any case in which the need for leave is foreseeable based on planned treatment or supervision, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operation.

3. Partial Absences. The law provides that leave can be taken intermittently or on a reduced schedule. Thus, employees may take leave in noncontinuous increments, *e.g.*, every afternoon, two days per week, one week each month, etc.

- a. Family leave for birth, adoption or foster care can only be taken on an intermittent or reduced basis if the employer and employee agree.
- b. Medical leave may be scheduled as medically necessary.
- c. An employer may temporarily transfer an employee taking intermittent or reduced schedule leave to a position more suitable for recurring periods of absence to better accommodate the leave.

Employees cannot be penalized by the transfer. Therefore, the wages and benefits must remain the same.

C. Employer Action.

1. An employer can deny a requested leave if the employee fails to provide proper advance notice, unless the employee was unable to comply because of the need for emergency health care.
2. An employer may deny a requested leave if the employee does not provide the required medical certification within 15 calendar days after being requested to do so unless the employee was unable to comply because of the need for emergency health care.

VII. SUBSTITUTION OF EMPLOYER-PROVIDED LEAVE FOR STATUTORY LEAVE.

A. Substitution. The County will require substitution of any unused, accrued paid leave under the following circumstances:

1. Sick leave, vacation, or personal leave otherwise available must be used for any portion of statutory leave for personal or family illness. The County is not required, however, to provide paid sick leave or medical leave in any situation in which the employee would not be eligible for paid leave in the absence of the FMLA.
2. For any other purpose for which the employee may be eligible for FMLA leave, the employee will be required to exhaust all paid vacation leave, or personal leave, or other available paid leave (other than compensatory time off), prior to using unpaid leave under the FMLA.

B. Leave Credited. Where the employee has substituted paid leave for all or a portion of a FMLA leave, the paid leave used will be counted toward the employee's annual allotment of 12 weeks of FMLA leave.

VIII. OTHER RIGHTS AND BENEFITS.

A. Rights and Benefits During Leave.

1. **Wages or Salary.** The Family and Medical Leave Act provides only for unpaid leave; and employer is not required to pay the employee while on statutory family or medical leave. As noted in Part VII above, however, under some circumstances there may be substitution of accrued paid leaves.
2. **Health Insurance.** While an employee is on family or medical leave the County must maintain coverage under any group health plan for the

duration of the family or medical leave at the same level and under the same conditions as that coverage would have been provided if the employee had continued in employment from the date the employee commenced the family or medical leave until the date the employee was restored to employment.

An employer may require the employee to continue to make any contribution to a group health plan that the employee would have made if the employee had not taken family or medical leave. If an employee is unable or refuses to make the contribution to the group health plan, the employee shall forfeit the health plan benefit until the employee is restored to employment.

- a. An employee has no obligation to continue health insurance benefits during the leave. If the employee chooses not to continue, the employer must provide re-enrollment without additional qualifying requirements, *e.g.*, physical exam.
 - b. The employee can be required to pay the employee's share of premiums if the employer requires the same of the other employees on leaves of absence and if the employer gives the employee written notice to make the payment in any of the following ways:
 - 1) pay employer or insurance carrier at time of regular payroll deductions;
 - 2) pay on COBRA schedule (but with no administrative fee);
 - 3) prepay at employee's option.
 - c. If the insurance lapses for nonpayment of premiums, the employee must be allowed to re-enroll without limitations or qualifications.
 - d. Note that the County may recover employer-paid premiums if the employee fails to return from leave except when the failure to return is because of a continuing serious health condition or circumstances beyond the employee's control.
3. **Accrual of other Benefits.** With the exception of group health coverage, an employee is not entitled to accrue any other employment benefit while on statutory family or medical leave.

B. Rights and Benefits Upon Return From Leave.

1. **Return to Former Position.** An employee returning from family or medical leave is entitled to the position held before the leave began, if the position is vacant. If, however, the former position is not vacant, the

employee must be returned to “an equivalent position having equivalent employment benefits, pay, and other terms and conditions of employment.”

If an employee would have been terminated during statutory leave for legitimate business reasons, such as a layoff or other reduction in force, the employee has no reinstatement right.

2. **Nonforfeiture.** Accrued benefits cannot be forfeited. However, if benefits would have been changed had the employee not taken leave, the change can take effect.

IX. KEY EMPLOYEES.

Under very limited circumstances an employee who is identified as a “key” employee may be denied restoration to employment.

- A. **Key Employee Defined.** A key employee is an employee who is salaried, and is among the highest paid 10% of the employees employed within 75 miles of his or her work site. To determine who is the highest paid 10%, year-to-date earnings as of the date leave is requested are considered.
- B. **Denial of Restoration.** An employer may deny restoration to a “key employee” only if necessary to prevent substantial and grievous economic injury to the operations of the employer.
- C. **Rights of Key Employees.** The employer has a number of obligations to a key employee:
 1. The employer must notify the employee of key employer status;
 2. The employer must inform the employee if the employer believes there is a possibility the employee will not be restored at the end of the leave;
 3. If the key employee elects not to return to work upon receiving the employer’s notice, the employer must continue to maintain health benefits without recovery of employee shared premiums during the period of the leave;
 4. The key employee may request reinstatement at the end of the leave. If reinstatement is denied at that time, the employer must notify the employee, in writing, that substantial and grievous economic injury would result from reinstatement.

X. PROHIBITIONS.

- A. **Non-Interference.** Employers are prohibited from interfering with, restraining, or denying the exercise by employees of any rights under the Act.

B. Non-Discrimination. Employers are prohibited from discharging or discriminating against persons who oppose practices that are unlawful under the Act. Employees have the right to:

1. Oppose a prohibited practice;
2. File, institute, or cause charge to be instituted;
3. Assist or intend to assist investigation or proceeding; and
4. To testify.

XI. NOTICE REQUIREMENT.

Covered employers must post a notice describing the Act's provisions. The County is also furnishing additional notice and information by including the federal family medical leave benefits description in personnel manuals, employee handbooks, and other written materials.

XII. ENFORCEMENT.

A. Right to Bring Action. The Secretary of Labor can enforce the Act in accordance with the FLSA enforcement procedures. In addition, an individual employee can enforce the Act through civil action in any Federal or State court of competent jurisdiction.

B. Time Limits. Actions for relief must be brought in writing not later than 2 years after the date of the last event constituting an alleged violation, or within 3 years of the last event if the violation is willful.

C. Remedies. Available remedies include reinstatement, back pay, employment benefits, actual monetary losses, such as the cost of providing care, and attorneys' fees. Further, if the employer acts in bad faith, double damages will be awarded. Finally, an employer is subject to a fine of \$100 per day for failure to post the appropriate notice.

XIII. RECORDKEEPING. An employer must make, keep, and preserve records regarding compliance with the Family Medical Leave Act. The records need not be kept in any particular order or form but must include:

1. Basic payroll and identifying employee data;
2. Dates FMLA leave is taken, including hours of leave, if applicable;
3. Copies of all written notices;

4. Any documents describing employee benefits or employer policies regarding paid and unpaid leaves;
5. Premium payments of employee benefits;
6. Records of any employer/employee disputes over the FMLA;

Employers are not required to submit records to the government unless specifically requested to do so by the Department of Labor.