FF 2/9/98

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FACT-FINDING RECOMMENDATION

Michigan Employment Security Commission Case No. L96 C-6005

In the matter of the fact-finding between

Berrien County Road Commission

- and -

International Brotherhood of Teamsters, Local 214

DATE OF FACT-FINDING PETITION:	April 3, 1997
DATE OF PRE-HEARING CONFERENCE:	August 19, 1997
LOCATION OF PRE-HEARING CONFERENCE:	Benton Harbor, Michigan
DATE OF HEARING:	November 6, 1997
LOCATION OF HEARING:	Benton Harbor, Michigan
DATE HEARING CLOSED:	November 6, 1997
DATE BRIEFS FILED:	December 29, 1997
DATE RECORD CLOSED:	December 29, 1997
FACT-FINDER:	Richard N. Block

APPEARANCES:

For the Berrien County Road Commission

Mr. Michael F. Ward, Attorney
Mr. Brian Berndt, Engineer-Manager
Mr. Bob Forker, Member
Mr. Richard Payne, General Superintendent

Berrien County Road Commission

For Teamsters Local 214

Mr. James Markley, Secretary-Treasurer
Mr. Richard Divelbuss, Business Agent
Mr. Richard Busho
Mr. Bill Leidy
Mr. Ron Braford
Mr. Jeff Morlocak
Mr. Darrell Heimel

GENERAL BACKGROUND

The mechanics, heavy equipment operators, medium equipment operators, and light equipment operators employed by the Berrien County Road Commission (hereinafter the Commission) are represented for collective bargaining purposes by International Brotherhood of Teamsters Local 214 (hereinafter the Union). The most recent collective bargaining between the Commission and the Union expired at midnight on June 30, 1996. The parties were unable to reach agreement on a new collective bargaining agreement. The Union filed a petition for fact-finding on April 3, 1997.

The petition listed seven issues in dispute: temporary employees, reporting directly to job site rather than home garage, seniority accumulation on workers' compensation, assignment of night patrols, health insurance for current employees, health insurance for retirees, and wages. At the prehearing conference on August 19, 1997, the parties added two additional issues: foremen/supervisors working and call-in requirements for absences. The fact-finder has added a tenth issue - duration of the agreement. Each issue will be discussed separately.

ISSUE 1, TEMPORARY EMPLOYEES

Contract Language Proposed by Commission

1. Amend Subsections (b) and (c) of Section 1, Article 1, to read as follows:

(b) A temporary employee shall be defined as any employee who is hired by the Employer on an "as needed" basis for a term of not to exceed one hundred twenty (120) actual days worked per year. Temporary employees shall be hired as supplements to the employment of regular employees, provided no capable employees are on layoff, except in emergency situations

(c) Employees hired as seasonal or temporary employees shall not be used to displace regular full-time employees on jobs assigned to them by their supervisor. However, it is understood and agreed that under certain emergency conditions or when the full-time employee who is normally assigned to the job is unavailable, it may be necessary, when no qualified, full-time employee is available, at that garage, to assign temporary or seasonal employees to jobs which are normally performed and/or assigned to permanent full-time employees.

2. Add a sentence to Section 3 of Article VIII, which shall read:

"It is understood and agreed that seasonal and temporary employees can work overtime that is a continuation of the job they were performing on a straight time basis, or when regular employees in the garage refuse to work over-time, are all working overtime, or were unavailable when called to work." (Comm. Ex. 7)

Existing Contract Language

(b) A temporary employee shall be defined as any employee who is hired to perform a specific task for the Employer on an "as needed" basis for a term of not to exceed thirty (30) days. Temporary employees shall be hired as supplements to the employment of regular employees, provided no capable employees are on layoff, except in emergency situations.

(c) Employees hired as seasonal or temporary employees shall not be used to displace regular full-time employees on jobs assigned to them by their supervisor. However, it is understood and agreed that under certain emergency conditions or when the fulltime employee who is normally assigned to the job is unavailable, it may be necessary, when no qualified, full-time employee is available, at that garage, to assign temporary or seasonal employees to jobs which are normally performed and/or assigned to permanent full-time employees. (Jt. Ex. 1; Comm. Ex. 7)

2. No existing contract language for proposed addition to Section 3 of Article VIII.

Fact-Finder Discussion. The major substantive change in this provision being proposed by the Commission is an increase in the time limit for retaining temporary employees from 30 days to 120 days. The Department claims that the reason for this is to permit it to have a sufficient number of employees for snow plowing during the winter. I find this to be a reasonable basis for this change. This clause provides the Commission with the authority to hire temporary employees during the period from approximately late October through late April, which corresponds with the snow season and have some assurance assured that they will stay for the duration . It also permits the Commission to have that same assurance during the maintenance season.

A period of 120 days is also consistent with three of the jurisdictions that the Union considers comparable. Jackson County permits the hiring of seasonal employees for 17 weeks (119 days), Monroe County for 198 days (April 15 through October 30), and Saginaw County for 120 days (Un. Ex. 4).

Although the Union has a concern about temporary employees replacing regular bargaining unit employees, the Commission's proposal protects Union interests by stating that the temporary employees will only be hired as "supplements" to regular employees, and only if no regular employees are on layoff. In addition, if a job is to be filled permanently, the Commission must use the posting and bidding procedure in Article V, Section 7.

The Commission's proposed changes in subsection (c) also do not compromise Union interests. Under this provision, temporary or seasonal employees will not displace regular full-time employees on jobs assigned to them unless regular, full-time employees are not available.

I find merit in the Union's concern that the last clause in the Commission's proposal, permitting the Employer to use temporary employees when regular employees are on layoff in "emergency situation," is unnecessarily ambiguous. The inherent ambiguousness of the term "emergency situation" has the potential to lead to grievances, causing unnecessary conflict between the parties.

Fact-Finder Recommendation on Issue 1, "Temporary Employees.". The fact finder recommends that the parties adopt the Commission's proposal on Issue 1 except that the last four words of its proposal for Article 1, Section 1, Subsection (b) ("except in emergency situations") shall be deleted, and a period placed after the word "layoff" in Article 1, Section 1, Subsection (b).

ISSUE 2, SITE OF REPORTING

Contract Language Proposed by Commission

Add a subsection (b) to Section 8 of Article V of the contract which shall read as follows:

> (b) Management may require employees to report to the job site or a garage different than their normal reporting garage. The Commission shall not be responsible for payment of of travel time to and from the job site or garage. (Comm. Ex. 8)

Existing Contract Language

Article V, Section 8: The Employer shall have the right to temporarily transfer employees irrespective of their seniority status from one job classification to another to cover for employees who are absent from work due to illness, accident, vacations, or leaves of absence for the period of such absence. The Employer shall also have the right to temporarily transfer employees irrespective of their seniority status to fill jobs or temporary vacancies or take care of unusual conditions or situations which may arise for a period of not to exceed three (3) months, which period may be extended by mutual agreement between the Employer and the Union. It is understood and agreed that any employee temporarily transferred in accordance with the provisions of this Section, shall not acquire any

permanent title or right to the job to which he is temporarily transferred but shall retain his seniority in the permanent classification from which he was transferred (Jt. Ex. 1; Comm. Ex. 8).

Fact-Finder Discussion. The major change resulting from this proposal would permit the Commission to require employees to report to a job site or a garage other than the garage to which they have bid. The purpose of this Commission proposal is to permit more efficient use of the employee's time that is possible under the existing contract. This proposal would appear to have a substantial benefit to the Commission in greater efficiency, with but negligible loss to employees. Employees must drive somewhere from their homes to report to work, and it is not clear that requiring reporting to the job site or a different garage will always result in greater travel time than reporting to the home garage. Sometimes the reporting location may be closer to home than the home garage, and sometimes it will be further, but the distances are likely to even out over a period of time.

The Union's concerns regarding liability, injury to third parties, and workers' compensation are unfounded. The Union has not demonstrated that these issues are less serious if the employee is asked to report to his or her home garage than to a site designated by the Commission.

Fact-Finder Recommendation on Issue 2, Reporting Site. The Fact-Finder recommends that the Commission's proposed changes, adding a subsection (b) to Article V, Section 8, be incorporated in a new collective agreement.

ISSUE 3, LEAVES OF ABSENCE

Contract Language Proposed by Commission

Amend Section 2 of Article VI to read as follows:

> **Section 2:** An employee who because of illness, injury (work or non-work related), or pregnancy, is physically unable to report for work shall be given a leave of absence without pay and without loss of seniority for a period of not to exceed one (1) year, provided he/she promptly notifies the Employer of the necessity therefor, and provided further that he/she supplies the Employer with a certificate from a medical doctor of the necessity for such absence and for the continuation of such absence when the same is requested by the Employer. The Employer may extend the leave for an additional year if the employee provides proof from a medical doctor of the necessity therefor. Employees, who because of a work related injury or illness, are physically unable to report for work shall be given a leave of absence without pay and without loss of seniority for a period of not to exceed eighteen (18) months, provided he/she promptly notifies the Employer of the necessity therefore and provided further that he/she supplies the Employer with a certificate from a medical doctor of the necessity for such absence and for the continuation of such absence when the same is requested by the Employer. The Employer may extend the leave for an additional year if the employee provides proof from a medical doctor of the necessity therefore.
>
> (a) It is understood and agreed that the Employer shall not be liable for the payment of any insurance premiums after an employee has been on medical leave (for non-work related reasons) for twelve (12) consecutive months; or for work related absence of eighteen (18) consecutive months. (Comm. Ex. 9)

Existing Contract Language

Section 2: An employee who because of illness, accident or pregnancy, which is non-compensable under the Workers Compensation Law, is physically unable to report for work shall be given a leave of absence without pay and without loss of seniority for a period of not to exceed one (1) year, provided he promptly notifies the Employer of the necessity therefor, and provided further that he supplies the Employer with a certificate from a medical doctor of the necessity for such absence and for the continuation of such absence when the same is requested by the Employer. The Employer may extend the leave for an additional year if the employee provided proof from a medical doctor of the necessity therefor.

(a) It is understood and agreed that the Employer shall not be liable for the payment of any insurance premiums after an employee has been on medical leave for twelve (I 2) consecutive months or more. (Jt. Ex. 1; Comm. Ex. 9)

Fact-Finder Discussion. The change resulting from this Commission proposal would make a distinction between leaves of absence for non-work and work-related illness or injuries. A leave for a nonwork-related injury may be up to 12 months, and a leave for a work-related injury may be 18 months. Seniority would continue to accrue during the leave, and the Commission would continue to pay for health insurance during the leave.

The key benefit in this proposal is the length of time an employee may be on medical leave before the Commission's obligation to pay medical benefits terminates and the employee's seniority terminates. This provision would place the Berrien County employees in a superior position relative to their counterparts in Jackson County (4 months maximum), Kalamazoo County (6 months), Monroe County (6 months), Saginaw County (zero months), and St. Clair County (90 days) (Union Exhibit 6). It would also place the employees in a superior position vis-a-vis Allegan County (length not specified), Cass County (12 months for all leaves), St. Joseph County (Family and Medical Leave Act maximum), and Van Buren County (12-month maximum with payment of 95%) of health insurance premium (Comm. Ex. 8).

The Union has expressed a preference that Berrien County be the leader in at least one area, as it has been in this area. The Commission's proposal does not change that situation, as the Berrien County employees continue to have superior medical leave benefits. The changes proposed by the Commission would simply create a rational distinction between work-related and nonwork-related illnesses. Employees who have experienced a work-related injury illness will have greater work-related benefits than employees who have an injury or illness unrelated to work.

Fact-Finder Recommendation on Issue3, "Leaves of Absence." The Fact-Finder recommends that the Commission's proposed changes, amending Article VI, Section 2 be incorporated in a new collective agreement.

ISSUE 4, SECOND SHIFT/NIGHT WORK

Contract Language Proposed by Commission

Amend Section I (b) of Article VIII to read as follows:

(b) The Commission may establish a second shift which may be effectuated at any time from November 15 through April I of any given year. If the Employer establishes a second shift, the normal work time shall be from 8:00 p.m. to 4:30 a.m. and said shift may start at 8:00 p.m. on Sunday or a holiday. If under normal circumstances the Commission decides to establish one or more of these shifts, it will give five (5) working days notice of the establishment of the shift(s) and request non-probationary employees as volunteers by district to staff said shifts; however, if during emergency situations it becomes necessary to use a second shift, the Commission shall not be required to give the five day notice and may establish shifts immediately. If it does not obtain the desired number of employees within the district needed, it shall assign the lowest seniority non-probationary employees in the district to said shifts. Employees who are regularly scheduled to work the second shift shall receive a fifteen ($.15) cent per hour shift premium. This premium shall not apply to employees who are called in to work on the second shift. The Employer will post for five (5) working days for volunteers for the second shift on or before October I each year and shall notify employees who are to work on the second shift not later than November 1. The districts for purposes of this subsection shall be Watervliet and Benton Harbor, Eau Claire and Baroda, Three Oaks and Bakertown. (Comm. Ex. 10)

Existing Contract Language

(b) The Commission may establish a second shift which may be effectuated at any time from November 15 through April I of any given year. If the Employer establishes a second shift, the normal work time shall be from 8:00 p.m. to 4:30 a.m. and said shift may start at 8:00 p.m. on Sunday or a holiday. If under normal circumstances the Commission decides to establish one or more of these shifts, it will give five (5) working days notice of the establishment of the shift(s) and request non-probationary employees as volunteers by district to man said shifts; however, if during emergency situations it becomes necessary to

use a second shift, the Commission shall not be required to give the five (5) day notice and may establish shifts immediately. If it does not obtain the desired number of employees within the district needed, it shall assign the lowest seniority non-probationary employees in the district to said shifts. Employees who are regularly scheduled to work the second shift shall receive a fifteen ($.15) cent per hour shift premium. This premium shall not apply to employees who are called in to work on the second shift. The Employer will post for five (5) working days for volunteers for the second shift on or before October I each year and shall notify employees who are to work on the second shift not later than November 1. (Jt. Ex. 1;Comm. Ex. 10)

Fact-Finder Discussion. This change would create three districts for the purpose of night assignments, with the Commission having the right to solicit volunteers within three defined districts (Watervliet-Benton Harbor, Eau Clare-Baroda, and Three Oaks-Bakertown) and, if necessary, assign the work to the lowest seniority person in the district. Under the previous collective agreement, the solicitation and assignment was done bargaining unit-wide. The purpose of this proposed change by the Road Commission is to reduce the commuting time required for the night work and to insure that the roads are maintained by persons familiar with the road.

While such a system would seem to have a small benefit for the Commission, there is nothing on the record that indicates serious problems with the unit-wide system that has been in place. There is nothing on the record that indicates poor quality work by employees maintaining unfamiliar roads or that the curent system of unit-wide solicitation and assignment has caused problems for the Commission, or has resulted in inefficiencies. Moreover, a three-district system as is being proposed by the Commission would severely compromise the seniority-related benefits for the bargaining unit employees; a senior employee in the bargaining unit could be working a second shift, while junior employee is working a day shift preferred by the senior employee. In addition, the Commission has presented no evidence that any of the jurisdictions it considers comparable have established such a three-district system for night work (Comm. Ex. 9).

Fact-Finder Recommendation on Issue 4, "Second Shift/Night Work." The Fact-Finder recommends that the Union's proposal to retain the current language of Article VIII, Section 1(b) be incorporated in a new collective agreement.

ISSUE 5, HEALTH INSURANCE FOR CURRENT EMPLOYEES

Contract Language Proposed by Commission

1. Change Article IX, Section 6 and 6(d) to read as follows:

Section 6: The group health insurance coverage provided to employees shall be changed to the Blue Cross/Blue Shield PPO coverage contained in the proposal presented to the Union during negotiations for this agreement with the five ($5.00) dollar prescription drug co-pay. The Employer agrees to maintain this level of group health insurance benefits with an insurance company or companies authorized to transact business in the State of Michigan, or on a self-insured basis, for the duration of this agreement. The Employer agrees to make available to employees the two traditional Blue Cross/Blue Shield coverages and the network plan contained in the proposal presented to the Union during negotiations. Employees may select coverage under these optional plans but must pay the difference in premium cost between the Blue Cross/Blue Shield PPO coverage and the optional plan by payroll deduction. The Employer shall make available the family continuation option which employees can select but must pay the premium cost for.

Section 6(d): The Employer shall provide dental insurance coverage at a benefit level which was outlined in a proposal made by the Employer to the Union during negotiations of this agreement. It is expressly understood and agreed that the Employer may obtain this insurance level from any insurance carrier licensed to transact business in the State of Michigan. It is likewise understood and agreed that this dental coverage and the Employer's liability to pay the premiums therefor shall cease on June 30, 1999. (Comm. Ex. 11)

Existing Contract Language

Section 6: The Employer agrees, for the duration of this Agreement, to maintain the level of group health insurance benefits that existed immediately prior to the execution of this Agreement with an insurance company or companies authorized to transact business in the State of Michigan or on a self-insured basis. Effective the first full pay period after ratification of this Agreement each employee shall contribute only in that amount paid by the non-union workforce toward the cost of their health insurance premiums; said contribution shall be deducted from each employee's paycheck.

Section 6(d): The Employer shall provide dental insurance coverage at a benefit lieve which was outlined in a proposal made by the Union to the Employer from Delta Dental. It is expressly understood and agreed that the Employer may obtain this insurance from any insurance carrier licensed to transact business in the State of Michigan. It is likewise understood and agreed that this dental coverage and the Employer's liability to pay the premiums therefor shall case on June 30, 1996. (Jt. Ex. 1; Comm. Ex. 11)

Fact-Finder Discussion. The Commision's proposed contract language would make the Blue Cross/Blue Shield Preferred Provider Option (PPO) the base plan that would be offered to all employees without a contribution. Employees who wished coverage under a traditional plan would could have such a plan but would be required to pay the difference between the PPO and the plan they preferred.

The record establishes that this is this system for health insurance has been in place since September 1, 1996 as the result of a joint Commission-Union solicitation of bids. The record establishes that, under the old agreement, all employees were paying approximately $10 a month for health insurance. The Commission's proposal would eliminate that payment for employees who choose the PPO. Although not all health care providers are currently participants in the PPO, the record indicates that provider participation continues in the PPO is increasing.

This appears to be a reasonable plan that strikes a balance among the considerations of employer cost containment and employee choice of medical provider. It has its roots in work by a joint committee. It is also not inconsistent with the plans in other jurisdictions. For example, employees in Kalamazoo County and Van Buren must pay 5% of the premium for any plan, while employees in Cass County are responsible for 25% of the increase in premiums that may occur. Although other counties, such as St. Clair County and St. Joseph County appear to pay the full cost of a traditional health plan, the Commission's proposal clearly provides coverage comparable to that in similar jurisdictions.

The Union has not objected to the Commission's proposed changes in Article IX, Section 6(d). The recommendation shall reflect this.

Fact-Finder Recommendation on Issue 5, "Health Insurance for Current Employees."

The Fact-Finder recommends that the Commission's proposed changes amending Article IX, Sections 6 and 6(d) be incorporated in a new collective agreement.

ISSUE 6, "HEALTH INSURANCE FOR RETIREES"

Contract Language Proposed by Commission

Amend Section 6(e) of Article IX to read as follows:

> (e) Effective for employees who retire after July 1, 1996, the Commission will contribute up to sixty (60%) percent of the monthly premium but no more than one hundred fifty ($150.00) dollars per month toward the total health insurance premium for the retired employee and his/her spouse or up to sixty (60%) percent of the monthly premium but no more than seventy five ($75.00) dollars toward the retiree only coverage. The Commission shall only be required to pay its share of the premium if the employee retires under the normal retirement provisions of the Commission's retirement plan and then only from age 60 to age 65. When the retired employee reaches age 65, the employee and spouse coverage shall end. Likewise, if the retired employee has health insurance coverage available through another source or the retiree dies before reaching age 65, retiree and spouse insurance coverage shall end (Comm. Ex. 11)..

Existing Contract Language

> Effective for employees who retire after January 1, 1996, the Commission will pay sixty (60%) percent of the premium cost for the retiree and spouse, or retiree only, and the retiree shall pay the remaining forty (40%) percent of the premium for the retiree's health insurance only. The Commission shall only be required to pay its share of the premium if the employee retires under the normal retirement provision of the Commission's retirement plan and then only from age 60 to age 65 (Jt. Ex. 1; Comm. Ex. 11)..

Fact-Finder Discussion. The change proposed by the Commission would place a cap on the amount of the premium the Commission must pay for each employee, with the proviso that

the Commission pays no insurance for retirees who have reached age 65. The limit would be $150.00 per month for the retiree and spouse coverage, and $75.00 per month for the retiree only coverage. The Union proposes no change in Article IX, Section 6(e), proposing that the Commission pay all off the premiums for under-65 retirees regardless of the amount.

The major issue in this provision is the distribution of the burden of future premium increases for under-65 retirees. If it is assumed that current retirees will meet the age-65 threshold sooner than future retirees, the Commission's proposal would place the greatest burden on future retirees, because they would be under 65 for a substantial period of time while health insurance premiums increase. Current retirees will turn 65 relatively soon and be removed from the Commission's insurance. Therefore, it is important to provide some protection to the future retirees.

On the hand, it is also important to place some limit on the liability of the Commission for retiree benefits. It is reasonable for the Commission to have some predictability in its retiree health insurance costs.

I find the Commission's cap structure generally reasonable, but, because it is likely that health insurance premiums will rise, the Commission's proposed cap is too low for future retirees. A reasonable cap is $200.00 per month for employee-spouse coverage and $100.00 per month for employee-only coverage for employees who retire after July 1, 1998. For employees who retire after July 1, 1999, the cap should be raised to $250.00 per month for employee-spouse coverage and $125.00 per month for employee-only coverage. A recommendation such as this protects the Commission from unlimited liability for retirees, while still assuring that retirees will not bear too large a share of the burden of health insurance costs up to age 65.

An analysis of the comparables indicates that, consistent with the Union position, five of nine counties - Cass, Jackson, Livingston, Monroe, and Saginaw - provide for the County to pay for 100% of employee coverage regardless of when employees retire. St. Joseph County also provides for full pay, but conditions it on employee retiring at 62, thus limiting the amount of time the County will be required to pay insurance. On the other hand, three counties - Allegan, Kalamazoo, and Van Buren - provide that the retirees pay for a share of their insurance.[1] Thus, to require retirees to pay some portion of their health insurance premiums is not inconsistent with the comparables.

Fact-Finder Recommendation on Issue 6, "Health Insurance for Retirees." The fact-finder recommends adopting neither the Commission nor the Union position. Rather the fact-finder recommends the following changes in Article IX, Section 6(e):

> Effective for employees who retire after July 1, 1996, the Commission will contribute up to sixty (60%) percent oft he monthly premium but no more than one-hundred-fifty ($150.00) dollars per month toward the total health insurance premium for the retired employee and his/her spouse or up to sixty (60%) percent of the monthly premium but no more than seventy-five ($75.00) dollars toward the retiree only coverage Effective for employees who retire after July 1, 1998, the Commission will contribute up to a maximum of two-hundred ($200.00) dollars per month toward the total health insurance premium for the retired employee and his/her spouse or up to one-hundred ($100.00) dollars toward the retiree only coverage. Effective for employees who retire after July 1, 1999, the Commission will contribute up to a maximum of two-hundred -fifty ($250.00) dollars per month toward the total health insurance premium for the retired employee and his/her spouse or up to one-hundred-twenty-five ($125.00) dollars toward the retiree only coverage. The Commission shall be required to pay its share of the premium if the employee retires under the normal retirement provisions of the Commission's retirement pant and then only from

[1]The record is silent on retiree health insurance benefits in St. Clair County.

age 60 to age 65. When the retired employee reaches age 65, the employee and spouse coverage shall end. Likewise, if the retired employee has health insurance coverage available through another source or the retiree dies before reaching age 65, retiree and spouse coverage shall end.

ISSUE 7, "CONSTRUCTION CREW FOREMEN"

Contract Language Proposed by Commission

Amend Section 7 of Article XII by adding a sentence:

"It is further understood and agreed that the Supervisor of the construction crew can perform such bargaining unit work as he deems appropriate." In addition, change the word "men" to "employees" in said section. (Comm. Ex. 12).

Existing Contract Language

Section 7: So long as an employee is classified as a supervisor by the Employer, he will not be used to displace regular employees covered by this Agreement. This provision shall not be construed to prevent supervisors from performing such manual work as may be required for the purpose of instruction, supervision, investigation, inspection or experimentation or as may be necessary when an employee is absent and other employees are not available or in case of emergencies. "Other employees are not available" shall be defined to mean that other qualified employees are not available to perform the work without disrupting other necessary work. It is understood and agreed that the purpose of this Section is not to displace regular employees nor to deny employees overtime or cause a layof f of regular employees. However, it is understood and agreed this Section shall not preclude a supervisor, who is called out at times other than his regular working hours, from performing such work as may be necessary to take care of emergencies or correct a situation which does not require additional men or pieces of equipment. Likewise, it is expressly understood and agreed that supervisory personnel may perform such bargaining unit or non-bargaining unit work during regular or overtime hours as they can perform with the equipment regularly assigned to them. (Jt.Ex. 1; Comm. Ex. 12)

Fact-Finder Discussion. The purpose of this proposed change is to broaden the range of situations in which the construction foreman may perform bargaining unit work in order to complete the job assigned. This would be done by adding the Commission's proposed sentence to Article XII, Section 7. Although the Union's concerns regarding protection of the jobs of bargaining unit

members are certainly legitimate, these concerns are addressed in Article XII, Section 7. That provision clearly states, and would continue to state under the Commission's proposal, that a supervisor "will not be used to displace any employee" (Comm.. Ex.. 1, p. 20). Therefore, no bargaining unit member will lose his or her job as a result of adding this sentence. The Union has expressed a concern that this section be enforced, but such enforcement is within the control of the Union.

Fact-Finder Recommendation, Issue 7, "Construction Crew Foremen." It is recommended that the parties adopt the Commission's proposed contract language for Issue No. 7.

ISSUE 8, WORK RULE CHANGE

Contract Language Proposed by Commission

> Amend Appendix B, Section 2(e) as follows: Failure to report for work without giving the Employer advance notice unless it was impossible to give such advance notice and/or failing to report for work without giving an excuse acceptable to Management (Comm. Ex. 14).

Existing Contract Language

> Appendix B, Section 2(e): Failure to report for without giving the Employer advance notice unless it was impossible to give such advance notice. (Jt. Ex. 1; Co. Ex. 14)

Fact-Finder Discussion. The Commission is proposing language which would require employees who call-in absent from work to state the reason why they are absent and to permit the Commission to determine whether that excuse is acceptable. This appears to be a reasonable and justifiable proposal. There can be no debate that employees must have an acceptable excuse for missing a scheduled day of work.

The Union's concern about potential management arbitrariness in determining and "acceptable" excuse is legitimate. A discharge resulting from a management determination that

an absence/absences is/are "unacceptable" must still meet the just cause standard in Article III and would be subject to the grievance procedure in Article II (Comm. Ex. 1).

Fact-Finder Recommendation, Issue 8, "Work Rule Change." The fact-finder recommends that the Commission's proposed changes to Appendix B, Section 2, Subsection (e) be incorporated into the collective bargaining agreement.

ISSUE 9, WAGES AND RETROACTIVITY

Fact-Finder Discussion. The Commission has proposed a wage increase of $.60 per hour across all classifications upon ratification, with an additional $.30 per hour on July 1, 1998. The Union has proposed an increase of $.40 per hour across all classifications, with retroactivity to the expiration of the previous contract, July 1, 1996. The record establishes that although retroactivity has been granted on two occasions to this bargaining unit, it has not been granted in 20 years in this unit. This fact-finder is unwilling to recommend a change in the long-standing practice of the parties.

On the other hand, the Union is entitled to some compensation for the wait of more than 19 months since the last agreement. Thus, the fact-finder will recommend that the Union's proposed wage increase be implemented in on July 1, 1998 and July 1, 1999. This will increase the base wage, and be reflected in vacation pay, overtime pay, and other pay-based compensation

Fact-Finder Recommendation, Issue 9, Wages and Retroactivity. The fact-finder recommends that the Commission's proposed increase of $.60 across all classifications be effective upon ratification of the agreement. The fact-finder also recommends that increases of $.40 per hour across all classifications be implemented effective July 1, 1998 and July, 1, 1999. The fact-finder recommends against retroactivity.

ADDITIONAL ISSUE, DURATION.

Fact-Finder Discussion and Recommendation, Additional Issue Duration. The fact-finder recommends that the contract expire at midnight on June 30, 2000. This will bring an additional year of stability to the relationship. It is also consistent with the recommendation for health insurance for retirees (Issue 6) and Wages (Issue 9).

LISTING OF FACT-FINDER RECOMMENDATIONS

Issue 1, "Temporary Employees.". The fact finder recommends that the parties adopt the Commission's proposal on Issue 1 except that the last four words of its proposal for Article 1, Section 1, Subsection (b) ("except in emergency situations") shall be deleted, and a period placed after the word "layoff" in Article 1, Section 1, Subsection (b).

Issue 2, Reporting Site. The Fact-Finder recommends that the Commission's proposed changes, adding a subsection (b) to Article V, Section 8, be incorporated in a new collective agreement.

Issue3, "Leaves of Absence." The Fact-Finder recommends that the Commission's proposed changes, amending Article VI, Section 2 be incorporated in a new collective agreement.

Recommendation on Issue 4, "Second Shift/Night Work." The Fact-Finder recommends that the Union's proposal to retain the current language of Article VIII, Section 1(b) be incorporated in a new collective agreement.

Issue 5, "Health Insurance for Current Employees." The Fact-Finder recommends that the Commission's proposed changes amending Article IX, Sections 6 and 6(d) be incorporated in a new collective agreement.

Issue 6, "Health Insurance for Retirees. The fact-finder recommends adopting neither the Commission nor the Union position. Rather the fact-finder recommends the following changes in Article IX, Section 6(e).

Issue 7, "Construction Crew Foremen." It is recommended that the parties adopt the Commission's proposed contract language for Issue No. 7.

Issue 8, "Work Rule Change." The fact-finder recommends that the Commission's proposed changes to Appendix B, Section 2, Subsection (e) be incorporated into the collective bargaining agreement.

Issue 9, Wages and Retroactivity. The fact-finder recommends that the Commission's proposed increase of $.60 across all classifications be effective upon ratification of the agreements. The fact-finder also recommends that increases of $.40 per hour across all classifications be implemented effective July 1, 1998 and July, 1, 1999. The fact-finder recommends against retroactivity.

Additional Issue, Duration. The fact-finder recommends that the contract expire at midnight on June 30, 2000. This will bring an additional year of stability to the relationship. It is also consistent with the recommendation for health insurance for retirees (Issue 6) and Wages (Issue 9).

February 9, 1998
Date

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