7/24/87 FF

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

FACT FINDER: KENNETH P. FRANKLAND

LEELANAU COUNTY ROAD COMMISSION,

Employer,

-and-

TEAMSTERS, LOCAL 214,

Union.

MERC Fact Finding
Case No. G86 D-327

The undersigned, Kenneth P. Frankland, was appointed by the Commission as its Fact Finder and agent to conduct a Fact Finding Hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's Regulations, and to issue a report with recommendations with respect to the matters in dispute. A Fact Finding Hearing was held on April 29, 1987, at the Road Commission Offices in Suttons Bay, Michigan. Post hearing briefs were mutually submitted by July 3, and the Employer had a reporter present and the Fact Finder has the benefit of the transcript of the proceeding.

APPEARANCES:

For Leelanau County Road Commission	For the Union
Mr. Michael R. Kluck, Attorney	Mr. Dale J. Majerczyk
Mr. Glenn Noonan, Chairman	Mr. Herb Cradduck, Steward
Mr. Jim Gilbo, Manager	Mr. Adolph Novak, Steward

Leelanau County Road Commission (FF)

INTRODUCTION

The original petition for Fact Finding was filed by the Union on or about December 31, 1986, after two mediations had occurred, one on 9/30/86 and the other on 11/24/86. Mediation had been preceded by negotiations held on July 23, 1986 and August 29, 1986. The petition listed 15 issues in dispute. At the time of the hearing two issues were withdrawn, one being on premium pay and the other on general provisions. Thus, this report discusses 13 specific issues and will be on an issue by issue basis as they were taken up at the hearing. At the hearing each issue was separately discussed before going on to the next issue with the proponent of change having the obligation of going forward.

It should be further noted at the outset that Section 25 of the Act does not set forth any parameters such as those required for arbitration under Act 312. Rule 35 of the Commission requires that the Fact Finder prepare a report containing a statement of findings of facts and conclusions upon all material issues presented at the hearing, recommendations with respect to the issues, and reasons and basis for the findings, conclusions, and recommendations.

Although there is no specific format for Fact Finding, assumptively the parties present information by way of exhibits, testimony and the like which will aid the Fact Finder in actually determining the facts. When a party proceeds on some issues by way of argument rather than with presentation of what we normally call evidence, it is often difficult for a Fact Finder to

actually determine the facts and make a recommendation because one side is not necessarily presenting facts but strictly opinion and argument as to why certain language should be changed in the contract.

This Fact Finder always assumes that the party who seeks change from the existing contract has the burden of going forward and demonstrating why there should be change. Fact Finders and arbitrators ought not to make recommendations for changes in existing contracts without the benefit of a substantial factual basis when the parties who have negotiated and/or mediated have not been able to reconcile their differences. I believe that it is important that these prefatory remarks be made insofar as the Union, on several issues, rested their case almost exclusively on the argumentative skills of Mr. Majerczyk whereas the Employer either used exhibits or testimony of Mr. Gilbo in support of its position. This is not to say that one method is better than another, it is simply a statement of reality that Fact Finders, like Arbitrators should look at the record that is presented and make findings of facts and recommendation based upon the information presented in factual context rather than an argumentive mode.

It should further be understood that in fact finding we need not make a determination of comparable communities. Needless to say, both parties have relied upon certain counties as being comparable for statistical support for their positions. The Union has suggested that 14 counties in the Paul Bunyon Council are more comparable to Leelanau. The Employer however

has used four counties as being comparable, three of which are in the Paul Bunyon Council and the fourth, Presque Isle, being in the northeast rather than in the northwest quadrant.

For Fact Finding this writer will not make a determination of comparable communities but will utilize the information presented to best arrive at appropriate recommendations. Since both parties rely upon Antrim, Lake, and Missaukee counties as comparable communities, we can at least look at those three counties for comparison purposes since the parties themselves believe that they would be comparable. But, as stated above, we will not necessarily be constrained to only the evidence adduced from those three counties.

ISSUE I

ARTICLE XIX - OUTSIDE EMPLOYMENT

CURRENT CONTRACT:

> Employees may be employed outside of the Leelanau County Road Commission with Board approval as long as the outside employment does not and shall not interfere with their work performance while employed at the Leelanau County Road Commission.

EMPLOYER POSITION:

Current contract.

UNION POSITION:

Strike from the second line, "with Board approval".

RECOMMENDATION:

Maintain current contract language.

DISCUSSION:

The Union has proposed that outside employment be

permitted without Board approval. As proponents they have simply argued that current language is unreasonable and should be stricken. Further, that the requirement has never been enforced and that adequate remedies exist in the contract in the event of a conflict.

The Employer presented testimony through Mr. Gilbo that the language has been in existence since the first collective bargaining agreement with this Union and that there has never been any grievance regarding the language. The intent according to Mr. Gilbo was to give the Employer an opportunity to disapprove outside employment which would conflict with the efficient operation of employees while working for the Commission. In the absence of any demonstrated problem with existing language, and since the Board has never denied a request, the moving party, the Union, has not demonstrated why the contract should be changed. It would seem that the contact would require prior approval but as was testified by Mr. Gilbo, quite often the Commission does not know if employees are engaged in other employment and assuming that the employment did not in fact impair the efficiency of the employees operations, the Board could easily grant approval after the fact. With no demonstrative reasons for change, in the absence of any facts that show the current contract creates any hardship, there is no reason to change the contract.

ISSUE II

ARTICLE XXIII - TIME CARDS

CURRENT CONTRACT:

> (d) Anyone reporting late for work shall be paid the actual hours worked to the nearest quarter (1/4) hour. However, a minimum of fifteen (15) minutes shall be deducted from his total daily hours and Appendix "A" shall apply.

EMPLOYER POSITION:

Current contract.

UNION POSITION:

Add: Employees who work in excess of the normal work day shall be paid overtime to the nearest quarter (1/4) with a minimum of fifteen (15) minutes overtime.

RECOMMENDATION:

Maintain current contract.

DISCUSSIONS:

On this issue, neither party presented evidence. The Union presented argument that a reward should be given for employees who work past their normal work shift as simply a question of fairness. The Union indicated that they believed that it was unfair to penalize a person who reports late for work and yet the same employee receives no additional compensation for working beyond the regular shift. The Employer pointed out that existing Article 23 references Appendix A which is a schedule of progressive discipline in the event of repeated lateness. In the absence of a factual record that individual employees have been unfairly treated with respect to time cards there is no compelling reason on this record to modify the current contract. Therefore the recommendation is that the current contract be maintained.

ISSUE III

ARTICLE XXIV - WORK RULES

CURRENT CONTRACT:

(a) The Employer reserves the right to publish and enforce from time to time new work rules, policies, and regulations. The Union shall have the right to grieve the reasonableness of any new work rule established by the Employer.

(b) The Union agrees that the presently established rules, regulations, and policies shall remain in effect and agrees to abide by such rules, regulations and policies.

EMPLOYER POSITION:

(a) The Employer reserves the right to publish and enforce from time to time new reasonable work rules, policies, and regulations. The Union shall have the right to grieve the reasonableness of any new work rules established by the Employer.

(b) Current contract.

UNION POSITION:

In the first sentence, second line, add, "reasonable" before "work rules".

Second sentence, add at the end, "at the time the violation of such rules applied to individual employee."

RECOMMENDATION:

The word reasonable should be added before "rules" in paragraph (a) and the following language should be added at the end of the second sentence in paragraph (a) as follows: "when the new rule is adopted or an employee may grieve the reasonableness of such work rule when applied to the employee."

Both sides have agreed that reasonableness is applicable to new work rules that might be adopted by the

Employer. Thus, that word is added to paragraph (a) first sentence. As to when an alleged rule may be grieved as being unreasonable, the parties differ. The Union suggests that it can grieve the reasonableness of a new rule after it has been applied to an individual member of the Union. The Employer suggests they should do it when adopted. The Employer offered Exhibit 11 which purports that none of their comparable counties have a contract provision allowing the Union to defer challenging the reasonableness of a work rule until after the rule is applied to a given employee. Having reviewed each contract, they are in fact silent and have no direct applicability to this issue. In fact, some of the contracts are so vague as to a provision for work rules and their definition of grievance procedures that it is difficult to give any interpretation to them.

The Fact Finder believes that since the parties agree that the added rule should be reasonable, if there is a question as to the unreasonableness of a new rule and the Union has a dispute, they should grieve at the earliest possible time on behalf of the bargaining unit. As pointed out by the Employer, the definition of grievance is "a complaint by an employee or the Union concerning the application and the interpretation of this Agreement. . ." Thus, if a new rule is being applied to an employee who believes that it is unfairly applied to him and he challenges the reasonableness of the rule as applied to him then the employee could clearly file a grievance. The suggested language of the Fact Finder merely recognizes that right. Individual employees generally grieve after a disciplinary action

has been taken and if the employee perceives it to be an unreasonable new rule, the question of reasonableness will then be part of the grievance.

ISSUE IV

ARTICLE XXVI - WORK DAY AND WORK WEEK

CURRENT CONTRACT:

> The normal work day for regular full-time employees shall normally be eight (8) hours per day, excluding a thirty (30) minute paid lunch period. The normal work week for regular full-time employees shall normally consist of five (5) work days and shall normally be forty (40) hours duration. This section shall not be construed as, and is not, a guarantee of any number of hours of work per day or per week, or pay per day or per week.
>
> Nothing shall restrict the Employer from scheduling overtime and the employees shall be required to work such overtime unless excused for satisfactory reasons.
>
> The starting and quitting time of each shift shall be established by the Employer as required to meet operating schedules.
>
> All employees shall be allowed a fifteen (15) minute rest period approximately in the middle of the morning shift.

EMPLOYER POSITION:

> Current contract.

UNION POSITION:

> The Union is proposing that in the fourth paragraph that the following language be substituted: ". . . fifteen (15) minute a.m. and p.m. break."

RECOMMENDATION:

The Union requests that there be a fifteen (15) minute rest break in the afternoon in addition to that which is already provided in the morning. The Employer, through Mr. Gilbo,

indicated that the normal shift begins at 7:00 a.m., that there is a break around 9:00 a.m., that lunch is taken between 12:00 and 12:30 and the day ends at 3:30. Also that there had been no grievances on this matter and that the additional break could interrupt productivity.

Union Exhibit 1, for all 14 Paul Bunyon counties shows six have a single break, five have a double break and three have no contract provision. Thus, evidence in the Paul Bunyon council is mixed at best. Using only Antrim, Lake and Missaukee we have three different provisions: no contract provision, a single a.m. break and a double break. Thus, using the jointly agreed upon comparables provides no specific assistance.

Assuming that it is the proponents burden to show a demonstrative need, it is the Fact Finder's belief that the same has not been proven and that an evaluation of the alleged comparables does not make a persuasive argument one way or the other. Assuming that the work day is from 7:00 to 3:30 with a break at noon the longest shift is obviously five hours from 7:00 to 12:00. The shortest shift is from 12:30 to 3:30. It seems reasonable to have a mandated break in the morning to break up the longest segment and to avoid potential fatigue but there does not seem to be any compelling argument as why there should be an additional 15 minute break in the three hour segment from 12:30 to 3:30. Without getting into the potential economic aspects, it seems more reasonable to maintain the current language.

ISSUE V

ARTICLE XXIX - FUNERAL LEAVE

CURRENT CONTRACT:

> Section 1. Every employee shall be granted three (3) days paid leave (other than sick leave) without loss of pay to attend the funeral of the spouse, child, mother, father, sister, or brother. Each employee shall be granted one (1) days leave to attend the funeral of his son-in-law, daughter-in-law, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparents, grandchildren; however, such leave shall be charged against the employee's sick leave accumulation. In the event the employee has no accumulated sick leave, compensation will not be paid.

EMPLOYER POSITION:

> Current contract.

UNION POSITION:

> The Union wishes to include in the definition of family for three-day funeral leave, all others defined in the one-day leave, and not charged to any other paid leave.

RECOMMENDATION:

> Adopt Union position.

DISCUSSION:

The Union wishes to expand the immediate family definition to include in-laws, grandparents and grandchildren for the purposes of three day paid funeral leave. The Union offers Exhibit 2 suggesting that a majority of the Paul Bunyon counties have an expanded definition whereas the Employer uses Exhibit 12 to demonstrate that in its four comparables there is a diversity in funeral leave provisions and Leelanau is as generous as its comparables.

The evidence adduced from the County Exhibits demonstrates that mother and father-in-law and grandparents are clearly covered as immediate family. Missaukee for example has identical language as proposed except for grandchildren, Lake includes mothers and fathers-in-law and grandparents and Antrim includes mothers and fathers-in-law. An examination of the actual contracts suggests that in three of the county comparables there is no deduction from other leaves and in Presque Isle there is no stated provision except three day or one day leaves are deducted from the four personal days that are available.

The Union does not need to show actual hardship under the existing funeral provision but only that the majority of the surrounding counties have an expanded funeral leave provision for immediate family. The Exhibits clearly reflect that the expanded definition should be used and also that there is no deduction from sick leave or other leave banks to attend the funeral of such defined immediate family. Thus, on the basis of the Exhibits and the actual contracts in Antrim, Lake and Missaukee it is the Fact Finders recommendation that the Union proposal be adopted so that all individuals presently identified under the one day leave provision be included as immediate family for purposes of a maximum three day paid leave.

ISSUE VI

ARTICLE XXX - GROUP INSURANCE

CURRENT CONTRACT:

> The employee shall pay $2.60 per month as his share of the premium of Group Policy 957, the balance of the premium shall be paid by the Employer.

EMPLOYER POSITION:

Current contract.

UNION POSITION:

The Union's position is that the Employer pay the full premium.

RECOMMENDATION:

Maintain current contract.

DISCUSSION:

The Union proposes that the Employer pay the remaining $2.60 per month for the cost of sick and accident disability insurance. Presently the county pays $18.50 per month for group S & A and life insurance of which $11.00 is for life and $7.50 is for S & A. Four Dollars and Ninety Cents is being paid now by the county and $2.60 by the employee. Exhibit U3 suggests that eight of the 14 Paul Bunyon counties do not provide S & A while five counties apparently provide S & A at 100% paid by the Employer. There is no information as to the amount of benefits. Both Antrim and Lake provide Employer paid group insurance but according to E13, Lake does not provide disability only life insurance and Antrim provides disability of $60.00 per week for 26 weeks and only $5,000 in life. By way of contrast in Leelanau County, the employee may receive a minimum of $100 up to a maximum of two-thirds of his wage for 15 weeks. This is a substantially better benefit than appears evident from the programs offered in adjacent counties. Exhibit E14 demonstrates that there has always been an employee co-pay and that up until 1986 both the employee and the employer paid $2.60. In 1986 the Employer contribution went up to $4.90. Assumptively this was

for the S & A portion of the premium since the Employers always paid 100% of the life insurance portion of the premium. Although it is obviously beneficial that the employee would not have to make a contribution, the more compelling argument from the Exhibits demonstrates that the employee contribution is not unreasonable in relationship to the benefits earned and experience elsewhere. It is clear that the $25,000 life insurance policy is much greater than in most other counties and it also seems that the S & A benefit is much greater than in those counties that provide it whereas many counties in the Bunyon Council do not provide it at all. Accordingly, it would be the recommendation to continue the existing contract language.

ISSUE VII

ARTICLE XXXII - RETIREMENT

CURRENT CONTRACT:

> The Employer will continue with its present retirement plan for the life of this Agreement.

EMPLOYER POSITION:

> Current contract.

UNION POSITION:

> That the Employer increase its contributions to the pension plan by 5 percent.

RECOMMENDATION:

> Since the parties are approaching this issue from different perspectives, it is recommended that they restudy the issue to determine exactly what an additional 1/2% or 1% contribution by the employer would cost and more importantly what that additional contribution would produce as far as a benefit. Since the employee would need to match the contribution as his portion under

the deferred compensation plan it is unclear if he understands the relinquishment of current income versus taxable deferred comp at a later date.

DISCUSSION:

Retirement issues are always complex. This is evidenced by Exhibits U4 and E27. We really do not know what is contained in the pension plans of the various counties represented by those Exhibits. This record indicates that up until 1983 there was a defined benefit plan utilizing annuities with Northwestern Mutual Life. The contributions of the Employer and the employee were based upon a sliding scale where the Employer's contribution was greatest as the employee's was lowest and as the employee approached the age of 65 his contribution increased and the Employer's contribution decreased. In 1983 the existing plan was adopted and the plan specifications in summary form is contained in Exhibit E15.

It is a defined contribution plan to the extent that the Employer will make a 3.75% maximum contribution of an employees wages up to $18,000 but only if the employee matches the contribution by making a similar contribution into his own personal deferred compensation plan. The employees contribution is tax deductible. In 1983 all employees had to switch and apparently, all members of the unit did so. It is clear from the record that the benefits of this plan are superior to the proceeding plan and also that the benefits of this plan appear to be superior to comparable M.E.R.S. plans.

The problem is that the parties did not approach the issue from the same perspective. The Employer is looking at it

from the benefits earned as a result of contributions in arguing that they ought not to increase their contributions because the existing benefits are greater than in comparable communities. The employees say that the benefits derived are irrelevant that the Employer contribution is important and if they are paying 3.75% now, obviously if they kick in more money, the employee must benefit. Although the Employer alluded that they could not afford an increase, they did not really defend their position on that basis. Thus, the actual cost of an increase was really not a part of the record. Exhibit U4 is really difficult to decipher. Where a plan is identified as self-insured, we do not know what kind of a plan it is but assume that it is a defined contribution plan. We do not know whether the employee matches any employer contribution. The Missaukee contract is part of our Exhibits but it does not set forth what the contributions are.

The record reflects that in 1983 the percentage of 3.75 was arrived at by taking the existing dollars that were being contributed by the Employer and determining how those dollars could be utilized in a percentage formula in a defined contribution plan. Thus, from a percentage perspective it is obviously less expensive because there is an equal employee match for his deferred compensation plan. Economic realities suggest that 3.75 or even 4% under the Leelanau plan buys far more benefits than a plan in an adjoining county where the employer is contributing a greater percentage of the employees' wage. It is encouraged and recommended that the parties actually explore, in the adjacent counties, the benefits that are being realized to

determine if in fact Leelanau County is competitive with its neighbors.

Since the percentage was fixed in 1983 based upon a correlation of then available funds and there has been no increase it seems that the county ought to be able to make some percentage increase in a combined economic package since as discussed later, the County's ability to pay is not zero as they have suggested. It is not clear on this record whether the employees fully understand that an increase by the Employer must be matched by the employee and the employee may not want more funds deferred even though he gets a present tax deduction for his contributions to the deferred compensation plan. Needless to say, these are the trade-offs that need to be explored in much greater depth and it is beyond the powers of this Fact Finder to be able to make a specific recommendation as to what increase in the Employer contribution should be adopted. As stated above in the recommendation part, both sides approached this issue from totally different directions and they therefore need to reconcile their approaches, analyze the plans in other communities and seek common grounds. From the Fact Finder's perspective, if the employees are willing to make additional contributions to the deferred compensation plan then the County should give very serious consideration to making the matching contribution on their side of the equation.

ISSUE VIII

ARTICLE XXXIII - VACATION

CURRENT CONTRACT:

NO LANGUAGE

EMPLOYER POSITION:

Establish a fixed vacation week twice annually.

UNION POSITION:

No contract change.

RECOMMENDATION:

Do not add new language to the contract.

DISCUSSION:

There is no existing language with respect to fixed vacation schedules and the Employer has proposed that a fixed vacation week be scheduled twice annually and that all employees of the Commission be off at the same time. Mr. Gilbo testified that such a provision might improve efficiency. He suggested that during the summer months there is often short work crews and it is difficult to schedule gravel crushing operations or seal-coating when they do not have full crews. However, it was pointed out by Mr. Majerczyk that the Commission now has the right to turn down vacation requests if they conflict with the current needs of the Commission. A fair summary of the testimony would show however that the superintendent or foreman work the vacation schedules and that periodically they may ask a person to wait a week or defer for a short period of time but in no instances has there ever been a grievance filed by an employee because of denied vacation or postponed vacation.

Since the Employer proposes this change, they have the burden of demonstrating a basis for it. The only testimony was

that of Mr. Gilbo and although in general terms he explained a possibility of efficiency, there was really no support in the record to justify a recommendation to add a fixed period for vacations. Employees should have maximum flexibility to select their vacation time to fit their personal needs and to the extent that their personal needs can be met by the Employer without demonstrated inability to perform normal functions, then the existing procedure should prevail.

ISSUE IX

ARTICLE XXXIV - HOLIDAYS

CURRENT CONTRACT:

Section 1. The employee shall be paid for nine (9) holidays.

New Years Day	Cherry Festival Friday
Memorial Day	Labor Day
Good Friday	Thanksgiving Day
Fourth of July	Christmas Day
Friday before Labor Day	

Section 2. Holiday Eligibility:

(a) The employee must work his regularly scheduled work day prior to the holiday and his regularly scheduled work day following the holiday; otherwise no pay will be granted.

(c) In addition to holiday pay for time not worked, if an eligible employee works on the actual day of the designated holiday, he shall also be paid the rate of one and one-half (1 1/2) time his regular straight-time rate for the hours so worked.

EMPLOYER POSITION:

Section 1. Current contract.

Section 2. (a) The employee must work his regularly scheduled work day prior to the holiday and his regularly scheduled work day following the holiday, unless the employee is on an approved paid leave of absence on said

days; otherwise, no holiday pay will be granted.

(c) Current contract.

UNION POSITION:

The Union is proposing to increase the holidays to include December 24 and December 31.

The Union is proposing that Section 2, paragraph (a) add in the third line after "holiday", "unless on an approved leave of absence".

Paragraph (c) - change to read two (2) times the hourly rate.

The Union is proposing to:

A. Add two additional holidays;

B. Allow eligibility for holiday pay if an employee is absent the day before or after the holiday provided the employee is on an approved leave of absence; and

C. Increase the pay for time worked on a holiday from time and one-half to two times the hourly rate (TR. 82-83).

RECOMMENDATION:

No change in Section 1 or Section 2(c). In acceptance of the parties' agreement, allow eligibility for holiday pay if an employee is on an approved paid leave of absence the day before and the day after the holiday which concept is to be added to Section 2(a).

DISCUSSION:

The Union offered Exhibit U5 and the Employer E18 in support of their respective positions. Very little time was spent on this issue at the hearing and Exhibit U5 shows that only three counties have more than nine paid holidays all the others have nine or less. As pay for holidays, the vast majority pay 1 1/2 time which is what Leelanau pays. There is no support in the

record, even using the Union's comparables, to support their recommendations and therefore their proposal to add Christmas Eve and New Years Eve as paid holidays and to increase the rate of pay is not recommended.

ISSUE X

ARTICLE XXXV - HOSPITAL, MEDICAL, DENTAL AND OPTICAL INSURANCE

CURRENT CONTRACT:

See pages 26 and 27 of expired contract.

EMPLOYER POSITION:

Current contract.

UNION POSITION:

The Union is proposing that the Employer pay the full cost of premiums for Blue Cross/Blue Shield.

Additionally, the Union is proposing that employees who retire from the Leelanau County Road Commission shall have their Blue Cross/ Blue Shield premium paid by the Employer.

RECOMMENDATION:

Adopt the Union proposal that the Employer pay the full cost of premiums for current employees but do not change the contract to add employer financing of retiree Blue Cross/ Blue Shield premiums.

DISCUSSION:

In the existing contract, effective September 1, 1984, the Union agreed to pay 50% of the increase in the first year of the contract and 100% of any premium increase in the second year of the contract. Mr. Gilbo testified that this was a trade off at the bargaining table, a concession by the Union in order to get forty cents an hour increase in base wages. Union Exhibit 6

demonstrates that Blue Cross/Blue Shield coverage is provided by the vast majority of counties and the total premium is paid by the Employer. Leelanau is the only county with a co-pay and this is true even amongst the county comparables.

It was pointed out that fully paid Blue Cross/Blue Shield is offered to Commission members and non-bargaining unit employees. Exhibit E19 demonstrates that pre-April 1987 employee cost was $336.50 per month and post-April 1987 was $385.66 per month. These are in relationship to a total cost of $6,466.25 pre-April 1987 and $6,518.63 post-April 1987. The Employer points out that the monthly contribution increase between 1986 and 1987 was $49.16 per month. Notwithstanding cost sharing of other items, it would seem that sharing this benefit was a one time trade-off for the wage increase. Since it is almost common practice for an employer to pay full health premium benefits it is recommended that the Commission do the same in this contract. In the absence of a bargaining table trade-off such as occurred in the prior contract, the evidence suggests that the equities are on the side of the Union on this issue.

As it relates to providing retiree benefits, of the adjacent counties, seven do not provide retiree coverage and six do in some fashion. Before adding a new benefit to the contract other than at the bargaining table, the proponent should demonstrate a compelling reason and it would seem that Exhibit U7 provides only mixed basis and not a preponderance of why it should be added. We have no information upon the cost implications and whether to include only the retiree, or his

spouse and children, if any. Assuming that the parties get back together, the retiree issue could be a potential trade-off that the parties might consider at the table given full information as to cost and persons that might be covered. However, at this time, based upon the record there is no compelling reason to recommend that it be added.

ISSUE XI

ARTICLE XXXVIII - SICK LEAVE

CURRENT CONTRACT:

See pages 29, 30 and 31 of expired agreement.

EMPLOYER POSITION:

Current contract.

The Employer is proposing the current contract except that it would agree to a Letter of Understanding which would provide as follows:

"For the next 12 months and on a trial basis only, to see if employee attendance is improved, the Employer would agree that ny employee who has, on his anniversary date, accumulated the maximum of 70 days of sick leave, will be eligible, during the 12 months following the anniversary date, to accumulate up to a maximum of 82 days. At the conclusion of this 12 month period, the employee will be paid, on his anniversary date, 50 percent of those days so accumulated in excess of 70. This shall not alter the maximum pay out upon retirement which shall remain at 1/2 of the unused and accumulated sick leave days to a maximum of 70 days.

The Employer shall, in its sole discretion, determine at the end of the 12 months, whether to continue this provision."

UNION POSITION:

The Union is proposing to increase the maximum sick leave accumulation from 70 days to 120 days.

Additionally, the Union is proposing to increase the payoff upon death, retirement or quit to 100 percent of the accumulation.

RECOMMENDATION:

Adopt the Employer position that is an extra 12 days to a maximum of 82 days but for the balance of the contract not just for the first 12 months. The maximum pay out shall remain as is in the contract.

DISCUSSION:

The Union wishes to have sick leave raised from 70 to 120 maximum and that the pay out at the time of death or retirement be 100% instead of the current 50% for death or retirement. Exhibit U8 provides some support for an increase as seven counties have more than 70 days, five having 120 days or more and two having 82 and 80 days respectively. Of the Employer comparables, Antrim is below, Lake has 120 days, Missaukee is 80 and Presque Isle has 90. Thus there is a basis using the Employers own comparables to suggest that the maximum accumulation should be increased. The Employer is proposing that an experimental 12 days be added and after the first year determine whether it is being abused. Assumptively, if it is not being abused it would be continued for the second year. Although this is an unfunded liability, the Employer's present ability to pay was raised but in an unspecified manner. The Union pointed out that nine members had accumulated maximum sick leave, four had accumulated 90%, and eight had accumulated 80%. Thus, 21 of 34 members saw a need to draw substantial amounts of sick leave. Coupled with the provisions for sickness and accident benefits, it would seem that some movement is authorized but not increased

to 120 days. Accordingly, the suggestion of the Employer to add 12 days makes sense but it ought not to be done just on a one year experimental basis it should become part of the contract for two years. Thereafter, if there has been an abuse or if the Employer demonstrated that it was an imprudent decision the subject would again be available for collective bargaining and the trade-offs that always occur.

On the question of pay out, only five counties pay more than Leelanau at retirement and of the Employer comparables Antrim has 50% over 48 days, Lake has 50% of accumulation, and Missaukee has 50% over 80 days. It would seem therefore from the evidence that Leelanau is comparable using either groups and therefore the pay off percentage ought not to be changed unless the parties did so in some kind of a trade-off under the total economic issues.

ISSUE XII

ARTICLE XII - GENERAL PROVISIONS

This issue is withdrawn.

ISSUE XII

ARTICLE XII - WAGES

CURRENT CONTRACT:

Refer to Appendix "B" of existing contract.

EMPLOYER POSITION:

Current contract.

UNION POSITION:

The Union is proposing to retitle all the "Assistant Mechanics" to "Mechanics" and retitle all "Mechanics" to "Chief Mechanics".

Additionally, the Union is proposing to increase the base rates of all employees by 6.5 percent.

RECOMMENDATION:

Based upon a comparison of comparable communities and financial position of the County, it is recommended that the employees in the bargaining unit receive a 4% wage increase in the first year of the contract or if it is going to be a two year contract without a wage reopener, a 6% increase.

DISCUSSION:

Wages are always the most difficult issue in either Fact Finding or Arbitration. In this case the Union has proposed in increase in base rates of all employees by 6.5% and the Employer has proposed the existing wage schedule under Appendix "B" of the contract with no increases.

The Union argues that the Employer is on the bottom looking up at the wage level of the 14 county Paul Bunyon Council. They argue the average wage expressed in Exhibit U9, should be paid since Leelanau is not the smallest, poorest, nor is maintenance more difficult in Leelanau verses the other counties. Using the Union wages under U9 the average light truck is $9.05, heavy truck $9.15, heavy equipment operator $9.30, and mechanic $9.49. By comparison, Leelanau is paying $8.47 for both light and heavy truck, $8.62 for heavy equipment operator, and $8.75 for mechanic. For the purposes of this report, I will accept the figures in U9 as being accurate as of September 1, 1986, since they are based upon Union Exhibit 13 which is the 1986 County Road Wage Scale as of September 1, 1986. The question was raised by the Employer as to the dates but in

consideration of Exhibit U13 I am assuming that wages in Exhibit U9 are as of September 1, 1986, so that they would be the same date as the Employer used in Exhibit E21. Exhibit E21 uses four comparables, three of which are within the Paul Bunyon Council. If you use only the three comparables within the Paul Bunyon Council the truck driver average is $8.71, equipment operator is $8.96, and mechanic is $9.15; while Leelanau is paying $8.47, $8.62, and $8.75 respectively. Even if you add in Presque Isle, the averages are not much different, a truck driver would then be $8.73, equipment operator $8.87, and mechanic $9.02. The point being that whether you use the Paul Bunyon total composite or whether you only use the Employer's comparables set forth in Exhibit E21, Leelanau's wage schedule is substantially below that of its neighbors. In its brief, the Employer says that they believe they are not paying substandard wages, that some employers will always pay more and others less and the issue is whether or not what is being paid is reasonably related to the appropriate market. However, an analysis of the Employer's own Exhibits demonstrate a dramatic difference between wages paid in Leelanau and the Employer comparable communities.

Union Exhibits U10 and U11 attempt to demonstrate that in surroundings communities Leelanau is dramatically below. U10 includes one of the Employer's comparables and includes Benzie and Grand Traverse. Because of the dramatic total revenue available to Grand Traverse, I do not believe Exhibit U10 fairly depicts comparable communities. As to U11, this Exhibit depicts wages two above and two below the composite, Lake and Missaukee

are included and both of those are stated by the Employer to be comparable. Crawford is outside of the Paul Bunyon Council and Benzie apparently has a reasonable high wage scale and thus, why it was included in the Exhibit by the Union. For these reasons, this Exhibit should not be a basis for our decision. In the final analysis by simply using the Employer's E21 Exhibit, taking the average including Presque Isle the difference for truck drivers is twenty-six cents an hour, for equipment operators forty cents an hour and for mechanics twenty-seven cents an hours. Excluding Presque Isle and only taking Antrim, Lake and Missaukee, counties that both parties agree are comparable, the differences are truck drivers twenty-four cents, equipment operators forty-nine cents, and mechanics sixty-eight cents.

It seems evident from the statistical analysis of wages paid that Leelanau is below the appropriate market. In fact, at page 109 of the transcript, counsel for the Commission in explaining Exhibit 21 inferred that that might be the case when he said that Leelanau County is coming "within striking distance of those other road commissions that we feel are most like us economically and otherwise".

Since the case has clearly been made that the employees are below comparable wages the next issue is what might be an appropriate wage increase and the question of the Employer's ability to pay comes into focus.

The County alleges that it does not have the ability to pay any more than under the present rate schedule and offered several Exhibits in support of its position. In looking at some

of the Exhibits, it is very difficult to understand them. For example, E26 showing total revenues and purportedly taken from the annual financial reports does not necessarily coincide with the actual financial reports. For example, in 1984, E26 indicates total revenue of $2,046,777 whereas Exhibit U16 shows total revenue of $2,301,415. For 1985, revenue in Exhibit E26 is stated at $2,181,255 whereas Exhibit U17 shows $2,497,648. With respect to expenses there is the same statistical variance. If one looks at Union 15, 16, and 17 for the years 83, 84, and 85 they suggest that in 83 there was a loss of $152,000 and yet on Exhibit E26 the County suggests that they had a plus of $26,000. For 1984, U16 suggests a loss of $58,000 and E26 a loss of $81,000. For 1985, U17 suggests a loss of $46,000 and E26 suggests a loss $59,000. For 1986, the Employer suggests that there was a gain of $94,000. It is extremely difficult to tell on this record exactly what the financial situation of the County is. What we do know is that as of December 31, 1983 the County had cash of $62,000 and December 31, 1984 they had $84,000 and December 31, 1985 they had $24,000. Joint Exhibit 2, proposed revenues for 1986, suggested that there would be a fund balance on 12/31/85 of $50,000 and an estimated fund balance on 12/31/86 of $31,000.

Admittedly these numbers are all over the lot but demonstrate that Leelanau County spends most of the money that it receives. In fact, that is exactly what Road Commissions are supposed to do. They are not supposed to hoard huge contingencies but rather take tax payers funds and apply them to

road maintenance and repairs and come as close as possible to breaking even with some prudent reserve in the event of contingencies.

Another way of looking at the financial condition of the Employer is to look at its balance sheet. Total fund balances in 1983 were $266,000, in 1984 $452,000, and in 1985 $369,000. This does not mean that this is cash available but it reflects the net worth, that is if one were to liquidate the assets at apparent book value, those are the numbers that would reflect its net worth. If one looks at net worth, and also looks at available revenues verses expenditures, you get a reasonably decent picture that Leelanau County is not rich, that it clearly spends most of its money for public purposes but can within its available revenues based upon its net worth afford a wage increase. I did not hear the County say that it would be insolvent if a wage increase was granted nor do I believe that the analysis of the numbers would lead to such a result. Needless to say, any increase in the economic package for employees creates tougher decisions for managers and then they need to make prudent decisions. However, that is what managers are paid to do, make tough decisions.

Exhibit E22 is offered purportedly to show a need to borrow. However, E22 is really a reflection of cash flow not a question of solvency. For example, the ending fund balance, cash on hand 12/30/86 is $119,000, apparently in excess of the proposed expenditure fund balance at 12/31/86 of $31,925. However, to be paid out of that fund balance is the accrued

payroll liability, certain accrued accounts payable and certain escrow funds leaving them a net balance of $43,853. In reality, this is reasonably close to the estimated fund balance projected at $31,925. Because of the low cash fund balance, they took an advance from the transportation fund. This is not unusual and the last sentence of the Exhibit says, "we received the Michigan Transportation Fund payment on January 12, 1987." The first receipt of the year. They do not state how much was received but the advance was simply to meet the short term cash flow problems which was resolved upon receipt of the January 12th payment.

Exhibit E23 upon cross-examination demonstrated that the County does have some outstanding obligations but the Exhibit does not demonstrate any acute financial problems. The equipment purchases simply mean that they have principal payments to make on lease/buy arrangements, that they have committed to purchase a tandem truck and single axle truck out of 1987 capital outlay funds and that the Suttons Bay roof project needs to be completed although $35,603 has already been committed for that project.

The County has received a one-half mill levy for 1986 and 1987 for purposes of general operating expenses for maintenance and repair of roads. This produces about $211,000 in revenue. Although the intent is for maintenance and repair of the roads and the record suggests that it will be used for major overhaul of primary or secondary system, it could be used for general operating expenses for salaries incurred in maintenance and repair of the roads. There are 237 miles of primary road out of 631 total miles. Needless to say, $211,000 would not go very

far if you are going to try to upgrade or improve the quality of the primary or the secondary roads. To the extent some of the work is being done by force account then you may be able to stretch the dollars further. Although these funds are not specifically intended for salary increases, it is within the descretion of the Commission to commit some of these resources as part of its total operating budget to handle the total expenses of the annual budget, including wages.

In summary, it is apparent that the wages are below comparable communities and that the Employer is not insolvent. It also does not have huge surpluses and presumably has been prudent in its expenditures. It does have the ability to meet salary wage increases. If this contract is only going to be for one year it is recommended a 4% increase be give across the board. After the first year then the parties can easily negotiate whatever would be appropriate. If this is going to be a two year contract without a wage reopener in the second year then it would be recommended that the employees receive a 6% wage increase. At a 4% wage increase the truck drivers would receive $8.71 an hour, the equipment operators $8.96 an hours, and the mechanics $9.10 an hour. This would still leave them below some of the comparable communities but would certainly narrow the gap. The Fact Finder is not unmindful of the possible financial ramifications but it can not be said on the record developed that there is no ability to increase. It can be stated that an increase will have a significant impact and make the Commission's situation more difficult, but as stated previously those are the

tough decisions that managers must make.

With respect to the reclassification of two employees, there was no record developed regarding specific functions nor classification levels other than argument. In the absence of any specific exhibits or testimony, it is recommended that the positions remain as classified. The parties should be able to resolve ambiguities since the parties know each employee individually, know exactly their relationships amongst each other, whether they are in fact foreman or true mechanics and this matter should easily be reconciled as if the parties simply sit down and talk it out.

ISSUE XIV

UNIFORMS

NEW

EMPLOYER POSITION:

> The Employer rejects the proposal of the Union.

UNION POSITION:

> The Employer agrees to furnish, maintain and launder, three (3) complete sets of uniforms per week to each employee in the field services.
>
> Mechanics shall be issued five (5) complete sets of uniforms per week, maintained and laundered by the Employer.
>
> Employees assigned to tar distribution shall be issued, in addition to the above uniforms, a pair of coverall, a pair of rubber boots and rubber gloves.

RECOMMENDATION:

> Do not add to contract.

DISCUSSION:

Currently the Employer does not furnish uniforms. The Union requests that the Employer maintain three sets of uniforms for service employees, five sets for mechanics, and that employees assigned to the tar distribute receive coverall, rubber boots, and rubber gloves. Union Exhibit 12 demonstrates that mechanics sometimes get uniforms and apparently they get them in Antrim, Missaukee, and Lake which are Employer comparables.

Although it would obviously be helpful for mechanics to have uniforms provided, in view of the economic award on wages, an item such as uniforms should be deferred for future consideration.

SUMMARY

The Fact Finder had a difficult time resolving some of the issues because of the paucity of concrete information. Although many exhibits were provided, the Fact Finder had to glean, for example from the annual reports, the significance of certain facts. These were not brought out and it was extremely difficult to really get a true handle of exactly what the financial picture of the County is. It is clear that the County is not paying wages comparable to its neighbors and thus unless the County could absolutely show that it could not afford anything, wages should be increased. Thus, the Fact Finder is not convinced that the County could not pay, therefore recommendations were made as stated. Needless to say, they are not what the Union asked for, the Fact Finder did give credence to some of the statements regarding the financial affairs of the

County. There will be a slight cost implication for the sick leave provision and for the Blue Cross/Blue Shield coverage. Since no cost figures were actually supplied by either side as to exactly what proposals might mean in terms of dollars, the Fact Finder can not state specifically what each might cost. It is hoped that the information contained in this report will assist the parties to narrow their disputes and perhaps to give the parties an opportunity to do the trade-offs that are often necessary to accomplish a negotiated agreement.

Respectfully submitted,

McGINTY, BROWN, JAKUBIAK,
FRANKLAND & HITCH, P.C.

Dated: July 24, 1987

By: 
Kenneth P. Frankland