

In the Matter of Fact Finding

between

Michigan Council 25, AFSCME, Local 92, AFL-CIO

and

Oakland County Road Commission

Case H-1770

Edward Simpkins

Michigan State University
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UNION	DATE
Billy Burling	1/8-9/87
Ray Stutzman	1/8-9/87
Bill Brown	1/8-9/87
Dean Mersino	1/8-9/87
John Farmer	1/8-9/87
Larry Watson	1/8-9/87
Employer	
Michael Kluck	1/8-9/87
Lee R. Rogers	1/8-9/87

APPEARANCES	For
Larry Watson	Union
Lee Rodgers	Employer
Harold Webber	Union
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Oakland County Road Commission (FF)

Background: On September 18, 1986 the Michigan AFSCME Council #25, Local 92 petitioned the Michigan Employment Relations Commission for Fact Finding in a dispute with the Oakland County Road Commission. The parties had been engaged in mediation after trying unsuccessfully to conclude an Agreement. There is a history of negotiations between the Oakland County Road Commission and its AFSCME employees in which disputes have been resolved and in which written Agreements have ensued from the negotiations process.

The Employment Relations Commission reviewed the application for fact finding and concluded that the matters in dispute might be more readily settled if the facts involved in the dispute were determined and publicly known.

Accordingly, the Employment Relations Commission appointed the undersigned as 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 and recommendations upon the conclusion of the hearing.

Subsequently, on November 13, 1986 a conference was held with the parties for the purpose of establishing hearing procedures and scheduling dates for meeting.

By consent of the parties, we agreed to proceed issue by issue beginning January 8 and continuing through January 9, 1987.

Summary of Issues and Matters Resolved

The Union's petition included eight issues that were in dispute. During the proceedings three of the eight issues were resolved. Five issues remained. The eight issues and a summary of their status are:

Issue 1: Shall the benefit schedule formula be increased to 2% for all years of service beginning January 1, 1987; or shall the benefit schedule be increased to 1.7 for all years of service beginning January 1, 1988? In addition shall health care benefits be improved by adding the following language to the contract. "Upon the retiree's death the Employer shall continue paying the full premium for the basic group hospitalization insurance for the retiree's spouse and/or dependents with the same coverage as set forth under hospitalization medical coverage starting January 1, 1987."

RECOMMENDATION: The parties shall incorporate into the successor agreement language providing that the multiplier for the pension benefit schedule beginning January 1, 1988 will be increased to 1.7% for all years of service.

RECOMMENDATION: The parties shall incorporate into the successor Agreement no new language which would extend a retiree's benefits upon his or her death to his or her spouse or dependents.

Issue 2: Shall Employees be awarded salary increases of 5% across the board for 1986, 1987 and 1988 and shall such increases be effective on July 1 in each of the respective years; or shall Employees be awarded increases of 4% across the board in 1986, 3% across the board in 1987 and 3% across the board in 1988 and shall

such increases be effective on November 1 in each of the respective years?

RECOMMENDATION: All Employees in the unit shall receive an increase of 4% across the board in 1986, an increase of 3% across the board in 1987 and an increase of 3% across the board in 1988. The effective date of the increase shall be retroactive to July 1, 1986 and will take effect subsequently on July 1, 1987 and July 1, 1988.

Issue 3: Shall Article 61, Job Assignments, be removed from the successor Agreement that is negotiated between the Oakland County Road Commission and AFSCME? That article reads: "If an employee feels that his assignment is improper because of his seniority, an attempt will be made the next working day to resolve the differences. Obvious errors known to the Superintendent will be corrected immediately whenever possible."

RECOMMENDATION: Article 61, Job Assignments, which reads in part: "If an employee feels that his assignment is improper because of his seniority, an attempt will be made the next working day to resolve the differences. Obvious errors known to the Superintendent will be corrected immediately whenever possible," shall be continued in the successor Agreement between the parties.

Issue 4: Shall a new article be included in a successor Agreement between the parties which shall be titled "Work Rules"? The new article shall read: "The Employer reserves the right to publish and enforce from time to time new work rules, policies, and regulations not in conflict with this Agreement. New work rules will be posted with a copy to the Local President ten (10) working days in advance of effective date."

RECOMMENDATION: The issue shall be removed from the table.

Issue 7: Shall Article 10, Maintenance of Standards, not be included in a successor Agreement? That Article reads: "The Employer agrees that conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the existing standards in effect at the time of the signing of this Agreement and shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement."

RECOMMENDATION: The parties shall continue in their successor Agreement Article 10, Maintenance of Standards which reads: "The Employer agrees that conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall

be maintained at not less than the existing standards in effect at the time of the signing of this Agreement and shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement."

Resolved Issues

Three issues were resolved during the course of the fact finding.

Issue 5: Resolved: The successor Agreement shall contain the following language which will be added to what is presently Article 15, Stewards and Alternate Stewards, in the previous Agreement: "Scheduled overtime shall be defined as overtime which is scheduled by the Employer during the regular shift preceding the overtime work. Work assigned that is of one hour or less, prior to the beginning of the regular shift and assignments of up to 2 1/2 hours to complete work started during the regular shift shall not be considered as scheduled overtime."

Issue 6: Resolved: The language of the previous Agreement in Article 52, Equalization of Overtime Hours, shall be continued in the successor Agreement. Separate language shall be incorporated into the successor Agreement that will permit an on-duty mechanic within his district to change tires on a disabled piece of equipment or to transport tires within the district without the necessity of calling in a tire repairman to perform the work.

Issue 8: Resolved: The term of the contract shall be from the date signed through June 30, 1989.

PROCEEDINGS

Procedure: By consent of the parties we agreed to proceed issue by issue. The party moving the issue would make his presentation on the case and the respondent would then offer arguments and proofs in rebuttal. The parties agreed that briefs would be submitted following the close of the hearing.

EVIDENCE AND ARGUMENTS

Issue 1. As the moving party on Issue 1, the Union raised two questions. The first was whether pension benefits shall be increased

by changing the benefit schedule formula multiplier to 2% for all years of service beginning January 1, 1987; contrasted, of course, with the Employer's rebuttal question of whether the benefit schedule shall be increased to 1.7% for all years of service beginning January 1, 1988.

Secondly, under issue 1 the Union raised the question of whether health care benefits shall be improved by adding the following language to the contract. "Upon the retiree's death the Employer shall continue paying the full premium for the basic group hospitalization insurance for the retiree's spouse and/or dependents with the same coverage as set forth under hospitalization medical coverage starting January 1, 1987."

Issue 1.1: Pension Benefit Schedule Formula

The Union made two arguments and provided supportive documentation in defense of its arguments in the form of several exhibits. The Union's first argument was based on comparability. It made the point that the present formula and the formula recommended by the Employer is inferior to the formulas which comparable road commissions use for comparable groups of employees.

Joint Exhibit 1 which contains the operative rules governing the first part of issue 1 provides: "1.45% of the first \$4,200.00 of final average compensation plus 1.70% of final average compensation in excess of \$4,200" shall be the benefit schedule formula.

Union Exhibit 1 shows that the Genessee County Road Commission provides a 2.0 multiplier for the first 25 years of service and 1.0 for each year of service after 25 years. The Macomb County Road Commission, the exhibit shows, uses a 2.25 multiplier for the first 26 years of service and 1.0 for each year after. In Wayne County a 2.0 multiplier is used for all years of service. Companion exhibits were offered which substantiated the accuracy of the data presented in Union Exhibit 1.

The best and clearest of the Union's exhibits on this issue was Union Exhibit 10 which is the Agreement between the Board of County Road Commissioners of Genessee County and Local 79, Service Employees, for the period 1984-1987. That exhibit reads: "All Employees covered by this Agreement shall be members of the Genessee County System and shall receive retirement and survivor benefits in accordance with the provisions of the Genessee County Retirement System Ordinance with the following modifications: (1) The retirement allowance factor for the first twenty-five years of service will be .02. (2) The retirement allowance factor for each year of service after the twenty-fifth year of service will be .01. (Article 23, Sec. 1 Retirement)

Secondly, the Union argues that the Employer has failed to manage its business properly in that it failed to follow the advice of

Gabriel, Roeder, Smith and Company with whom it had consulted. Had the Employer done so, the Union argues, it would be able at this time to compensate its Employees in the form of improved Pension and Health care benefits that Employees receive who work for comparable road commissions.

Issue 1.1: Rebuttal

The Employer rebutted the Union's comparability argument by denying that the counties offered as comparable, with the exception of Macomb, are truly comparable to Oakland County. Although the Employer lists Macomb as one of its own comparables, it denied, as well, that its own comparables are actually valid. The Employer argued that Oakland and perhaps all counties are so different in certain ways that comparability arguments are misleading. The only appropriate comparables, the Employer argued further are those which occur internally between Employees of the same Employer.

The Employer offered in rebuttal of the Union's claims Employer Exhibit 10 which is the current collective bargaining Agreement between the Oakland County Road Commission and Council 25, Local 529, the AFSCME unit of Salaried Employees. In addition the Employer offered two other contracts: Exhibit 11, District Superintendents'; and Exhibit 12, the General Foreman contract. Each of these Agreements add pension improvements of 1.7% effective in the second year for all years of service.

No Employees working for Oakland County in the AFSCME Union have a multiplier higher than 1.7%, the Employer points out. The pension improvement in Joint Exhibit 1 took the multiplier from 1.4% to 1.5%. The Oakland County Road Commission, the Employer argues in its brief, considers the internal equities between its various groups of Union and non-union Employees paramount to any external equities (p. 3). The Employer argued further "Road commissions, unlike some other forms of municipal government, have no independent taxing or revenue raising abilities. They are dependent upon legislative enactments and the public's consumption of fuel for their primary sources of revenue."

The Employer also called attention to Proposal 2 below (JX2) which shows that even if benefit provisions are not changed the Employer's costs at 1.69% will require \$121,848 in new dollars. A multiplier of 2.48% will require adding \$178,806 in new dollars to the benefits package.

Benefit Provisions	Normal Cost	Unfunded Liability	Amorti- zation Payment	Employer Contri- bution %	Contri- bution in \$
Unchanged	10.32%	\$2,821,503	1.95%	12.27%	\$884,663
Proposal 1	4.05	3218075	2.23	6.28	452781
Proposal 2	1.26	617093	.43	1.69	121848
Proposal 3	1.46	1466658	1.02	2.48	178806
Proposal 4	.63	727855	.5	1.13	81472
Proposal 5	.01	12705	.01	.02	1442

Issue 1.1: Findings

The Fact Finder does not accept all of the Employer's reasons for wanting to improve the pension benefit formula by making the multiplier 1.7% effective January 1, 1988. While the Oakland County Road Commission may not be exactly like any other road commission, it is in fact a large commission that employs persons to perform duties that are identical or at least comparable to duties performed by persons who work for other road commissions. The Oakland County Road Commission is in many ways comparable to the Macomb County Road Commission despite some differences. It is likewise comparable in proportionate ways to Wayne and Genessee. Still the Fact Finder acknowledges the Employer's arguments on comparability. The Employer has noted that no clear trend or pattern is evident in the exhibits that have been presented. The Employer also has established that there is a problem with meeting rising costs over which it has no control. So at this time the Employer believes attention must be paid to matters relating to internal equity.

The Union noted that the Employer could have improved its ability to pay its Employees had the Employer followed the advice of its consultants who recommended that: "The Board of Trustees consider authorizing use of the Asset Valuation Method described in Comment D." The second recommendation was that the "Board of Trustees consider authorizing a special study to show the retirement system costs under the entry age normal method to be used in considering a change to the entry age method." (JX2) The Employer successfully rebutted the contention that these recommendations had not been carried out with (EX9) which is the Oakland County Road Commission Minutes for the Board of Trustees for the meeting of August 7, 1986. Those minutes read: "The Board discussed the recommendation of the Actuary, Gerald Sonnenschein of Gabriel, Roeder, Smith and Company that the asset valuation method be changed from a cost method to a modified market value method as is required for private pension plans subject to ERISA." The minutes also show that the Board voted unanimously to

instruct the actuary to "... use the recommended method in making actuarial valuation beginning with the year ending December 31, 1986." In addition the minutes show that the Board voted unanimously to "... make a study of the affect of a change from the attained age method to the entry age method in computing the valuation of the plan." So it is clear to the Fact Finder that the Employer has sought and followed expert advice and has reasonable plans for maintaining the services of the Road Commission and advancing the interests of its Employees with regard to improving pension benefits. The Employer's proposal lends further evidence that plans to increase the pension benefit formula in an equitable manner are moving forward; hence, it is my RECOMMENDATION that: The parties incorporate into a successor agreement language providing that the multiplier for the pension benefit schedule beginning January 1, 1988 will be increased to 1.7% for all years of service.

Issue:1.2: Health Care Benefits

The second part of issue 1 relates to health care benefits. The Union proposes adding the following language to the contract. "Upon the retiree's death the Employer shall continue paying the full premium for the basic group hospitalization insurance for the retiree's spouse and/or dependents with the same coverage as set forth under hospitalization medical coverage starting January 1, 1987."

The Macomb contract is accepted by both parties as representing a jurisdiction somewhat comparable to Oakland County. That contract which is Union Exhibit 3a, contains language which reads: "Employees retiring under age 65 years hospital-medical coverage will be extended to a retiring employee and spouse who qualifies and receives benefits under the Macomb County Retirement Ordinance. Benefits shall be limited to the current coverage with full cost assumed by the Macomb County Road Commission. The coverage indicated shall be limited to the spouse of the Employee named at the time of retirement or any future spouse who reaches fifty-five years of age." Section 2 reads: "Coverage of the spouse shall be discontinued upon the death of the retiree, unless the spouse continues to be entitled to and receives payment under a retirement benefit option."

In addition the Union offered Union Exhibit 11 which is a document titled "Salary Plan County of Wayne." It is dated May 9, 1986. The purpose of this document was to substantiate figures in the Wayne County comparables included in the Union's charts one of which was Exhibit 4. The documents and summarized data were offered for purposes of clarity. The Union called attention to Group Code 07 which related to various health benefits. A,E,I,N,R, and X were the respective codes. "A," for example, relates to Medical Insurance-Blue Cross MDF-II. "E" relates to Medical Insurance Blue Cross

Prescription rider. "I" represents Dental Insurance-Delta. Each of the letters, similarly, represents a specific health benefit. Union 11 contains salary information on grades 14 through 18 which are the same as the salary information in Union Exhibit 4.

Issue 1.2: Rebuttal

In rebuttal, the Employer points out that the Macomb contract does not support the Union's contention that health and medical benefits are continued for a spouse and dependents upon the death of a retiree. The Macomb contract provides spouse coverage for those retirees who retire prior to age 65. The County assumes full cost of the coverage but appears to limit coverage to the level provided at the time of retirement. Upon the death of the retiree, the spouse is no longer covered unless there is a benefit option specifically providing for such coverage.

The Employer offered other exhibits in proof of its claims. Employer Exhibit 2 is the current Agreement between the Ingham County Road Commission and its AFSCME Employees. The purpose of the next several Exhibits 2-7 (with the exception of 5) is to substantiate the figures set forth in Exhibit 1. Employer Exhibit 8 is a comparison chart showing those county road commissions that are comparable to the Oakland County Road Commission and which provide hospitalization for the retiree's spouse and dependents. The chart contains five columns. The chart shows that after the death of the retiree coverage is provided to the spouse and dependents in Kalamazoo, Saginaw and Washtenaw. No coverage is provided in Ingham County, Kent or Macomb Counties. In the case of Kalamazoo the effect of the existence of such a provision has been to provide coverage for only one spouse thus far.

Exhibit 14 is a chart showing the Oakland County Road Commission health-benefit/revenues comparison. It shows that for 1987 the revenues were 29.7 million in Oakland County. If the total costs of benefits are divided by the total cost of revenues a fraction results. This factor makes some comparison possible. The Employer did not claim that this factor has any general acceptability among persons in the field of labor relations or economics. It is simply one way that the Employer looked at comparisons. Employer Exhibit 14 is a chart showing the Oakland County Road Commission health benefits/revenues comparison. It shows that for 1987, 1982 and 1977 respectively the revenues and benefit costs were:

Health Benefits/Revenues Comparison

	Benefit Costs	MTF Benefits Revenues	Revenues
1987	2,602,684	29,600,000	8.793%
1982	1,350,273	18,274,662	7.388%
1977	847,435	17,211,162	4.924%

Revenues appear to have gone up 6% in the five years from 1977 to 1982 and over 60% in the next five years. Benefit costs went up 60% in the period from 1977 to 1982 and over ninety per cent in the next five years.

Finding Issue 1.2

The Union has not been able to show comparables that reflect a pattern which supports its claims that health care benefits should extend to the spouse and dependents of a retiree following his or her death. The County which both of the parties agree to some extent is comparable to Oakland County, Macomb, does not award such a provision. Even if it did, the Employer offered evidence in the form of Employer Exhibits 5A and 15 about the present health care liability which the Oakland County Road Commission carries which raises a serious question about the weight which comparability should receive as opposed to the Employer's need to consider other factors. The Fact Finder is persuaded that the Employer's caution against increased expenditures in this area is well founded. After presenting the data in the chart above, the Employer went on to point out in Exhibit 14, a part of which is included above, that in 1987 Employees received benefits in six health care areas: dental, \$206,000; hospitalization, \$1,955,911; vision, \$38,000; major medical, \$115,011; and prescription drugs \$198,623. In 1982 prescription drugs were not provided. In 1977 neither vision nor prescription drugs were provided. But it is clear that the cost of these added benefits do not account for the nearly doubling of the benefit costs as a portion of total revenues. Seventy-five per cent of the costs of health benefits are hospitalization costs. Hospitalization, Major Medical, Dental and Life Insurance costs account for ninety per cent of the health benefit expenditures.

Employer Exhibit 15 is a memorandum from Bair to Dane dated August 27, 1986. The subject is budget transfers for benefits. This exhibit shows that the cost for several benefit lines has been higher than originally projected for the 1986 budget. Bair recommends budget transfers in those cases where the amount of money that is

budgeted is less than the projected cost as of the above date. This exhibit shows that the hospitalization budget is short by \$549,000. The dental care budget is short by \$27,000. Prescription drugs coverage requires an additional \$40,000 and major medical an additional \$13,000. The memo also points out that the Employer is self-insured for hospitalization and prescription drug coverage. The shortfalls, the memorandum states, result primarily from increased utilization. Not only has the number of Employees using major medical increased but there has been an increase in the rate per employee. The evidence is unrebutted, so the RECOMMENDATION is that the parties incorporate into a successor Agreement at this time no new language which would extend a retiree's benefits upon his or her death to his or her spouse or dependents.

Issue 2: Salary and Wages

The Union was the moving party on issue 2 which posed the question: shall Employees be awarded salary increases of 5% across the board for 1986, 1987 and 1988 and shall such increases be effective on July 1 in each of the respective years. It also posed the rebuttal question of whether Employees shall be awarded increases of 4% across the board in 1986, 3% across the board in 1987 and 3% across the board in 1988 and whether such increases shall be effective on November 1 in each of the respective years.

Union Exhibit 7 is a two page chart containing seven columns. It shows comparisons between hourly rates in selected classifications among comparable counties. This exhibit mixes variables which are different and does not really show comparable rates.

The Union also offered Union Exhibit 8. This is a chart showing the fringe costs per person among selected Employees working for the Oakland County Road Commission. Aggregated data are available in Employer Exhibit 14 and clarifies the matter.

Union Exhibit 9 is a summary of Employee Contract Provisions for the Michigan County Road Commission. The rates shown here are a compendium of all the eighty three counties. The best evidence, the Employer argued, would be the actual contracts. The Union only wanted the figures from pp. 1 and 4 on Genesee County.

Union Exhibit 11 is a document titled "Salary Plan County of Wayne." It is dated May 9, 1986 and is described in detail under issue 1.1 in this report. The purpose of this document was to substantiate figures in the Wayne County comparables included in the Union's charts one of which was Exhibit 4.

Union Exhibit 7 is a two page chart containing seven columns. It shows comparisons between hourly rates in selected classifications among comparable counties. This exhibit mixes variables which are different and does not really show how these comparable counties reflect a pattern with regard to salary. It shows a 1985 rate for Oakland County for the classifications of Janitor, Laborer, Semi-Skilled Laborer, Stock Clerk, Skilled Laborer I, Sign Fabricator and Mechanic. It shows the Genessee County classification rates with COLA for 1986 and the Macomb County rates without COLA for 1986. It shows the Wayne County Rate without the year being specified. The classifications that are being compared do not show a pattern of any kind. The fact finder is persuaded that the Union has made the point, however, that Employees doing comparable work are paid more than Employees who work for the Macomb County Road Commission and less than Employees who work for either the Wayne or Genessee County Road Commissions.

Union Exhibit 8 is a chart showing the fringe costs per person among selected Employees working for the Oakland County Road Commission.

Issue 2: Rebuttal

In rebuttal the Employer rejects Wayne County as a comparable district. The Employer points out that the size difference in revenues and the complexity of Wayne County's organization and number of Employees makes comparisons invalid.

The Employer offered Employer Exhibit 18 which is a list of budgeted positions and salaries.

Title	No.	Salary 1986	Totals
Assistant Sign Fabricator	1	\$18,012.80	\$18,012.80
Auger Operator	3	\$18,324.80	\$54,974.40
Bridge Crew Member*	6	\$26,513.76	\$159,082.56
Carpenter	1	\$18,012.80	\$18,012.80
Curb Sweeper Operator	5	\$18,012.80	\$90,064.00
Electrician	16	\$18,616.00	\$279,856.00
Equipment Operator	13	\$18,012.80	\$234,166.40
Grader Operator	20	\$18,324.80	\$366,496.00
Janitor	3	\$14,830.40	\$44,491.20
Loader Operator	5	\$17,492.80	\$87,464.00
Mechanic	33	\$18,616.00	\$614,328.00
Paint Machine Operator	5	\$19,780.80	\$96,904.00
Radio Repairman	1	\$20,113.60	\$20,113.60
Semi-Skilled Laborer I	29	\$24,949.60	\$735,538.40
Semi-Skilled Laborer II	15	\$26,079.04	\$404,244.00
Radio Repairman	1	\$18,616.00	\$18,616.00
Skilled Laborer I*	31	\$25,644.32	\$794,973.92
Skilled Laborer II*	20	\$26,079.04	\$521,580.80
Solid State Technician*	1	\$26,513.76	\$26,513.76
Stock Clerk	3	\$17,492.80	\$17,492.80
Storekeeper	2	\$18,324.80	\$18,324.80
Tree Trimmer	7	\$18,324.80	\$128,273.60
Truck Driver I	84	\$17,492.80	\$1,469,395.20
Watchman	3	\$17,492.80	\$17,492.80
	308	\$481,673.92	\$6,319,649.00

Employer Exhibit 19 shows the number of budgeted positions and the minimum and maximum salaries related to those positions. The above chart combines information from the exhibits to get a picture of the Employer's present salary costs for AFSCME Council 25, Local 92. Pointed out during the proceedings was the fact that the Employer will not necessarily fill all of the positions that are budgeted during the course of the year for a number of reasons. So the budgeted positions need not represent the Employer's actual costs.

Employer Exhibit 20 is the all cities chart showing the change in the cost-of-living from July 1983 to the present. Employer Exhibit 21 shows the Detroit cost-of-living index for the same period. The Employer offered these exhibits in rebuttal of the Union's comparability argument. The charts show that the cost-of-living has changed from 83-84 by -1.8%. The exhibit shows that it was cheaper to live in Detroit in July of 1984 than it was in July, 1983. The all-cities index shows an increase during this period. Using the Detroit index for 84-85 there was a 3.4% increase in the cost of living. Using the Detroit index for 85-86 there was a .3% decrease in the cost of living and in 1986 from July to November one notes a 2.3% increase.

Issue 2: Findings

The Consumer Price Index makes clear that the cost-of-living in Detroit went up from 83-86 whether one uses the all-cities index or the Detroit index. There was a higher rise in the all-cities index than in the Detroit index. The Fact Finder is persuaded that this is the controlling exhibit with respect to the wage and salary issue.

There were several other useful and informative exhibits. Employer Exhibit 22 is a chart called Comparison Chart for Wage Rates for July, 1986 to July, 1987 for Employer comparables using the counties which the Employer believes are comparable to Oakland. Hourly rates are given for selected classifications. Union Exhibit 8 is a chart showing the fringe costs per person among selected Employees working for the Oakland County Road Commission. Aggregated data are available in Employer Exhibit 14 which clarifies this exhibit. The Union argues in its brief (p. 4) that even if the Oakland County Road Commission hourly Employees were given an increase of five per cent per year, they would still be paid less than comparable Employees working in Wayne County and Genessee County. This appears to be true. However, the Employer has raised the question of the two-tiered structure under which Employees are paid in Wayne and Macomb counties which may, in fact, modify the degree to which the statement is true in Wayne County.

The Employer argues in its brief that the 1983-86 agreement provided increases in wages alone of 15% for members of the Union. (p. 15). The salaried unit, the Employer goes on to say, settled a three year agreement, the superintendents, a two year agreement and the foremen, a two year agreement and each received 4% in the first year and 3% in the second year. The salaried unit has a 3% increase coming in the third year as well.

During the hearing the Union made the unrebutted claim that the first year provision actually provides for monies above what shows in the Agreements of the salaried Employees, the foreman and the superintendents. However, the point was not pursued and the Union did not address it in its brief.

It appears to the Fact Finder that the Union has shown that wage and salary increases are greater in Wayne and Genessee counties. But the Union has not shown any pattern to the external comparables or demonstrated that they should weigh more heavily than the internal comparables that the Employer argues is a vital equity concern. The Union has not addressed the issue of whether Employees in this particular unit are deserving for some reason of an increase that is outside of the internal pattern that the Employer has set. The Employer, on the other hand, has argued that "Genessee County's rates seem driven by some inexplicable force . . . Genessee," the Employer points out, "pays a stock clerk \$15.05 per hour plus C.O.L.A., whereas

Wayne County pays either \$12.95 per hour or \$10.26 per hour (UX6)." The Employer argues that it should not be compelled to follow patterns which appear to be unreasonable and which it cannot justify. (Brief, pp. 15-17)

The Employer also argues that both Macomb County and Wayne County use a two tiered wage structure and calls attention to UX3B and UX7. The Exhibits show the Employer is correct. The two-tiered structure in Wayne and Macomb Counties make it difficult to know exactly what a given classification and level of employee earns.

Internal patterns alone cannot control salary and wage adjustments for units that have different communities of interest and in some cases different agents or no agents representing them. The Employer significantly offers the consumer price index standard as one of its proofs and notes that the standard rose just over four per cent in the past year. The Fact Finder further notes that the Employer is proposing a four per cent increase for the first year of a successor Agreement. So the Fact Finder RECOMMENDS that all Employees in the unit receive an increase of 4% across the board in 1986, an increase of 3% across the board in 1987 and an increase of 3% across the board in 1988 and that the effective date of the increase shall be retroactive to July 1, 1986 and will take effect subsequently on July 1, 1987 and July 1, 1988.

Issue 3: Job Assignments

The Employer was the moving party on issue 3. The Employer would like to see Article 61, Job Assignments, modified by excluding "If an employee feels that his assignment is improper because of his seniority, an attempt will be made the next working day to resolve the differences. Obvious errors known to the Superintendent will be corrected immediately whenever possible."

The Employer offered Employer Exhibit 16, a chart showing daily job assignments for comparable road commissions. It notes that Ingham, Kalamazoo, Kent, Macomb, Saginaw and Washtenaw do not make daily job assignments by seniority only. They make daily assignments at the Employer's discretion. Oakland County is alone among this group in using seniority as the major criterion in making daily job assignments. There was testimony regarding the difficulties of daily operations that have been brought on because of this language but for the most part the counter testimony was equally persuasive. Union Exhibit 6, which was offered in rebuttal, is a daily assignment sheet. It contains seniority dates and Larry Watson testified that the cumbersome job of determining the seniority of men requesting a change in a daily assignment should not exist.

Issue 3: Findings

The Fact Finder notes that seniority, historically, has formed a basis for determining whether decisions having some effect on workers are proper. As of late, contracts between some Employers and Unions have begun to regard seniority as secondary to other mutually shared goals. In such a case the parties may choose not to include seniority as a basis for determining whether an action is fair or proper. But both parties must agree to this. Whereas standards of pay and certain other quantitative factors can be argued on the basis of comparability among similar groups of unions and employers, non-quantitative factors which exist as a restraint against possible abuse in a specific work place cannot be argued in the same manner. It is the history of the specific relationship in the work place that is controlling. The question is not so much whether there is a contract provision in place that restrains one party or another from a given action but whether there is a history which justifies the existence of a contract provision which will provide a restraint where one is needed. The parties to the present language, which the Employer now wishes to have excluded from a successor Agreement, included that language because of a mutually felt need to have it as a guide. The same mutuality is not yet present with respect to the Employer's proposal that the language should be excluded from a successor Agreement. Hence, it is the Fact Finder's RECOMMENDATION that Article 61, Job Assignments, which reads in part: "If an employee feels that his assignment is improper because of his seniority, an attempt will be made the next working day to resolve the differences. Obvious errors known to the Superintendent will be corrected immediately whenever possible," shall be continued in the successor Agreement between the parties.

Issue 4: Work Rules

The Employer was the moving party on issue 4. Presently the Employer sees the need to incorporate into a successor Agreement a new article which shall be titled "Work Rules" and read: "The Employer reserves the right to publish and enforce from time to time new work rules, policies, and regulations not in conflict with this Agreement. New work rules will be posted with a copy to the Local President ten (10) working days in advance of effective date."

In support of its proposal the Employer offered Employer Exhibit 23 which is a Comparison Chart showing the pattern for contractual rights which permit the Employer to implement work rules. The right exists in Kalamazoo, Flint and Saginaw and is proposed for Oakland. The right does not exist in either Macomb or Washtenaw.

The Union calls attention to Joint Exhibit 1, the Agreement between the Oakland County Road Commission and Hourly Employee's Union, Council 25, AFSCME Local 92, October 10, 1983-June 30, 1986.

The Union argues that among other things this document shows that the Employer already has a contractual right to manage spelled out in the Agreement.

Issue 4: Findings

It is clear to the Fact Finder that the Employer is not satisfied with the present language on management rights that is included in the contract. Yet, the language has been there for some time and when the parties can reach agreement, the language can be modified or new language added. The Fact Finder is not persuaded that these proceedings have dealt in sufficient depth with this issue to warrant a finding and remands the matter to the parties to be resolved in future negotiations. For these negotiations the Fact Finder's RECOMMENDATION is that the issue be removed from the table.

Issue 7: Maintenance of Standards

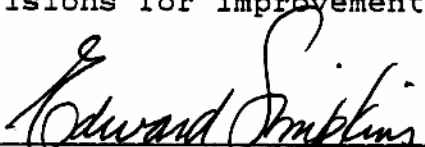
The Employer was the moving party on issue 7 which would exclude Article 10, Maintenance of Standards, from a successor Agreement. That Article reads: "The Employer agrees that conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the existing standards in effect at the time of the signing of this Agreement and shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement."

The Employer has tried to promulgate work rules and policies which were not negotiated and has encountered difficulty. The Employer has been sustained at the administrative level in the Michigan Employment Relations Commission and reversed by the Commission on appeal.

The Union believes that there is a need for the language under "Maintenance of Standards." Union Exhibit 15 is an order by the Michigan Employment Relations Commission, Case No. C81E-154. The Commission among other things ordered the Employer, the Oakland County Road Commission, to cease and desist from (1) revising, promulgating or enforcing absence control work rules or disciplinary procedures governing Employees represented by AFSCME Council 25, Local 92 and Local 529 (2) Refusing on request of the aforesaid Unions to discuss and negotiate with them about the revision, promulgation and or enforcement of absence control work rules or disciplinary procedures governing Employees represented by said Union. (3) In any like manner interfering with the efforts of the aforementioned Unions to bargain collectively on behalf of the Employees they represent. The order

also directs the Oakland County Road Commission to (1) cancel, withdraw and rescind the March 29 document on absence control work rules (2) remove from personnel work files all disciplinary warnings issued since March 29, 1981 (3) offer all Employees discharged, suspended or otherwise denied work opportunities as a result of the unilateral promulgation of said rules and procedures immediate and full reinstatement to their former positions.

The Union makes the case effectively that the matter of unilateral action on the part of the Employer has been strongly contested hence there is history which sustains the position which it takes on issue 7. In view of this history, the Fact Finder's RECOMMENDATION is that the parties continue in their successor Agreement Article 10, Maintenance of Standards which reads: "The Employer agrees that conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the existing standards in effect at the time of the signing of this Agreement and shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement."


Edward Simpkins, Fact Finder

March 16, 1987
March 16, 1987